Jennifer B. Hutchinson
Senior Counsel

September 23, 2013

VIA HAND DELIVERY & ELECTRONIC MAIL

Luly E. Massaro, Commission Clerk
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

RE: Docket 4437 - Review of Power Purchase Agreement – Champlain Wind, LLC
Pursuant to RI General Laws § 39-26.1 *et seq.*
Responses to Division Data Requests – Set 1

Dear Ms. Massaro:

Enclosed for filing are National Grid's[1] responses to the Division's First Set of Data Requests concerning the above-referenced matter.

Please note that pursuant to Commission Rule 1.2(g) and R.I.G.L. § 38-2-2(4)(B), the Company is requesting that the Commission provide confidential treatment and grant protection from public disclosure certain confidential, competitively sensitive, and proprietary information submitted in this proceeding. Specifically, the Company is seeking protective treatment of the following confidential attachments it has submitted with these responses: Attachment DIV 1-4; Attachment DIV 1-8; and the CD-ROM that includes confidential Excel spreadsheets identified as Attachment DIV 1-3, Attachment DIV 1-6, and Attachment DIV 1-7. As explained further in the enclosed Motion for Protective Treatment of Confidential Information (the "Motion"), these attachments include, among other things, confidential and proprietary pricing and bidder information that should not be disclosed to the public. In addition to the Motion, the Company has enclosed copies of the above-referenced confidential attachments and the CD-ROM containing the confidential Excel files. The Company is also providing these attachments and the CD-ROM to the Division.

Thank you for your attention to this transmittal. If you have any questions, please contact me at (401) 784-7288.

Very truly yours,

Jennifer Brooks Hutchinson

Enclosures
cc: Docket 4237 Service List
Leo Wold, Esq.
Steve Scialabba, Division

[1] The Narragansett Electric Company d/b/a National Grid (hereinafter referred to as "National Grid" or the "Company").

280 Melrose Street, Providence, RI 02907
T: 401-784-7288 ■ jennifer.hutchinson@nationalgrid.com ■ www.nationalgrid.com

Certificate of Service

I hereby certify that a copy of the cover letter and/or any materials accompanying this certificate were electronically transmitted to the individuals listed below. Copies of this filing were hand delivered to the RI Public Utilities Commission and to the RI Division of Public Utilities & Carriers.

Joanne M. Scanlon
National Grid

September 23, 2013
Date

Docket No. 4437 - National Grid PPA w/ Champlain Wind, LLC (Bowers Wind Project, Developer) Service List updated 9/9/13

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File an original & 10 copies w/: Luly E. Massaro, Commission Clerk Public Utilities Commission 89 Jefferson Blvd. Warwick, RI 02888	Luly.massaro@puc.ri.gov Amy.dalessandro@puc.ri.gov Nicholas.ucci@puc.ri.gov Alan.nault@puc.ri.gov Dilip.shah@puc.ri.gov	401-780-2017

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

RHODE ISLAND PUBLIC UTILITIES COMMISSION

Review of Champlain Wind, LLC
Power Purchase Agreement **Docket No. 4437**
Pursuant to R.I.G.L. § 39-26.1 *et seq.*

NATIONAL GRID'S MOTION FOR PROTECTIVE TREATMENT OF CONFIDENTIAL INFORMATION

National Grid[1] respectfully requests that the Rhode Island Public Utilities Commission ("Commission") provide confidential treatment and grant protection from public disclosure certain confidential, competitively sensitive, and proprietary information submitted in this proceeding, as permitted by Commission Rule 1.2(g) and R.I.G.L. § 38-2-2(4)(B). National Grid also respectfully requests that, pending entry of that finding, the Commission preliminarily grant National Grid's request for confidential treatment pursuant to Rule 1.2 (g)(2).

I. BACKGROUND

On September 23, 2013, National Grid is filing with the Commission its responses to the Division of Public Utilities and Carriers' (the "Division") First Set of Data Requests. Division Data Request 1-3 requests all internal memos, presentations, analyses, and other documents regarding the ISO-NE negative pricing issue. In response to Division Data Request 1-3, the Company is providing a live spreadsheet containing its

[1] The Narragansett Electric Company d/b/a National Grid ("National Grid" or the "Company").

analysis of the potential magnitude of negative pricing in any hour. This working spreadsheet contains confidential and proprietary pricing information. Therefore, National Grid requests that the Commission give the information contained in Attachment DIV 1-3 confidential treatment.

In addition, Division Data Requests 1-4 and 1-5 request the market forecast methodology used by Energy Security Analysis, Inc. ("ESAI") for the energy price and renewable energy credits ("RECs"). In response to Division Data Requests 1-4 and 1-5, the Company is providing a copy of the ESAI Forecast Methodology as of June 2012 as a confidential attachment identified as Attachment DIV 1-4. Division Data Request 1-6 requests the live spreadsheets that were used to calculate the price scores in Exhibit 3 (Confidential) to the testimony of Corinne M. Abrams. In response to Division Data Request 1-6, the Company is providing the information on a confidential CD-ROM identified as Attachment DIV 1-6. Division Data Request 1-7 also requests the live spreadsheet that was used to create Exhibit 2 (Confidential) to the testimony of Corinne M. Abrams. In response to Division Data Request 1-7, the Company is providing the information on a confidential CD-ROM, identified as Attachment DIV 1-7. The Company previously submitted a hard copy version of Exhibit 2 (Confidential) to the Commission on September 3, 2013, which is the subject of a Motion for Protective Treatment pending before the Commission. Attachment DIV 1-7 is a working spreadsheet of Exhibit 2 (Confidential), which illustrates a comparison of the Champlain Wind PPA pricing to the market forecast for energy, capacity, and RECs prepared by ESAI.

The ESAI Forecast Methodology in Attachment DIV 1-4 and the working spreadsheets in Attachment DIV 1-6 and Attachment DIV 1-7 contain market price forecasts for energy, capacity, and RECs, which ESAI prepared while acting as a consultant to National Grid and at National Grid's request. Under National Grid's arrangement with ESAI, the forecasts are considered proprietary. In addition, the spreadsheet in Attachment DIV 1-6 also contains detailed bidder information and pricing data, as well as the price and non-price evaluation of those bids. Therefore, National Grid requests that the Commission treat the information contained in Attachment DIV 1-4, Attachment DIV 1-6, and Attachment DIV 1-7 as confidential.

Finally, Division Data Request 1-8 requests a detailed breakdown of the non-price scores in Exhibit 3 (Confidential). In response to Division Data Request 1-8, the Company is providing redacted and unredacted versions of the non-price scoring sheets for each bidder as Attachment DIV 1-8. These non-price scoring sheets contain confidential and proprietary bidder information as well as bid evaluation information. Therefore, National Grid requests that the Commission treat the information contained in the unredacted version of Attachment DIV1-8 as confidential.

II. LEGAL STANDARD

The Commission's Rule 1.2(g) provides that access to public records shall be granted in accordance with the Access to Public Records Act ("APRA"), R.I.G.L. §38-2-1 *et seq.* Under APRA, all documents and materials submitted in connection with the transaction of official business by an agency is deemed to be a "public record," unless the information contained in such documents and materials falls within one of the exceptions specifically identified in R.I.G.L. §38-2-2(4). Therefore, to the extent that information

provided to the Commission falls within one of the designated exceptions to the public records law, the Commission has the authority under the terms of APRA to deem such information to be confidential and to protect that information from public disclosure.

In that regard, R.I.G.L. §38-2-2(4)(B) provides that the following types of records shall not be deemed public:

> Trade secrets and commercial or financial information obtained from a person, firm, or corporation which is of a privileged or confidential nature.

The Rhode Island Supreme Court has held that this confidential information exemption applies where disclosure of information would likely either (1) impair the Government's ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. Providence Journal Company v. Convention Center Authority, 774 A.2d 40 (R.I. 2001).

The first prong of the test is satisfied when information is voluntarily provided to the governmental agency and that information is of a kind that would customarily not be released to the public by the person from whom it was obtained. Providence Journal, 774 A.2d at 47.

II. BASIS FOR CONFIDENTIALITY

The Company's negative pricing analysis contained in Attachment DIV 1-3 contains competitively sensitive price information that the Company obtained during the course of its negotiations with Champlain Wind, LLC ("Champlain Wind") and used in its analysis of the potential impact of the ISO-NE negative pricing rule change. Disclosure of this information could impact the competitive position of Champlain Wind

in the market, and would impede National Grid's ability to obtain the best price for future power purchase agreements.

In addition, the information regarding the ESAI forecast contained in Attachment DIV 1-4, Attachment DIV 1-6, and Attachment DIV 1-7 was developed by ESAI through its proprietary methods of analysis and was provided to National Grid on a confidential basis. National Grid is providing confidential Attachment DIV 1-4 and confidential CD-ROMs as Attachment DIV 1-6 and Attachment DIV 1-7 to the Commission and the Division on a voluntary basis to assist the Commission with its decision-making in this proceeding. Disclosure of this information could adversely affect ESAI's competitive position and would tend to make it less likely that such information would be provided voluntarily in the future. Moreover, such disclosure would impede National Grid's future ability to obtain this type of proprietary information from third-party consultants, or would increase the cost at which that information could be obtained.

In addition, the information contained in Attachment DIV 1-6 and Attachment DIV 1-8 contains confidential and proprietary bidder information, including pricing information and bid-evaluation information. National Grid obtained this information from bidders and agreed to use all reasonable efforts to treat this non-public information in a confidential manner as it contains the bidders' confidential pricing data. National Grid is providing a confidential CD-ROM as Attachment DIV 1-6 and the un-redacted version of Attachment DIV 1-8 to the Commission and the Division on a voluntary basis to assist the Commission with its decision-making in this proceeding. Disclosure of this information would impact the competitive position of these parties, and such disclosure

would impede National Grid's future ability to obtain bids and/or this type of proprietary information.

III. CONCLUSION

Accordingly, the Company requests that the Commission grant protective treatment to (i) confidential Attachment DIV 1-4, (ii) the confidential CD-ROMs identified as Attachment DIV 1-3, Attachment DIV 1-6, and Attachment DIV 1-7, and (iii) the un-redacted version of Attachment DIV 1-8.

WHEREFORE, the Company respectfully requests that the Commission grant its Motion for Protective Treatment as stated herein.

Respectfully submitted,

NATIONAL GRID

By its attorney,

Jennifer Brooks Hutchinson (RI Bar #6176)
National Grid
280 Melrose Street
Providence, RI 02907
(401) 784-7288

Dated: September 23, 2013

Division 1-1

Request:

Please provide a copy of the draft decision or final order issued by the Maine DEP on July 24, 2013 denying a permit to Champlain Wind.

a. What were the grounds for the Maine DEP denying the permit?
b. On what grounds is Champlain Wind appealing?
c. Why does Champlain Wind expect to be successful in its appeal?

Response:

Champlain Wind has provided the Company with a copy of the Maine Department of Environmental Protection ("DEP") Order denying the permit for the construction of a wind energy development consisting of 16 turbines (the "Project"). A copy of the Maine DEP Order is attached as Attachment DIV 1-1.

a. Based solely on information the Company obtained from Champlain Wind and the DEP's conclusions on pages 42-45 of the Order, it is the Company's understanding that the basis for the Maine DEP's denial of the permit to Champlain Wind was that the Project did not comply with the scenic impact standard. The Maine DEP found that the Project satisfied all other review standards.

b. The Company does not have first-hand knowledge of the grounds for Champlain Wind's appeal. However, on September 20, 2013, Champlain Wind filed a motion to intervene in this docket.

c. The Company does not have first-hand knowledge of why Champlain Wind expects to be successful in its appeal. However, as noted above, Champlain Wind has filed a motion to intervene in this docket.

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

PAUL R. LEPAGE
GOVERNOR

PATRICIA W. AHO
COMMISSIONER

August 2013

Champlain Wind, LLC
129 Middle Street, Floor 3
Portland, Maine 04101
ATTN: Mr. Neil Kiely

RE: Site Location of Development Act/ Natural Resources Protection Act Applications, Carroll Plantation and Kossuth Township, #L-25800-24-A-N/#L-25800-TE-B-N/#L-25800-IW-C-N Denial

Dear Mr. Kiely:

Please find enclosed a signed copy of the denial of your Department of Environmental Protection applications for permits under the Site Location of Development Act and the Natural Resources Protection Act. You will note that the denial includes a description of your project, and findings of fact that relate to the criteria the Department used in evaluating your project. The Department reviews every application thoroughly and strives to formulate reasonable findings of fact within the context of the Department's environmental laws. You will also find attached some materials that describe the Department's appeal procedures for your information.

If you have any questions or concerns on how the Department processed this application please get in touch with me directly. I can be reached at (207) 446-9026 or at Jim.R.Beyer@maine.gov.

Sincerely,

James R. Beyer, Regional Licensing and Compliance Manager
Division of Land Resource Regulation
Bureau of Land & Water Quality

pc: File

STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
17 STATE HOUSE STATION AUGUSTA, MAINE 04333-0017

DEPARTMENT ORDER

IN THE MATTER OF

CHAMPLAIN WIND, LLC	) SITE LOCATION OF DEVELOPMENT ACT
Kossuth Township, Washington County	)
Carroll Plantation, Penobscot County	) NATURAL RESOURCES PROTECTION ACT
BOWERS WIND PROJECT	) WATER QUALITY CERTIFICATION
L-25800-24-A-N (denial)	) SIGNIFICANT WILDLIFE HABITAT
L-25800-TE-B-N (denial)	) WATER QUALITY CERTIFICATION
L-25800-IW-C-N (denial)	) FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 35-A M.R.S.A. §§ 3401 -3457, 38 M.R.S.A. §§ 481 et seq. and 480-A et seq., and Section 401 of the Federal Water Pollution Control Act, the Department of Environmental Protection (Department) has considered the application of CHAMPLAIN WIND, LLC with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. Summary: The applicant proposes construct a wind energy development consisting of 16 turbines. This project qualifies as an expedited wind energy development as defined in the Wind Energy Act (35-A M.R.S.A. §3451(4)) (WEA). In addition to the turbines, the project would include an operations and maintenance (O&M) building as well as associated facilities. The O&M building would be located in Carroll Plantation on Route 6. The proposed project overall would include 33.92 acres of impervious area and 33.92 of developed area. The O&M building would result in approximately 7,000 square feet of impervious area. The project is shown on a set of plans included in the application, the first of which is entitled "Overall Location Plan," prepared James W. Sewall Company, and dated September 26, 2012.

1) Wind Turbines. The applicant proposes to construct 16 wind turbines, either the Siemens 3.0 megawatt (MW) model (SWT-3.0-113) or the Vestas 3.0 MW turbine (V112 3.0-MW) for a total of 48 MW of generation capacity. The turbines would be either 446 (Siemens) or 459 (Vestas) feet in total height to the tip of the fully extended blade. The turbines would be located on Dill Hill and Bowers Mountain in Carroll Plantation and Kossuth Township.

2) Turbine Pads. The turbines would be constructed on 16 pads. The total impervious area associated with the turbine pads is 0.66 acre.

3) Access Roads and Crane Path. The applicant is proposing 3.0 miles of 24-foot wide access roads and 4.0 miles of 35-foot crane paths. The total impervious area associated with the linear portion of the project is 21.74 acres.

4) Electrical Collector Substation and O&M building. The applicant proposes to construct an electrical substation adjacent to Line 56 in Carroll Plantation. The applicant is also proposing a 7,000 square foot O&M building in Carroll Plantation located north of Route 6, adjacent to the express collector line. The total new impervious area associated with the electrical substation and the O&M building is 5.65acres.

5) Meteorological Towers. The applicant is proposing to construct one permanent meteorological tower on the site to monitor turbine performance.

6) Express Collector Line. The applicant is proposing to collect the power from the turbines in a 34.5 kilovolt (kV) express collector line. The express collector line would run approximately 5.2 miles to the proposed substation.

The applicant's proposal includes the conversion of 2.58 acres of forested wetland to scrub-shrub wetland associated with the summit collector line and express collector line and no permanent wetland fill. The proposal would also include 0.14 acre of fill in the upland portion of an Inland Waterfowl and Wading Bird Habitat (IWWH).

B. Public Hearing. The Department received numerous requests for a public hearing. The proposed project is a modified version of a project previously denied by the Land Use Regulation Commission (LURC) in 2011. The previous project was subject to an evidentiary public hearing process. To assist the Department in its decision making for the proposed project, the Commissioner exercised her discretion pursuant to 096 CMR Chapter 2, Section 7.B to hold a public hearing. The Department held a public hearing on April 30th and May 1st, 2013 at Lee Academy in Lee, Maine. The Department granted intervenor status to Conservation Law Foundation (CLF)/Maine Renewable Energy Associates (MREA), Partnership for the Preservation of Downeast Lakes Watershed (PPDLW), and David Corrigan, and they participated in the public hearing process. Throughout the public hearing process the Department issued five procedural orders:

1) First Procedural Order. The first procedural order set forth the Hearing Officer's decision with respect to Petitions for Leave to Intervene and set a date for the pre-hearing conference.

2) Second Procedural Order. The second procedural order was completed after the pre-hearing conference and summarized the discussions of the attendees at the conference, and included the scheduling of the public hearing.

3) Third Procedural Order. In the third procedural order the Hearing Officer set forth time limits for the summary of direct testimony and witness requests for cross-examination, and made other rulings with respect to procedural issues and objections to ensure the fair and orderly conduct of the hearing.

4) Fourth Procedural Order. The fourth procedural order was issued upon conclusion of the public hearing. The Hearing Officer set forth time limits for

submission of post-hearing briefs, and made other rulings with respect to procedural issues and objections.

5) Fifth Procedural Order. The fifth procedural order dealt with three specific objections that had been raised by PPDLW and the applicant.

C. Current Use of the Site. The site of the proposed project is woodlands and is currently used for commercial forestry operations.

2. TITLE RIGHT OR INTEREST:

To demonstrate title, right or interest in the property proposed for development, as required in Chapter 2(11)(D) and Chapter 372(9) of the Department's rules, the applicant submitted copies of deeds, leases and lease options between the applicant and the property owners for the proposed project site. The owner of one protected location has a license agreement with the underlying landowner from the wind energy development, as described in Section 5 below. There are no other proposed easements for adjacent parcels of land pertaining to shadow flicker effects and safety setbacks.

The Department finds the applicant has demonstrated sufficient title, right or interest for the area which would be occupied by the project.

3. FINANCIAL CAPACITY:

The applicant estimates the total cost of the project to be $100 million. Champlain Wind, LLC is a legal entity authorized to do business in the State of Maine and is a wholly owned subsidiary of First Wind Holdings, LLC. The applicant submitted a plan detailing financing for the project. The financing is proposed to include First Wind Holdings, LLC equity funded from cash balances, bank construction and long-term debt sourced on market terms, tax equity source on market terms, and cash contributions from Emera pursuant to its joint venture with First Wind. Prior to the start of construction, the applicant would be required to submit to the Bureau of Land and Water Quality (BLWQ) for review and approval evidence that it has been granted a line of credit or a loan by a financial institution authorized to do business in the State or evidence of any form of financial assurance determined by Department Rules, Chapter 373(1), to be adequate.

PPDLW argued in pre-filed testimony that the applicant had not submitted accurate and complete cost estimates for the proposal because "other construction costs" were not detailed to a sufficient level to conduct an analysis. PPDLW also questioned if these costs included the cost that would be incurred to retrofit the turbines to include the Obstacle Collision Avoidance System once it is approved by the Federal Aviation Administration (FAA). PPDLW concluded that the applicant should have submitted detailed audited financials similar to what the applicant was required to submit to the Public Utility Commission in connection with the Emera transaction, an up to date organization chart that clearly informs the Department of where project assets and liabilities would be held, and two sets of financials with one set reflecting if the Emera

transaction is overturned. PPDLW also argued that the Department should hire a certified professional accounting firm to properly assess the finances of the applicant.

In rebuttal testimony submitted by the applicant, the applicant stated that it has met requirements set forth by Chapter 373. The Site Location of Development Law (Site Law) authorizes the Department to condition a permit such that the applicant submits evidence of financial capacity prior to construction. 38 M.R.S.A. § 484 (1). The applicant contends that the breakdown of the project cost is consistent with what the Department has required for other developments. The project estimate does include the cost of installing radar-assisted lighting technology. The applicant concludes that it has submitted sufficient financial evidence to satisfy Chapter 373. In order to further guard against any financial risk to the public, the applicant is proposing to post appropriate financial security (a letter of credit, performance bond, or other similar security) that would be independent from the decommissioning fund and available to the State to fully restore the site in the event that the developer started but did not complete construction within a certain time period.

The Department finds that the applicant has demonstrated adequate financial capacity to comply with Department standards, conditioned on the applicant submitting prior to construction evidence that it has been granted a line of credit or a loan by a financial institution authorized to do business in this State, or evidence of any other form of financial assurance determined by Department Rules, Chapter 373(1), to be adequate for the BLWQ review and approval.

4. TECHNICAL ABILITY:

The applicant operates 16 other wind energy projects across the country with a total generation capacity of 980 MW. The applicant provided resume information for key persons involved with the project and a list of projects successfully constructed by the applicant. The applicant also retained the services of several consulting firms to assist in the design and engineering of the project. The firms and their proposed involvement are as follows:

- Stantec Consulting – natural resource assessment, permitting
- James W. Sewall Company – engineering and stormwater
- SGC Engineering, LLC – electrical engineering
- Kevin J. Boyle, PhD – user surveys
- Landworks – visual impact analysis
- Kleinschmidt Associates, LLC – recreational surveys
- TRC/Northeast Cultural Resources – prehistoric archaeological resources
- Verrill Dana – legal counsel

Based on the experience and expertise of the applicant and their retained consultants, the Department finds that the applicant has demonstrated adequate technical ability to develop the project in compliance with Department standards and provisions of the Site Law.

5. NOISE:

To address the Site Law standard pertaining to the control of noise, 38 M.R.S.A. §484(3), and the applicable rules, Chapter 375(10), the applicant submitted a Noise Impact Study entitled "Sound Level Assessment for the Bowers Wind Project," completed by Stantec Consulting and dated September 2012. The Noise Impact Study was conducted to predict expected sound levels from the proposed project, and to compare the model results to the applicable requirements of Chapter 375(10).

The Bowers Wind Project must comply with Department regulations applicable to sound levels from construction activities, routine operation and routine maintenance. Chapter 375(10) applies hourly sound level limits (L_{eqA}-Hr) at facility property boundaries and at nearby protected locations. Chapter 375(10)(G)(16) defines a protected location as "[a]ny location accessible by foot, on a parcel of land containing a residence or planned residence or approved subdivision near the development site at the time a Site Location of Development application is submitted…". In addition to residential parcels, protected locations include, but are not limited to, schools, state parks, and designated wilderness areas. For the proposed project, the nearest protected location is approximately 3,600 feet from a turbine.

As outlined in Chapter 375(10)(I)(2), the sound level resulting from routine operation of a wind energy development is limited to 75 decibels (dBA) at any time of day at any development property boundary. At any protected location, the limit is 55 dBA between 7:00 a.m. and 7:00 p.m., and 42 dBA between 7:00 p.m. and 7:00 a.m.

Pursuant to Chapter 375(10)(C)(5)(s) sounds from a regulated development received at a protected location are exempt from the regulations when the owner of the property conveys a noise easement for that location to the generator of the sound. The owner of one protected location has a license agreement with the underlying landowner from the wind energy development.

To assist with the review of the application, the Department retained an independent noise expert, Peter Guldberg of Tech Environmental, Inc., to review the applicant's prediction model and associated data as well as other evidence received on the issue of noise.

A. Sound Level Modeling. The applicant's noise consultant, Stantec Consulting, Ltd., developed a sound level prediction model to estimate sound levels from the operation of the proposed project. The sound model for the project was created using Cadna/A software developed by DataKustik of Germany. Cadna/A allows the consultant to construct topographic surface models of area terrain for calculating sound attenuation from multiple sound sources such as wind turbines. The location of the proposed turbines, roads, parcels, land uses and waterbodies were entered into Cadna/A in order to calculate sound levels at various points within the proposed project area. Sound level predictions were calculated in accordance with ISO 9613-2, which is an international standard for calculating outdoor sound propagation.

This computerized model is capable of predicting sound levels at specific receiver positions originating from a variety of sound sources. Applicable national or international standards can also be included in the analysis as described above. Cadna/A accounts for such factors as:

- Distance attenuation;
- Geometrical characteristics of sources and receivers;
- Atmospheric attenuation (i.e. the rate of sound absorption by atmospheric gases in the air between sound sources and receptors);
- Ground attenuation (effects of sound absorption by the ground as sound passes over various terrain and vegetation types between source and receptor);
- Screening effects of surrounding terrain; and
- Meteorological conditions and effects.

The model used the Vestas 112 3.0 MW turbine since this turbine has the greatest potential sound impact. To be conservative in calculating the high end of the sound power levels produced by the turbines, a factor of 2 dBA was added by the applicant's consultant to the manufacturer's sound power level of the Vestas turbine, and a factor of 1 dBA was added to account for uncertainty in the mathematical modeling, resulting in a total adjustment factor of 3 dBA.

Sound associated with the operational phase of the project was modeled excluding other existing sound sources. Modeling the sound generated from the operation of the 16 turbines was conducted by first obtaining the manufacturer's sound power level specifications 106.5 dBA, and then applying the uncertainty factors described above to account for the manufacturer's uncertainty and the modeling uncertainty, for a total sound power level of 109.5 dBA from each turbine. The model was run with all 16 turbines operating at full sound power output. No noise reduction operations are proposed for this project. The applicant reported that the predicted hourly nighttime sound levels at 4 protected locations at distances of 3,646 feet to 5,906 feet from the nearest proposed turbine ranged from 39.4 dBA to 40.2 dBA. The applicant concluded that the proposed project would result in sound levels below the required daytime sound level limit of 55 dBA and the nighttime sound level limit of 42 dBA at all protected locations.

Although substation transformers emit sound, they were not considered significant sound sources by the applicant's consultant due to a low sound output and relatively large distance from protected locations, and were therefore not included in the model. The Department and Peter Guldberg found this appropriate and acceptable.

B. Tonal Sound. As defined in Chapter 375(10)(I)(3), a tonal sound exists if: at a protected location, the 10 minute equivalent average one-third octave band sound pressure level in the band containing the tonal sound exceeds the arithmetic average of the sound pressure levels of the two contiguous one-third octave bands by 5 dB for center frequencies at or between 500 Hz and 10,000 Hz, by 8 dB for center frequencies at or between 160 and 400 Hz, and by 15 dB for center frequencies at or between 25 Hz and 125 Hz. 5 dBA shall be added to any average 10 minute sound

level ($Leq_{A\ 10\text{-}min}$) for which a tonal sound occurs that results from routine operation of the wind energy development.

The applicant's September 2012 Noise Impact Study states that the Vestas V112 turbines proposed for use carry Sound Level Performance Standard warranties certifying that they would not produce a tonal sound as it is defined by the Department's Noise Regulations. In his review of the applicant's Noise Impact Study on behalf of the Department, Mr. Guldberg confirmed that an analysis of the sound power octave band spectrum for the Vestas V112 reveals that they have no potential for creating a tonal sound as defined in the Department's Noise Regulations.

C. Short Duration Repetitive Sound. Chapter 375(10)(I)(4) defines short duration repetitive sound (SDRS) as:

> "a sequence of repetitive sounds that occur within a 10-minute measurement interval, each clearly discernible as an event resulting from the development and causing an increase in the sound level of 5 dBA or greater on the fast meter response above the sound level observed immediately before and after the event, each typically ±1 second in duration, and which are inherent to the process or operation of the development."

Chapter 375(10)(I)(4) requires that if any defined SDRS results from routine operation of a development, 5 dBA must added to the average 10-minute sound level ($Leq_{A\ 10\text{-}min}$) measurement interval in which greater than 5 SDRS events are present.

The September 2012 Noise Impact Study submitted by the applicant summarized measurements of operating wind turbines in Maine and data from published literature that indicate that sound level fluctuations during the blade passage of the wind turbines typically range from 2 to 5 dBA, with an occasional event reaching 6 dBA. The applicant's report states that amplitude modulation is not likely to occur in more than one-third of the measurement intervals, meeting the "worst-case" test protocol criteria. The applicant states that the conservative assessment of the 5 dBA penalty to one-third of the compliance measurement intervals would result in an added 1.7 dBA to the measured average $Leq_{A\ 10\text{-}min}$. Based on the applicant's Noise Impact Study and the assessment of the Department's noise expert, it appears the proposed project is unlikely to generate SDRS in exceedence of the applicable sound limits. Compliance testing for SDRS would be incorporated into the post-construction noise monitoring program (discussed in Section 5.E. below) after completion would provide assurance that SDRS was not occurring.

D. Department Analysis. Mr. Guldberg reviewed the proposed project and the report, entitled, "Sound Level Assessment Bower Wind Project," submitted by Stantec and dated September 2012 to determine if the acoustic studies submitted by the applicant were reasonable and technically correct according to the standard engineering practices and the Department's Regulations on Control of Noise (06-096 CMR 375(10)). Mr. Guldberg concluded that the Vestas 112 3.0 MW turbine maximum sound power levels with conservative uncertainty factors were used in the analysis;

the acoustic model and its assumptions are appropriate; the sound receiver locations are appropriate; the decibel contour maps adequately cover the potential impact area; and the Department Regulations on Control of Noise have been properly interpreted and applied for by the applicant.

E. Post-Construction Monitoring Program. In his project review, Mr. Guldberg states that to ensure that the sound level predictions submitted by the applicant are accurate for the wind turbines actually installed, and to ensure compliance with the Department's Noise Regulations, including provisions regarding SDRS and tonal sound, the Department should require post-construction sound monitoring for the project.

To ensure compliance, post-construction monitoring must meet all applicable standards of Chapter 375(10)(I)(8), which specifies the methods for measuring sound and the information to be reported to the Department.

F. Sound Complaints Response and Resolution Protocol. The applicant proposes to implement a formal protocol for responding to sound complaints. The protocol would meet all applicable standards of Chapter 375(10)(I)(7)(j). The applicant must notify the Department of any complaints within three business days of receiving them and must notify the Department of the outcome of its investigation within three business days of completion.

Based on the applicant's submissions and the review of those submissions by the Department's expert, the Department finds that the proposed project would meet all applicable standards of Chapter 375(10), including both tonal sound and SDRS, and that the applicant has made adequate provisions for the control of excessive environmental noise from the proposed project. To ensure that the project operates in compliance with the permit and the Department's regulations, the Department finds that the applicant must implement the post-construction monitoring program described above, including the sound complaint protocol. The applicant must investigate all complaints and must notify the Department of any complaints within three business days of receiving them, and must notify the Department of the outcome of this investigation within three business days of completion; and the applicant must submit sound level monitoring reports in accordance with the post-construction monitoring program described above. Upon any finding of non-compliance by the Department, the applicant must take short-term action immediately to adjust operations to reduce sound output to applicable limits under Chapter 375(10). Within 60 days of a determination of non-compliance by the Department, the applicant must submit, for review and approval, a mitigation plan that proposes actions to bring the project into compliance. The Department would review any such mitigation plan and may require additional mitigation or alternative measures. If immediate actions to bring the project into compliance with the applicable noise standards are not taken or not successful while the process of generating and obtaining approval of a longer term plan is taking place, the Department may take such enforcement action as it finds appropriate to ensure compliance with the Site Law, applicable provisions of Chapter 375(10), and this Order.

6. SCENIC CHARACTER:

The Site Law and the NRPA both have standards pertaining to scenic impacts that must be satisfied in order to obtain a permit for a wind energy project. The Site Law requires an applicant for a wind energy project to demonstrate that the proposed project would not adversely affect existing uses or scenic character. Pursuant to the NRPA an applicant must demonstrate that a proposed project would not unreasonably interfere with existing scenic, aesthetic or recreational uses of a protected natural resource. The WEA further specifies those standards and declares that when expedited wind energy developments are being evaluated:

> [T]he [Department] shall determine, in the manner provided in subsection 3 [which provides specific criteria discussed below], whether the development significantly compromises views from a scenic resource of state or national significance such that the development has an unreasonable adverse effect on the scenic character or existing uses related to scenic character . . . Except as otherwise provided in subsection 2, determination that a wind energy development fits harmoniously into the existing natural environment in terms of potential effects on scenic character and existing uses related to scenic character is not required for approval under…Title 38, section 484, subsection 3. 35-A M.R.S. §3452(1).

The proposed wind project contains "generating facilities" including wind turbines as defined by 35-A M.R.S. §3451(5) and "associated facilities" such as buildings, access roads, collection lines, and substation, as defined by 35-A M.R.S.A. §3451(1). With regard to the associated facilities, the WEA, 35-A M.R.S. §3452(2), provides in pertinent part that:

> The [Department] shall evaluate the effect of associated facilities of a wind energy development in terms of potential effects on scenic character and existing uses related to scenic character in accordance with …Title 38, section 484, subsection 3, in the manner provided for development other than wind energy development if the [Department] determines that application of the standard subsection 1 to the development may result in unreasonable adverse effects due to the scope, scale, location or other characteristics of the associated facilities. An interested party may submit information regarding this determination to the [Department] for its consideration. The [Department] shall make a determination pursuant to this subsection within 30 days of its acceptance of the application as complete for processing.

The WEA, 35-A M.R.S. §3452(3), further provides that:

> A finding by the [Department] that the development's generating facilities are a highly visible feature in the landscape is not solely sufficient basis for determination that an expedited wind energy project has an unreasonable adverse effect on the scenic character and existing uses related to scenic character of a scenic resource of state or national significance. In making its determination under subsection 1, the [Department] shall consider insignificant the effects of portions of the development's

generating facilities located more than 8 miles, measured horizontally, from a scenic resource of state or national significance.

As provided in the WEA, 35-A M.R.S. §3452(2), the Department made a determination within 30 days of the receipt of the application that the potential effects of the express collector line on the scenic character and existing uses would be reviewed under the standards set forth in the Wind Energy Act (35-A M.R.S. §3452).

To address the scenic impact criteria, the applicant submitted a Visual Impact Assessment (VIA) for the proposed project prepared by LandWorks and dated October 2012. The VIA examined the potential scenic impact of the generating facilities and associated facilities on Scenic Resources of State or National Significance (SRSNS) within eight miles of the proposed project using the evaluation criteria contained in the WEA. The applicant also submitted the results of user intercept surveys conducted by Kleinschmidt and dated September 2012.

The applicant identified fifteen SRSNS within eight miles of the proposed generating facilities. Fourteen of the SRSNS are great ponds, and the other is the Springfield Congregational Church. Additional descriptions of these fifteen SRSNS are included below, including the anticipated scenic impacts on them from the proposed project.

The applicant conducted a VIA within an eight-mile radius of the proposed generation facilities portion of the project. The applicant's VIA for the generating facilities and associated facilities addresses the criteria set forth in 35-A M.R.S. §3452(3):

(A) The significance of the potentially affected scenic resource of state or national significance;
(B) The existing character of the surrounding area;
(C) The expectations of the typical viewer;
(D) The expedited wind energy development's purpose and the context of the proposed activity;
(E) The extent, nature, and duration of potentially affected public uses of the scenic resource of state or national significance and the potential effect of the generating facilities' presence on the public's continued use and enjoyment of the scenic resource of state or national significance; and
(F) The scope and scale of the potential effect of views of the generating facilities on the scenic resource of state or national significance, including but not limited to issues related to the number and extent of turbines visible from the scenic resource of state or national significance, the distance from the scenic resource of state or national significance and the effect of prominent features of the development on the landscape.

A. Scenic Resources of State or National Significance. SRSNS are defined in 35-A M.R.S. §3451(9). The following is a description of what constitutes each type of a SRSNS and the applicant's summary of potential impacts to each of the SRSNS within eight miles of the proposed generating facilities:

1) National Natural Landmarks. National Natural Landmarks are federally designated wilderness areas or other comparable outstanding natural and cultural features, such as Orono Bog or Meddybemps Heath. The applicant did not identify any National Natural Landmarks within eight miles of the proposed project.

2) Historic Places. Historic Places are properties listed on the National Register of Historic Places pursuant to the National Historic Preservation Act of 1966, as amended, including, but not limited to, the Rockland Breakwater Light and Fort Knox.

   The applicant identified one historic property within eight miles of the proposed project, the Springfield Congregational Church, located on Route 6. The church is 5 miles from the proposed project and would not have any view of the project.

3) National or State Parks. There are no national or state parks within eight miles of the project.

4) Great Ponds. A great pond is a SRSNS if it is:

   a. One of the 66 great ponds located in the State's organized area identified as having outstanding or significant scenic quality in the *Maine's Finest Lakes* study published by the Executive Department, State Planning Offices in October 1989; or

   b. One of the 280 great ponds in the State's unorganized or de-organized areas designated as outstanding or significant from a scenic perspective in the *Maine Wildlands Lake Assessment* published by the Maine Land Use Regulation Commission in June, 1987.

   There are fourteen great ponds within eight miles of the project that have been rated significant or outstanding for scenic quality in the *Maine Wildlands Lake Assessment*. (Assessment)

GREAT POND	MWLA RATING	NEAREST TURBINE	NUMBER OF TURBINES VISIBLE
Pleasant Lake	Outstanding	2.4 miles	0-16
Duck Lake	Significant	2.7 miles	0-14
Junior Lake	Significant	3.2 miles	0-13
Shaw Lake	Significant	3.5 miles	0-14
Keg Lake	Significant	3.7 miles	0-12
Scraggly Lake	Significant	4.1 miles	0-16
Bottle Lake	Significant	5.1 miles	0-10
Sysladobsis Lake	Significant	6.3 miles	0-10
Pug Lake	Outstanding	7.7 miles	0-6
Horseshoe Lake	Significant	approx. 7.8 miles	No visibility

Lombard Lake	Outstanding	approx. 5.5 miles	No visibility
West Musquash Lake	Outstanding	approx. 6.0 miles	No visibility
Norway Lake	Significant	approx. 7.8 miles	No visibility
Upper Sysladobsis Lake	Significant	approx. 6.5 miles	No visibility

The applicant's VIA utilized a system by which methods and indicators were used collectively to evaluate each of the criteria in the WEA and determine their contribution to, or potential impact on, the scenic impact. Based on the evaluation of the indicators by the applicant, each criterion was given a rating of Low, Medium or High impact. For each SRSNS, the VIA concluded with a rating of Low, Medium or High for the overall scenic impact to the SRSNS. The following is a summary of the applicant's VIA materials and evaluations.

BOTTLE LAKE

Bottle Lake is approximately 258 acres, all of which are located within eight miles of the project. This lake is 5.1 miles from the nearest visible turbine. The applicant states that Bottle Lake is the most densely developed lake in the study area, with roughly 100 camps along the shoreline. Bottle Lake is listed as a great pond with a scenic resource rating of significant in the Assessment. The applicant did not conduct any user surveys on this lake.

The applicant's VIA indicates that up to 10 turbine hubs may be visible over 21% of the lake. The turbines would be visible within a horizontal viewing angle of 7 degrees. The applicant concludes that Bottle Lake will be minimally affected by the project since the closest turbine is 5.1 miles away and the views of the project would not appear dominant to a typical user. Given these facts along with the small horizontal viewing angle, the applicant contends that the overall scenic impact to Bottle Lake would be Low.

DUCK LAKE

Duck Lake is 262 acres in size. The nearest turbine is 2.7 miles away. Duck Lake is listed as a great pond with a scenic resource rating of significant in the Assessment. The applicant states that Duck Lake has approximately 37 camps along its wooded shoreline. The applicant did not conduct any user surveys on this lake.

The VIA identifies that up to 14 turbine hubs may be visible from the southern shore of the lake, while there would be no visibility from the northern side of the lake. The photosimulation prepared by the applicant shows that the turbines would be visible within an 8 degree angle of view. The project would be visible from 61% of the lake surface. The applicant concludes that the scenic values would not be unreasonably diminished by the visibility of the proposed project and rates the overall impact to Duck Lake as Low.

JUNIOR LAKE

Junior Lake is 4,000 acres in size with a mixed forest land cover. The applicant states that there are approximately 87 camps and/or structures on this lake. The proposed project would be 3.2 miles from the lake. Junior Lake is listed as a great pond with a scenic resource rating of significant in the Assessment. A portion of the eastern shore is conserved through what is referred to in the administrative record as the Sunrise Conservation Easement, which limits the amount of development allowed along the lake shore. The applicant conducted user surveys on this lake and submitted them with the application.

The applicant's VIA indicates that there may be up to 13 turbine hubs visible from Junior Lake. The photosimulation shows that the proposed project would be visible within a horizontal angle of view of 17.25 degrees. The project would be visible from 85 % of the lake. The applicant completed the user survey on Junior Lake over 12 days between May 25 and August 11, 2012. The survey found that 73% of the users expected to have a "very high quality" experience on the lake. The VIA noted that 60% of the respondents said that the proposed project would adversely affect their use and enjoyment of the lake. The applicant noted that these numbers may be related to the "significant public opposition" of the project because the survey found that, after viewing simulated conditions of post construction views, 74% of the users stated they would continue to use the resource. The applicant argues that the impact of the extent and nature of the visibility of the turbines from this lake is diminished by the lake's variety of views and the variety of the surrounding landscape. In other words, the applicant concludes that, because the ridge lines around the SRSNS are low-lying and not distinct, the addition of wind turbines on two of them would be visually absorbed, thus reducing the scenic impact of the project. The applicant rates the overall scenic impact to Junior Lake as Medium.

KEG LAKE

Keg Lake is 371 acres and located 3.7 miles from the nearest turbine. The applicant states that Keg Lake has a mixed growth forest and approximately 15 camps along the western shore. Keg Lake is identified as a great pond with a scenic resource rating of significant in the Assessment. The applicant did not conduct any user surveys on this lake.

The applicant's VIA indicates that up to 12 turbine hubs may be visible from this lake. The photosimulation shows that turbines would be visible within a horizontal view angle of 15 degrees. The project would be visible from 54% of the lake surface. The applicant concludes that the visibility is limited and not overly dominant and it would not have an adverse, unreasonable effect on scenic values and existing uses of Keg Lake. The applicant rated the scenic impact to Keg Lake as Low-Medium.

PLEASANT LAKE

Pleasant Lake is listed as a great pond with a scenic resource rating of outstanding in the Assessment. The lake is 1,550 acres is size and is surrounded by mixed growth forest. The nearest turbine is 2.4 miles from the lake. The majority of the shoreline is undeveloped. The applicant did a user survey for this resource.

The applicant's VIA indicates that 16 turbine hubs may be visible from the lake. The photosimulation shows the turbines would have a horizontal view angle of 30 degrees. The project would be visible from 90% of the lake. The user survey was completed in 12 days between May 25 and August 11, 2012. The user survey found that 70% of the respondents anticipated that the project would have a neutral or positive effect on their enjoyment and 86% indicated that it would have a positive or neutral effect on their continued use of the lake. Based upon this information the applicant concluded that "the effect on continued use and enjoyment of the scenic resource is low." Dr. Palmer, examining the converse of percentages, notes that the applicant does not explain its rationale as to why a negative effect to enjoyment of 30% and a negative effect on continued use of 14% is within the threshold of a Low scenic impact rating. Ultimately the applicant concludes that the overall result of the project would be a Medium impact to Pleasant Lake.

PUG LAKE

Pug Lake is a nearly enclosed bay that is considered part of West Grand Lake, which is listed as a great pond with a scenic resource rating of outstanding in the Assessment. Pug Lake is 7.7 miles from the nearest turbine. The lake is surrounded by the Sunrise Conservation Easement, which maintains a working forest. The applicant did not conduct any user surveys for this lake.

In the applicants VIA, it states that only approximately 97.2 acres of the lake, which is 14,467 acres in size, are within the project's 8-mile radius and up to 6 turbine hubs may be visible. The turbines would have a horizontal view angle of 5 degrees. The project would be visible from 17% of the lake surface of Pug Lake. The applicant concluded that the overall impact to Pug Lake is Low.

SCRAGGLY LAKE

Scraggly lake is listed as a great pond with a scenic resource rating of significant in the Assessment. Scraggly Lake is 1,641 acres in size with mixed growth forest and little development. The nearest turbine would be 4.1 miles in the distance. The applicant did a user survey for this resource.

The applicant's VIA indicates that up to 16 turbine hubs may be visible from the lake. The photosimulation shows the turbines would have a horizontal view angle of 36 degrees. The VIA indicates that from other locations on the lake the turbines would have a horizontal view angle of 43 degrees. The project would be

visible from 77% of the lake surface. The user survey was conducted over 12 days from May to August 2012. The survey found that 50% of respondents anticipated that it would have a positive or neutral effect on their enjoyment and 77% indicated that it would have a positive or neutral effect on their continued use. The VIA concludes that "based on all of these factors, effect on continued use and enjoyment of the scenic resource is low", although Dr. Palmer notes that the applicant does not explain its rationale as to why the converse of percentages results in a Low scenic impact rating. The applicant concludes that the overall scenic impact is Medium.

SHAW LAKE

Shaw Lake is listed as a great pond with a scenic resource rating of significant in the Assessment. Shaw Lake is 251 acres in size with a mixed growth forest cover. There is no road access to the lake shore and three quarters of the lake is surrounded by the Sunrise Conservation Easement. The lake is located 3.5 miles from the nearest turbine. The applicant attempted a user survey on this lake when the surveys were done for Junior, Pleasant and Scraggly Lakes, but was not able to identify any users to the lake.

In the VIA, the applicant indicates that up to 14 turbine hubs may be visible. The photosimulation of the turbines shows there would be a horizontal view angle of 45 degrees. The project would be visible from 80% of the lake surface. During the 2012 user survey, no individuals were observed using this lake. The applicant concludes that "The survey results indicate that the effect of the wind farms presence on the public's continued use and enjoyment of the scenic resource…will be minimal" and the overall scenic impact would be Low-Medium.

SYSLADOBSIS LAKE

Sysladobsis Lake is listed as a great pond with a scenic resource rating of significant in the Assessment. The lake is 5,401 acres in size although only 689 acres are within 8 miles of the proposed turbines. The land cover around the lake is mixed forest and the applicant states that there are approximately 52 camps along the shoreline. The nearest turbine is approximately 6.3 miles in the distance. The applicant did not conduct a user survey for this resource.

In the VIA, the applicant indicates that up to 10 turbine hubs would be visible from the lake. The most visible turbines at the photosimulation location would have a horizontal view angle of 10 degrees. The project would be visible from 47% of the lake surface. The applicant concludes that the overall scenic impact on this lake would be Low.

5) Scenic Rivers or Streams. A segment of a scenic river or stream is a SRSNS if it is identified as having unique or outstanding scenic attributes in Appendix G of the 1982 "Maine Rivers Study" by the Department of Conservation. There are no

scenic rivers or stream segments identified as having unique or outstanding scenic attributes within eight miles of the project.

6) Scenic Viewpoints. A scenic viewpoint is a SRSNS if it is located on state public reserved land or on a trail that is used exclusively for pedestrian use, such as the Appalachian Trail, that the Department of Agriculture, Conservation and Forestry (DACF) designates by rule adopted in accordance with 35-A M.R.S. § 3457. There are no scenic viewpoints within eight miles of the project.

7) Scenic Turnouts. A scenic turnout is a SRSNS if it has been constructed by the Department of Transportation pursuant to M.R.S. 23, § 954 on a public road designated as a scenic highway. There are no scenic turnouts within eight miles of the project.

8) Scenic Viewpoint in Coastal Areas. To qualify as a SRSNS, a scenic viewpoint located in the coastal area, as defined by 38 M.R.S. § 1802, subsection 1, must be ranked as having state or national significance in terms of scenic quality in:

   a. one of the scenic inventories prepared for and published by the Executive Department, State Planning Office: "Method for Coastal Scenic Landscape Assessment with Field Results for Kittery to Scarborough and Cape Elizabeth to South Thomaston," Dominie, et al., October 1987; "Scenic Inventory Mainland Sites of Penobscot Bay," Dewan and Associates, et al., August 1990; or "Scenic Inventory: Islesboro, Vinalhaven, North Haven and Associated Offshore Islands," Dewan and Associates, June 1992; or

   b. a scenic inventory developed by or prepared for the Executive Department, State Planning Office in accordance with 38 M.R.S.A. § 3457.

   There are no scenic viewpoints in a coastal area within eight miles of the project.

B. Public Hearing. At the public hearing, PPDLW summarized its pre-filed testimony asserting that, based on the applicant's intercept user intercept study, the PPDLW User Survey, and public opposition, the proposed project would have an unreasonable adverse effect on both scenic character and the existing uses related to the scenic character of the SRSNS within eight miles of the proposed project. PPDLW also submitted Exhibit N *Critique of Project Developer's VIA* prepared by Michael Lawrence & Associates, Landscape Architect & Site Planning Consultants, dated March 2013.

PPDLW also asserted that the tourism in the region would suffer serious impacts due to the proposed project. PPDLW argued that the guides that use this area rely on the "wilderness brand that brings visitors to the lakes." PPDLW disputes the applicant's assertion that tourism and guiding does not occur within 8 miles of the project location. PPDLW contends that, while the applicant described the area as "heavily forested" and a "working forest" thereby implying that these areas are not pristine or worth protecting from an industrial wind development, tourism and guiding can actually go hand in hand with forestry activities.

PPDLW' s prefile testimony provides that twelve of the fourteen SRSNS that lie within eight miles of the project are connected by water or short portages. This water-way trail is discussed in the book "Quiet Water Maine", and is noted in ten other websites for paddling enthusiasts provided by PPDLW. Nine of those SRSNS would have views of the turbines closer than 8 miles.

In prefiled testimony PPDLW described how the Legislature did not designate certain areas for expedited wind permitting in the WEA. These areas that were not designated were described in the report of the Governor's Wind Task Force on Wind Power Development as "…broad areas that encompass concentrations of ecological, recreational and/or scenic values that are among the most significant in the jurisdiction.". PPDLW describes how the Downeast Lakes areas were not included in the expedited wind permitting area. The proposed project is inside the expedited permitting area, but as close as approximately 1,220 feet to the edge of the expedited permitting area. PPDLW stated that the Downeast Lakes economy relies on forestry and tourism, and that the proposed project would be the first project to be visible from a total of nine SRSNS. PPDLW also testified that the applicant's VIA consistently minimized and understates the "scenic quality of the Downeast Lakes Region and the nine Scenic Resources of State or National Significance (SRSNS) with visibility of turbines within eight miles."

The applicant argued in its post-hearing brief that the area is not a tourist destination and found no publications to support the fact that it is a tourist destination. In its post-hearing brief the applicant states the proposed project is supported by many Maine guides, including the two sporting camps located closest to the project, the Maine Snowmobile Association, ATV Maine, Downeast Salmon Federation, Maine State Chamber of Commerce, Sierra Club Maine, Maine Audubon Society, large landowners within the vicinity of the proposed project, the Passamaquoddy Tribe, construction companies and the host communities, among many others. The applicant testified that they did not find much evidence of guides working in the vicinity of the project while conducting its user surveys.

PPDLW also noted in its post-hearing brief that the Maine Sporting Camp Association, Grand Lake Stream Association, Maine Professional Guides Association, Forest City Guides Association and Maine Wilderness Guides Association all oppose the proposed project.

CLF/MREA submitted pre-filed testimony regarding the "purpose and context" of the purposed activity as discussed in 35-A M.R.S.A. §3452(3). This included testimony from Abigail Krich, the president of Boreas Renewables, who testified about the positive economic and environmental impacts of wind energy in Maine. They also submitted testimony from George A. Smith, an outdoor writer, who testified that fishermen would still fish in waters within view of an industrial turbine development. CLF/MREA also submitted testimony from Philip Bartlett and Stacey Fitts regarding the WEA and its specific purpose to promote wind. Senator Bartlett and Mr. Fitts testified during the public hearing that the Governor's Task Force on Wind Power

Development (on which they served) knew that areas that were not included in the expedited permitting area would be able to see turbines that were located in the expedited permitting area. Further, areas of special interest, like Baxter State Park, were not located in the expedited permitting area and the nearest expedited permitting area is many miles away, therefore creating a 'buffer' area around these special interest areas.

C. Peer Review of the Visual Impact Assessment. The Department hired Dr. James F. Palmer of Scenic Quality Consultants, an independent scenic expert, to assist in its review of the evidence submitted on scenic character. Dr. Palmer provided the Department with review comments March 8, 2013. Dr. Palmer ranked fifteen SRSNS in a table entitled "Summary of Evaluation Criteria Ratings for the Bowers Wind Project". The fifteen SRSNS were evaluated by Dr. Palmer based on the WEA criteria, namely, significance of the resource; character of surrounding area; typical viewer expectations; development's purpose and context; extent, nature, and duration of uses; effect on continued use and enjoyment; and, scope and scale of project views. Dr. Palmer rated each statutory criterion for each of the fifteen SRSNS with ratings between "None" to "High". Dr. Palmer then determined an overall scenic impact to those SRSNS based on his evaluation of the three core criteria – extent, nature, and duration of uses; effect on continued use and enjoyment; and scope and scale of project views. No SRSNS reached the level of a "High–" or "High" overall scenic impact in Dr. Palmer's judgment. However, Dr. Palmer concluded that eight of the great ponds (Bottle Lake, Duck Lake, Junior Lake, Keg Lake, Pleasant Lake, Scraggly Lake, Shaw Lake, and Sysladobsis Lake) would reach a level of "Medium" overall scenic impact. Dr. Palmer concludes that "While the Bowers Wind Project is found to have an Adverse scenic impact, it does not reach the level of Unreasonably Adverse."

In his review comments, Dr. Palmer noted that the VIA did not set forth a procedure for combining evaluation criteria into an overall evaluation, and that nighttime use or visibility of the FAA lighting of the lakes are not discussed. In addition to the overall scenic impact ratings, Dr. Palmer provided the following comments to the Department on the nine great ponds within eight miles and with visibility of the proposed project:

1) Bottle Lake:

Dr. Palmer found that the proposed project would have an overall scenic impact on Bottle Lake of "Medium". Dr. Palmer reached this conclusion by using what he believes are the three core scenic criteria from the WEA (extent, nature and duration; effect to enjoyment and continued use, and scope and scale). Since these three core scenic criteria combined did not rate "High-" or "High", then he found the scenic impact to this resource would not be unreasonably adverse.

2) Duck Lake:

For Duck Lake, Dr. Palmer states the applicant's basis for concluding that the overall scenic impact on this resource would be Low is not clear. Specifically, he questioned how the views of turbines from this lake are limited when the turbines would be visible from half the lake, and why a communications tower would lessen the impacts of the turbines. Dr. Palmer found that by combining the three core scenic criteria from the WEA, the project's overall scenic impact on Duck Lake would be "Medium" but the overall scenic impact to Duck Lake would not be unreasonably adverse.

3) Junior Lake:

Dr. Palmer reviewed the applicant's VIA and questioned the applicant's basis for rating the project's effect on continued use and enjoyment of the lake as Low when 60% of the respondents to the user surveys indicated that the proposed project would have a negative effect on their enjoyment, and 27% indicated that it would have a negative effect on their continued use. The applicant states that "The visibility of the project is not so extensive and dominant as to deter the typical user, and will not substantially reduce use and enjoyment". Dr. Palmer found that by combining the three core scenic criteria from the WEA, Junior Lake would have an overall scenic impact of "Medium", but the overall scenic impact to Junior Lake would not be unreasonably adverse.

4) Keg Lake:

Dr. Palmer reviewed the applicant's VIA and found that there were no studies provided on how additional development such at the proposed project would affect user enjoyment of Keg Lake. The applicant's VIA states, "the common activity is likely fishing and some paddling, primarily by camp owners. As such, they are still likely to continue to visit and use the resource" but the applicant offers no specific evidence to support this claim. Dr. Palmer found that by combining the three core scenic criteria from the WEA, Keg Lake would have an overall scenic impact of "Medium", but the overall scenic impact to Keg Lake would not be unreasonably adverse.

5) Pleasant Lake:

Dr. Palmer points out that the applicant's VIA states that, "although the turbines are visible throughout much of the lake, they would not be an unduly dominant presence". Dr. Palmer also notes that the applicant's VIA states that "the central angle of view occurs within 40-60 degrees and is the area that most highly influences human perception of a scene, given a fixed viewing direction". Dr. Palmer believes that the 30 degree and 45 degree angle of view visible in Exhibits 15 and 16 of the VIA represent a "very large proportion of the 'central angle of view… that most highly influences human perception of a scene.'" Exhibit 16 is a view of the northern shore of Pleasant Lake and from this viewpoint the turbines

are visible over a horizontal view angle of 45 degrees at a distance of 2.8 to 4.3 miles away. Dr. Palmer found that by combining the three core scenic criteria from the WEA, the project would have an overall scenic impact on Pleasant Lake of "Medium", but the overall scenic impact to Pleasant Lake would not be unreasonably adverse.

6) Pug Lake:

Dr. Palmer found that by combining the three core scenic criteria for the WEA, Pug Lake would have an overall scenic impact of "Low", and the overall scenic impact to Pug Lake would not be unreasonably adverse.

7) Scraggly Lake:

Dr. Palmer reviewed the applicant's VIA that described Scraggly Lake as having "poor access and a lack of development" which can "give the lake a feeling of relative remoteness." Dr. Palmer found the statement in the applicant's VIA that, "it can also be posited that the extent of the project and linear layout reduces the potential for the view of the project to act as a distinct focal point that will continually draw the eye," confusing since it seemed to be saying that since the turbines were visible for such a large angle of view there was no focal point. The user survey results for this proposed project for Junior, Pleasant and Scraggly Lakes indicated that 66%, 57% and 62% of the respondents, respectively, would be less likely to continue to use the lakes if the proposed project were to be built. Dr. Palmer found that by combining the three core scenic criteria from the WEA, the project would have an overall scenic impact on Scraggly Lake of "Medium", but the overall scenic impact to Scraggly Lake would not be unreasonably adverse.

8) Shaw Lake:

Dr. Palmer reviewed the applicant's VIA and questioned the statement that "the project will not appear overly dominant" in part because "the regular pattern and linear nature of the array reflects accepted practice for reducing visual impact by providing order and pattern to the turbine siting" . He also stated that the applicant's VIA asserts that "the Baskahegan and Bowers project area lakes reinforce the fact that having wind turbines in view does not necessarily diminish the likelihood of users to return to this resource". Dr. Palmer found that by combining the three core scenic criteria from the WEA, the project would have an overall scenic impact on Shaw Lake of "Medium", but the overall scenic impact to Shaw Lake would not be unreasonably adverse.

9) Sysladobsis Lake:

Dr. Palmer reviewed the applicant's VIA and commented that the VIA stated that "Getchell Mountain is the proximate landform in view, and it would serve to provide visual balance to the turbines on the adjacent Bowers Mountain (see

Exhibit 20: Visual Simulation from Sysladobsis Lake), contributing to the landscape's ability to visually absorb the Project". Dr. Palmer found that this assertion was not true, that the turbines would be the highest element in the landscape and would be very much visible from the lake. Dr. Palmer found that by combining the three core scenic criteria from the WEA, the project would have an overall scenic impact on Sysladobsis Lake of "Medium", but the overall scenic impact to Sysladobsis Lake would not be unreasonably adverse.

D. Department Analysis and Findings. On December 7, 2012, the Commissioner exercised her discretion to hold a public hearing for the proposed project. The Commissioner determined that due to the unique history of the project and the fact that the previously proposed project was subject to an evidentiary public hearing process by the Land Use Regulation Commission, a public hearing would allow for sufficient public testimony, comment, and cross-examination that would be helpful to the Department's decision-making process. The Department reviewed and analyzed all information in the record related to scenic impacts including but not limited to, the applicant's VIA, Dr. Palmer's review and analysis, the Intervenor' s submissions, the Department's site visit, and public testimony and comments.

The Commissioner and Department staff conducted a site visit on May 21, 2013. Department staff also conducted site visits on November 6, 2012 and December 13, 2012 to six of the great ponds within eight miles of the proposed project. While the project area is designated as part of the expedited permitting area for wind energy projects, the Department notes that the project area is adjacent to the only area not designated as a wind expedited area in the entire southern and eastern part of the state, which is the Downeast Lakes region. On the site visit the Department visited Scraggly Lake, Junior Lake and Pleasant Lake by motor boat. On the site visit Junior Lake was easily accessed by boat via Scraggly Lake through a water passage between the two lakes. The Department's observations of these three lakes were consistent with other evidence in the record in that these lakes are undeveloped and provide a sense of remoteness. The Department acknowledges that these lakes do not meet the definition of a remote pond (04-061 CMR Chapter 10 106. Management Class 6 Lake (Remote Pond)) because they have existing road access and some level of development. Pleasant Lake and Scraggly Lake, however, appeared almost completely void of development in that there was only one sporting camp and the public boat launch visible on the shore from the lakes. Thus, the views of the turbines in the distance would not be interrupted by any shoreline development in the foreground when viewed from these three SRSNS. The only visible development on the shoreline of Junior Lake was a few scattered camps, which were developed in such a manner that masked most of the camps. This may be due to the fact that, consistent with regulatory land use standards of the Land Use Planning Commission, new camp construction along the shoreline since 1972 is required to be set back 100 feet, and to retain vegetation as screening from the shoreline, as pointed out in public comment. On the site visit the Department observed the unique character and topography, described in more detail below, involved in evaluating scenic impacts within the project area.

As listed above, there are fourteen SRSNS within 8 miles of the proposed generating facilities. The Department concludes based upon the evidence in the record that since the following five SRSNS do not have any visibility of the project, there would not be an unreasonable adverse effect on the scenic character or existing uses related to scenic character of these scenic resources:

- Springfield Congregational Church
- Horseshoe Lake
- Lombard Lake
- West Musquash Lake
- Norway Lake

The Department has reviewed the applicant's VIA, and it disagrees with many of the applicant's descriptions of the existing character of many of the lakes classified as SRSNS. In reference to Pleasant Lake, the VIA states that "logging activity directly influences user expectations by diminishing the potential for this area and the lake itself to be viewed as a pristine, unaffected landscape". However, the applicant's user surveys demonstrate that 90 percent of respondents give the three surveyed lakes high or highest ratings for existing scenic value. The Department acknowledges that the areas around the proposed project are working forests, but because of the rolling topography logging activity was not a primary visible feature from the resources observed on the Department's May 21, 2013 site visit. Logging activity did not change the undeveloped and remote character of Pleasant Lake and Scraggly Lake, a character description that was brought up many times in the public testimony and comments.

The Department has reviewed Dr. Palmer's reports and analyses, and it recognizes he found that the proposed project would have "an adverse scenic impact, [but] it does not reach the level of Unreasonable Adverse". The Department supports Dr. Palmer's, and the applicant's, approach of assigning scenic impact ratings (of Low, Medium or High) to each of the project's fourteen SRSNS and basing such rating on each of the six statutory criteria for scenic impact in the WEA. The Department agrees with Dr. Palmer that if an extensive number of SRSNS are determined to have an overall scenic impact of Medium, the project could be considered to have an unreasonable adverse effect on the scenic character of SRSNS. However, the Department did not agree with Dr. Palmer's assessment that the three core criteria (extent, nature and duration; effect to enjoyment and continued use; and scope and scale) should, as a matter of course, be given extra weight for determining scenic impacts to SRSNS. Rather, scenic impacts on SRSNS must be evaluated on a case by case basis, applying each of the six review criteria to the facts in the administrative record to determine whether a project's impacts would be unreasonable.

The Department also disagrees with Dr. Palmer's statement that "if SRSNSs with ratings of Medium or higher comprise 10 percent of the area within 3 miles or 8 miles then the scenic impact is Unreasonably Adverse" because, on this administrative record, such a bright line test cannot be drawn. While the Department gave considerable weight to Dr. Palmer's analyses of the applicant's VIA, it finds that since Dr. Palmer assigned a majority of, or eight of the project's fourteen, SRSNS an

overall scenic ranking of Medium, the Department must further review the scenic impact evidence in the record to determine whether the project would result in an unreasonable adverse effect on scenic character. For example, if a single SRSNS receives an overall scenic impact rating of High, it appears that that would be sufficient grounds for concluding that the project would have an unreasonable adverse effect on scenic character, based on the statutory language in 35-A M.R.S. §3452(1).

In his review of the applicant's VIA, Dr. Palmer concluded that the overall scenic impact to Pleasant Lake would be Medium. The Department disagrees with Dr. Palmer's rating of this lake, and after reviewing the evidence in the record, concludes that the impact to Pleasant Lake would be greater than Medium and very close to receiving an overall scenic impact rating of High. The reasons for the Department's conclusion include: the lake received a rank of outstanding in the Assessment; 73% of the lake surface would have visibility of 9 to 16 turbines; it is 2.4 miles from the closest turbine, and therefore the turbines would appear large and if constructed, would dominate the viewshed from the lake; the observations of undeveloped nature of the May 21 site visit; and, that LUPC assigns a Management Class 2 and Resource Class of 1A to Pleasant Lake. The LUPC defines Management Class 2 lakes as "high value, accessible, undeveloped lakes", their second highest Management Class. LUPC defines Resource Class 1A as "lakes of statewide significance with two or more outstanding values". Resource Class 1A is the LUPC' s highest Resource Class. The Department ultimately concluded that Pleasant Lake would not have an overall scenic impact rating of High because of the relatively small horizontal angle of view (30 degrees), which is in the middle of the range of angles of view for the other SRSNS within 8 miles of this project.

For the other seven great ponds (Duck Lake, Junior Lake, Shaw Lake, Keg Lake, Scraggly Lake, Bottle Lake, and Sysladobsis Lake) the Department concurs with Dr. Palmer's assessment that these lakes have a ranking of Medium for overall scenic impact. As stated above, the Department concludes that since a majority of the SRSNS (eight lakes out of the fourteen SRSNS, or 57%) received an overall scenic impact of Medium, and the Department concludes this is a significant impact on SRSNS by the proposed project, then that must be factored into the Department's analysis. The Department, however, further considered the evidence in the record with regard to whether the proposed project would have an unreasonable adverse effect on scenic character and existing uses related to scenic character.

After reviewing the administrative record as a whole, the Department notes the following pieces of evidence, reviewed in determining whether the proposed project would have an unreasonable adverse effect on scenic character or existing uses related to scenic character:

1) The applicant's user intercept survey indicates that if the scenic conditions remained the same, that is, if the project were not built, only 1% of the respondents indicated that they would be unlikely or very unlikely to visit the lakes again. When asked if the proposed project were to be constructed, the

percentage of respondents indicating they would be unlikely or very unlikely to visit the lakes again jumped up to 20%. The Department finds that this is a significant increase and impact on existing uses related to scenic character.

2) Forty-five percent of the user survey respondents (including 31% indicating it would have a very negative effect) indicated that the proposed project would have a negative effect on their enjoyment of the SRSNS. While this is mitigated somewhat by the 36% of the user survey results respondents would have no effect on their enjoyment of the SRSNS, this negative effect is relevant in the Department's analysis.

3) Similarly, not one user survey respondent rated the scenic value ratings of the lakes as Low in the current condition. After being shown the applicant's photosimulations, that number increased to 58%, which is a significant jump. Further, 90% of the respondents gave the lakes High or the highest scenic value ratings in the current condition, but that number dropped to 33% in the simulated conditions.

4) Dr. Palmer concluded that Pug Lake received an overall scenic impact ranking of "Low +", which mitigates the "Medium" and higher scenic impact rankings of the other SRSNS.

5) There was substantial public testimony and comment received at the public hearing and during the processing of the application. There were large numbers of project supporters at the public hearing, but the Department also received a significant number of comments from those opposed to the project. The common themes of the public comments received at the public hearing that expressed opposition to the project were: scenic impacts; nighttime lighting impacts; fire safety; negative impacts to local businesses and tourism; and noise issues. The comments received at the public hearing expressing support for the project included: job creation; support by local residents; tangible benefits; lack of concern about project's impact to tourism; and support for renewable energy.

6) A unique aspect of this project is that many of the great ponds within 8 miles of the proposed project are interconnected. The applicant supplied credible evidence indicating that, of the sample of users consulted, there is little actual multi-day use of the connected lakes. However, the Department gives consideration to the fact that this interconnection exists.

7) The Department agrees with the applicant that when considering whether a project's scenic impacts would cause an unreasonable adverse effect on scenic character, a case-by-case inquiry must be made. Each wind energy development project must be reviewed individually on its own merits, under the statutes and regulations applicable to that development. The applicant attempted to compare the proposed project's scenic impacts with impacts from other wind energy developments reviewed by the Department in an attempt to portray how the proposed impacts were comparable to other approved wind energy developments.

For instance, the applicant stated that the proposed project's scenic impacts were mitigated by the fact that the prior Bowers Wind project reviewed and denied by LURC in 2011 consisted of 27 turbines while the proposed project now consists of 16 turbines. The Department did not compare the proposed project with other previous wind energy developments, and gave no weight to the applicant's evidence in this regard.

8) The Department gave little weight to the applicant's "hypersensitivity" argument related to the user surveys. The applicant has asserted that people employ two coping strategies when they fear change, namely precaution and hyperdefensiveness. With the precaution strategy people follow a sort of "why take a chance" approach and people can become hyperdefensive about the presumed change or "danger". The applicant asserts that this coping strategy could have affected the user survey results. The Department concludes that the user surveys cannot be discounted due to assumed "hypersensitivity." There are two existing wind energy projects (the Rollins Wind project in Lincoln and the Stetson Wind project in T8 R3 NBPP) in near proximity to this proposed project. It is reasonable to conclude that many of the users of these SRSNS know what an existing wind energy project looks like, and could base their responses to the user survey questions on their experiences and not feelings of "hypersensitivity".

9) The Department gave little weight to the post-construction Baskahegan Survey supplied by the applicant. The Department does not infer that the proposed project's SRSNS users would not be impacted, and would continue to use the SRSNS, because of the results of this Baskahegan Survey. The reasons for this conclusion are that Baskahegan Lake is not a SRSNS; there is no pre-development information on the Stetson Wind project; the boat launch where the Baskahegan Survey was conducted is more than 8 miles from the Stetson Wind project; and the applicant did not provide credible evidence to support the concept that many people that were using Baskahegan Lake prior to the Stetson Wind project have not stopped. For these reasons, the Department was not persuaded by this survey to support the idea that the users of the proposed project's SRSNS would continue to use the resources even if the user surveys did not always indicate this fact.

10) Numerous amounts of public comment and testimony raised the issue of FAA lighting because the nature of star gazing requires a sky with limited man-made lighting. The applicant's user survey found that 38% of respondents reported star gazing in response to the question of what the users' plans for the day were. Dr. Palmer states, "I believe that FAA warning lights can pose a serious scenic impact to viewers of the nighttime sky. Of course there need to be such observers, but the Bowers survey suggests that a large percentage of respondents do enjoy viewing the nighttime sky." The applicant did not provide any photosimulations of the impacts from the night lighting system proposed by the applicant due to the difficulty in accurately simulating night lighting. And there is not clear evidence in the record as to when the FAA will approve radar-activated lighting for wind projects. In view of this evidence in the record, the Department is concerned

about the negative effect of nighttime lighting on the scenic character of the project's SRSNS without the use of FAA-approved radar-activated lighting. To mitigate for those negative scenic effects, the applicant is willing to accept a condition to install FAA-approved radar-activated lighting prior to the start of project construction.

The Department considered the evidence in the record regarding scenic impacts and weighed the evidence in determining if the proposed project would have an unreasonable adverse effect on scenic character and existing uses related to scenic character. The Department concluded that it is not allowed under the WEA to balance a project's potential scenic impacts with the project's potential benefits. The Department concludes that it is responsible for considering all the evidence in the record and determining if all the applicable statutes and regulations are met. For the proposed Bowers Wind project, the Department finds that the generating facilities portion of the project would have an unreasonable adverse effect on the scenic character and the existing uses related to the scenic character of the nine SRSNS listed above. This finding is not based on the fact that the proposed project would be highly visible, but rather on evidence in the record that demonstrates the great ponds within 8 miles of the project have a high scenic significance; there are 8 great ponds that were deemed to have an overall scenic impact rating of Medium or greater; and the user surveys demonstrate that in addition to the negative effect on scenic character, there would be negative effects on continued use and enjoyment of the SRSNS.

7. WILDLIFE AND FISHERIES:

Applicants for Site Law and NRPA permits are required to demonstrate that the proposed project would not unreasonably harm wildlife and fisheries; any significant wildlife habitat; freshwater plant habitat; threatened or endangered plant habitat; aquatic or adjacent upland habitat; travel corridor; freshwater, estuarine or marine fisheries; or other aquatic life. To address these criteria, the applicant submitted the results of a series of ecological field surveys conducted by Stantec Consulting (Stantec), including wildlife species surveys, and vernal pool surveys within the project area, including the area affected by the express collector line. During the preparation of the surveys and other material in support of the application, Stantec consulted with the Department and other natural resource review agencies.

A. Significant Vernal Pools. Stantec conducted vernal pool surveys in 2010 and 2011within the project area and identified 5 natural vernal pools, 1 of which meets the criteria of a significant vernal pool. The project was designed to avoid any impacts to the significant vernal pool depression and a 250-foot buffer area around the pool.

B. Inland Waterfowl and Wading Bird Habitat. The proposed project includes upland clearing in approximately 0.14 acre of Inland Waterfowl and Wading Bird Habitat (IWWH) for construction of a road.

C. Deer Wintering Area. The applicant states that neither the generating facilities nor the transmission line portions of the project would impact any Deer Wintering Areas as defined under NRPA.

D. Rare, Threatened, and Endangered Species. Stantec conducted a survey of the area within the proposed project for plant and animal species that are state or federally listed as Rare, Threatened, or Endangered. No Rare, Threatened or Endangered plant or animal species were found.

E. Salmon Habitat Streams. The project is located outside the mapped Critical Habitat for Atlantic Salmon.

F. Birds and Bats. The applicant retained Stantec to conduct bird and bat surveys to identify which species occurred in the area of the proposed project; the extent of the use of the site by such species; and potential impacts of the proposed project. Stantec conducted field surveys between September 2009 and June 2012. In the fall of 2009, Stantec conducted nocturnal radar surveys, bat acoustic surveys, raptor migration surveys, and nest surveys for bald eagle and great blue heron. In the spring/summer of 2010, Stantec conducted nocturnal radar surveys, acoustic bat surveys, raptor surveys and bald eagle nest surveys. Bald eagle nest surveys were also conducted in the spring of 2011 and 2012.

Stantec provided the results of the studies in the *Wildlife Habitat Report* in Section 7 of the application. The majority of the bat calls identified were unknown calls (1509 out of 2374), followed by the Genus *Myotis* (840 out of 2374 calls). No bald eagles nests are located within four miles of the proposed project.

MDIFW reviewed the proposed project and stated that there would be no significant adverse impact under the standards of Site Law and NRPA in the application submitted by Champlain Wind, LLC if these standards are met or exceeded as explicit permit conditions:

> For the period of April 20th through October 15th over the life of the project, set the cut-in speed for all turbines to 5.0 meters per second each night starting at one-half hour before sunset to one-half hour after sunrise. Cut-in speeds are determined based on mean wind speeds measured at hub heights of a turbine over a 10-minute interval. Turbines would be feathered during these low wind periods to minimize risks of bat mortality.

The applicant has agreed to these operational control measures for the proposed project.

Exhibit 7D of the application contains a post-construction monitoring plan. As the turbines would be curtailed to minimize impacts to bats, the Department would not require post-construction mortality monitoring of the project. However, should the applicant choose to apply to the Department to modify the curtailment plan, the

Department strongly advises the applicant to consult with MDIFW prior to the start of a study for methodology review and approval.

G. Fisheries. No fisheries impacts are anticipated from the proposed project.

H. Intervenor position on wildlife issues. In his pre-filed testimony, intervenor David Corrigan testified that the applicant had failed to meet its burden of proof under Chapter 375: No Adverse Environmental Effect Standard of the Site Location Law. Mr. Corrigan testified that the United States Fish and Wildlife Service (USFWS) recommended that the applicant consider doing winter track surveys to determine the presence of Canada Lynx in and around the project area and they also recommended having discussions with biologists at the MDIFW who may have first-hand knowledge of the local Canada Lynx population. The applicant only did a desktop assessment to determine if there was high quality snowshoe hare habitat within the project area, which is the primary prey for Canada Lynx. Mr. Corrigan did not believe that the applicant met their burden of proof under Chapter 375 as it relates to the threatened Canada Lynx population.

In rebuttal testimony submitted by the applicant, the applicant testified that in Exhibit 7C-4 of the application, Stantec conducted a desktop assessment to identify potential habitat suitable for Canada Lynx. The methodology for the desk top assessment Stantec used was recommended by USFWS. Based on this assessment, no high or moderate-value hare habitat was present in the project area. The assessment did find 15 small patches of moderate value hare habitat and 8 small patches of low value hare habitat within the vicinity of the project, but none of those areas were within the project footprint. USFWS recommended that the applicant either conduct a desktop habitat assessment and/or conduct winter track surveys. The applicant determined that the desktop assessment was a more thorough approach than winter tracking. The applicant determined that the project would not result in habitat loss for the lynx. The project would include minimal road construction, with all roads posted to speeds less than 30 mph. The applicant thereby concludes that the proposed project should not adversely impact Canada Lynx or its habitat.

Mr. Corrigan testified at the public hearing that the applicant did several aerial surveys which showed bald eagle nests in close proximity to the project area (as close as 4.72 miles). The applicant also noted several instances of bald eagles being seen in and near the project area during their site surveys. Despite the high numbers of federally protected birds using the area, Mr. Corrigan concluded that the applicant offered no real evidence that the project would not have an unreasonable adverse effect on the residence and migratory populations of bald eagles or other raptors.

In rebuttal testimony submitted by the applicant, the applicant stated that they had consulted with both USFWS and the US Army Corps of Engineers (ACOE) in connection with the previously proposed larger 27-turbine project. In the review of the previous project USFWS had stated, "survey dated suggests that current use of the project area by migrating and resident bald eagles is lower than many proposed or

existing Maine wind projects." The applicant developed all wildlife surveys in consultation with MDIFW and USFWS.

Mr. Corrigan testified that the applicant did not offer a solid plan to avoid undue adverse effects on bats. Mr. Corrigan noted that the applicants even objected to the curtailment plan presented by MDIFW.
In rebuttal testimony submitted by the applicant, they agreed to the conditions of curtailment stipulated by MDIFW, as described above.

Mr. Corrigan also submitted a list of questions regarding Canada Lynx and bald eagles to the Department for a response from MDIFW. In an email dated May 30, 2013 MDIFW submitted responses to Mr. Corrigan's questions specifically regarding the management of the Canada Lynx habitat and previous consultation between MDIFW and the applicant.

The Department concludes the project would not result in an unreasonable impact on fisheries and wildlife or habitat protected by the NRPA provided turbine operation is curtailed as outlined above. If post-construction monitoring indicates an unreasonable impact on birds, bats and/or raptors, the Department, in conjunction with MDIFW, may require modified operation of the project, including the curtailment of turbines, as necessary.

8. HISTORIC SITES AND UNUSUAL NATURAL AREAS:

The Maine Historic Preservation Commission (MHPC) reviewed the proposed project and stated that it would have no effect upon any structure or site of historic, architectural, or archaeological significance as defined by the National Historic Preservation Act of 1966.

The Maine Natural Areas Program (MNAP) database does not contain any records documenting the existence of rare or unique botanical features on the project site and, as discussed in Finding 6, MDIFW did not identify any unusual wildlife habitats located on the project site. The applicant's consultant surveyed the proposed project site and determined that four rare plant species were in the project area. They included populations of male fern, Orono sedge, large toothwort, and swamp fly-honeysuckle. MNAP worked with the project consultant on the development of avoidance and minimization plans for these four species. The applicant proposed to reduce the size of the turbine pad at Turbine 1 and to run underground electrical collector in the vicinity of Turbine 1; locate the express collector poles outside of any area determined to have a rare plant; and locate the O&M building away from any rare plant locations in order to avoid and minimize impacts to rare plants. MNAP worked with the applicant in order to provide the best methods of avoiding and minimizing any impacts to the rare plant communities.

Based on the information in the application, MHPC's review and MNAP's review, the Department finds that the proposed development would not have an unreasonably

adverse effect on the preservation of any historic sites or unusual natural areas either on or near the project site.

9. BUFFER STRIPS:

The applicant proposes four basic buffer types for the proposed project. The buffers for the proposed project would include no-disturbance buffers around roads and turbines, right-of-way (ROW) buffers, waterbody and stream buffers, and Inland Waterfowl and Wading Bird Habitat buffers. All buffer strips would be clearly marked prior to construction.

A. Access Road, Crane Path and Turbine Buffers. The applicant proposes to maintain forested buffers along the access road and around the turbine pads. Those buffers provide both a visual screen and stormwater and phosphorus treatment. The stormwater and phosphorus treatment measures are more fully described in Finding 11. Most of the area of the turbine pads would be revegetated after construction is complete, providing additional buffering.

B. ROW buffers. The collector line would require cutting to meet required safety standards. The applicant would flag all resources and their buffers in the field prior to any clearing. During clearing activities all methods to reduce ground disturbance, erosion and sedimentation would be employed.

C. Waterbody and Stream Buffers. There are 12 streams within the collector line ROW. These streams would have the standard buffer of 25-feet wide, measured from the top of the bank of the stream. No poles are proposed to be located in the stream buffer area. During initial construction, any vegetation that must be removed would be done by hand-cutting or traveling or reaching into the buffer using low ground pressure mechanized harvesting equipment. Following construction, any disturbed areas would be graded to the original contour and stabilized with permanent seeding.

D. Inland Waterfowl and Wading Bird Habitat (IWWH) Buffers. The proposed access road and collector line cross upland portions of one moderate-value mapped IWWH. During construction, the applicant proposes to only remove capable species. Topping of trees is the preferred method of vegetation maintenance unless the tree is dead or dying. No other vegetation would be removed. Removal of capable species would be by hand-cutting or with low ground pressure tree harvesting equipment. Where possible, the applicant would leave two to three snags per 500 linear feet of corridor to provide nesting habitat for waterfowl. Initial ROW clearing would be done during frozen conditions whenever practical. No clearing would take place between April 15 and July 15 in any calendar year, unless approved by the Department and MDIFW.

E. Vegetation Management Plan (VMP). The applicant proposes to utilize a Post Construction Vegetation Plan, prepared by Stantec Consulting, for the Bowers Wind Project, dated August 2012, which includes routine maintenance along the ROW to prevent vegetation from getting too close to the conductor. This plan summarizes vegetation management maintenance methods and procedures that would be utilized

by the applicant for transmission line corridor and collector lines. This plan describes restrictive maintenance requirements for natural resources and significant wildlife habitats. The plans also include procedures for managing or removing osprey nests built on power line structures, describe a system for identifying restricted areas, and summarize training requirements for construction personnel.

The Department finds that the applicant has made adequate provision for buffer strips based on the post-construction VMP and provided that the buffers are clearly marked on the ground prior to construction, for all visual screening buffers, stream buffers and other resource buffers, and the stormwater buffers. Additionally, prior to operation, the applicant must record all deed restrictions for stormwater buffers and submit the recorded deeds along with plot plans to the Department within 60 days of recording.

10. SOILS:

The applicant submitted a Class L soil survey for the turbine and road areas and a Class B soil survey for the O&M building location. These surveys were prepared by a certified soils scientist and reviewed by staff from the Division of Environmental Assessment (DEA) of the BLWQ. DEA commented that the applicant must submit the geotechnical data for review and approval prior to construction. DEA also reviewed a blasting plan and commented that the applicant must submit a revised blasting plan for review and approval prior to construction. If a rock crusher is being utilized on site, the applicant must ensure that the crusher is licensed by the Department's Bureau of Air Quality and is being operated in accordance with that license. DEA also commented that they recommend that the applicant submit an evaluation of any potentially reactive rock types encountered in the proposed construction area.

The Department finds that, based on these reports and the blasting plan, and DEA's review, the soils on the project site present no limitations to the proposed project that cannot be overcome through standard engineering practices, provided that the geotechnical report and revised blasting plan are submitted to the Department for review and approval prior to construction, in addition to the evaluation of any potentially reactive rock types encountered in the proposed construction area.

11. STORMWATER MANAGEMENT:

The proposed project includes approximately 33.92 acres of impervious area and 33.92 acres of developed area. It lies within the watersheds of Mill Privilege Lake, Dipper Pond, Baskahegan Lake, and Pleasant Lake. The applicant submitted a stormwater management plan based on the Basic, Phosphorus and Flooding standards contained in Department Rules, Chapter 500. The proposed stormwater management system would consist of 22 meadow buffers and 59 forest buffers and an underdrained soil filter.

A. Basic Standards:

(1) Erosion and Sedimentation Control: The applicant submitted an Erosion and Sedimentation Control Plan (Section 14 of the application) that is based on the

performance standards contained in Appendix A of Chapter 500 and the Best Management Practices outlined in the Maine Erosion and Sediment Control BMPs, which were developed by the Department. This plan and plan sheets containing erosion control details were reviewed by, and revised in response to the comments of, the Division of Land Resource Regulation (DLRR) of the BLWQ.

Erosion control details would be included on the final construction plans and the erosion control narrative would be included in the project specifications to be provided to the construction contractor. Given the size and nature of the project site, the applicant must retain the services of a third-party inspector in accordance with the Special Condition for Third Party Inspection Program, which is attached to this Order. Prior the start of construction, the applicant must conduct a pre-construction meeting to discuss the construction schedule and the erosion and sediment control plan with the appropriate parties. This meeting must be attended by the applicant's representative, Department staff, the design engineer, the contractor, and the third-party inspector.

(2) Inspection and Maintenance: The applicant submitted a maintenance plan that addresses both short and long-term maintenance requirements. This plan was reviewed by, and revised in response to the comments of, DLRR. The maintenance plan is based on the standards contained in Appendix B of Chapter 500. The applicant would be responsible for the maintenance of all common facilities including the stormwater management system.

(3) Housekeeping: The proposed project would comply with the performance standards outlined in Appendix C of Chapter 500.

The following minor adjustments may be made during construction without advance notice to the Department provided they do not impact protected resources and are reflected in the final as-built drawings: changes that result in a reduction in impact and/or footprint (such as a reduction in clearing or impervious area, and elimination of structures or a reduction in structure size); location of a structure within the identified clearing limits; the type of foundations used; additional drainage culverts, level spreaders or rock sandwiches; changes to culvert size or type provided that the culvert does not convey a regulated stream and that the hydraulic capacity of the substitute culvert is greater than or equal to that of the original; and changes of up to 10 feet in the base elevation of a turbine vertically as long as the change in elevation does not result in increased visual impacts or changes to the stormwater management plan.

Additionally, the following minor adjustments may be made upon prior approval by the third-party inspector or Department staff, and do not require a revision or modification of the permit but must be reflected in the final as-built drawings: minor changes that do not increase overall project impacts or project footprint and which do not impact any protected resources as long as any new areas of impact have been surveyed for environmental resources and do not affect other landowners. These

changes include adjustments to horizontal or vertical road geometry that do not result in changes to the stormwater management plan; a shift of up to 100 feet in a turbine clearing area; and adjustments to culvert locations based on field topography.

Based on DLRR's review of the erosion and sedimentation control plan and the maintenance plan, the Department finds that the proposed project would meet the Basic Standards contained in Chapter 500(4)(A) provided the applicant retains a third-party inspector and conducts a pre-construction meeting as described above.

B. Phosphorus Standards:

The applicant's stormwater management plan includes general treatment measures that would mitigate for the increased frequency and duration of channel erosive flows due to runoff from smaller storms, provide for effective treatment of pollutants in stormwater, and mitigate potential temperature impacts. This mitigation is being achieved by using Best Management Practices (BMPs) that will control runoff from no less than 95% of the impervious area and no less than 80% of the developed area for the O&M building. The proposed access road and turbine pads meets the definition of "a linear portion of a project" in Chapter 500 and the applicant is proposing to control runoff volume from no less than 75% of the impervious area and no less than 50% of the developed area.

The forested and meadow buffers would be protected from alteration through the execution of a deed restriction. The applicant proposes to use the deed restriction language contained in Appendix G of Chapter 500 and submitted a draft deed description that meets Department standards.

Prior to operation, the applicant must record all deed restriction for stormwater buffers and submit the recorded deeds to the Department within 60 days of recording.

Because of the proposed project's location in the watersheds of Mill Privilege Lake, Dipper Pond, Baskahegan Lake and Pleasant Lake, stormwater runoff from the project site would be treated to meet the phosphorus standard outlined in Chapter 500(4)(C). The applicant's phosphorus control plan was developed using methodology developed by the Department and outlined in "Phosphorus Control in Lake Watersheds: A Technical Guide for Evaluating New Development". For this project, the lakes have the following Predicted Phosphorus Export and Permitted Phosphorus Export values:

Lake	Town	Predicted Phosphorus Export (Lbs/Phos/Year)	Permitted Phosphorus Export (Lbs/Phos/Year)
Mill Privilege	Carroll Plt.	3.50	3.66
Dipper Pond	Carroll Plt.	0.30	0.30
Pleasant Lake	Carroll Plt.	4.57	4.65
Pleasant Lake	Kossuth Twp.	0.83	1.47
Baskahegan Lake	Carroll Plt.	14.72	14.74

Baskahegan Lake	Kossuth Twp.	2.35	2.43

The applicant is proposing to remove phosphorus by using buffers and an underdrained soil filter. The proposed stormwater treatment would be able to reduce the export of phosphorus in the stormwater runoff below the maximum Permitted Phosphorus Export for the site.

The stormwater management system proposed by the applicant was reviewed by, and revised in response to comments from, DLRR. After a final review, DLRR commented that the proposed stormwater management system is designed in accordance with the Phosphorus Standard contained in Chapter 500(4)(C) provided that the design engineer or a third-party engineer oversees the construction of the stormwater management structures according to the details and notes specified on the approved plans.

Within 30 days of completion of the entire system or at least once per year, the applicant must submit a log of inspection reports detailing the items inspected, photos and the dates of each inspection to the BLWQ for review.

Based on the stormwater system's design and DLRR's review, the Department finds that the applicant has made adequate provision to ensure that the proposed project would meet the Phosphorus Standard contained in Chapter 500(4)(C).

C. Flooding Standard:

The applicant is proposing to utilize a stormwater management system based on estimates of pre- and post-development stormwater runoff flows obtained by using Hydrocad, a stormwater modeling software that utilizes the methodologies outlined in Technical Releases #55 and #20, U.S.D.A., Soil Conservation Service and detains stormwater from 24-hour storms of 2-, 10-, and 25-year frequency. The post-development peak flow from the site would not exceed the pre-development peak flow from the site and the peak flow of the receiving waters would not be increased as a result of stormwater runoff from the development site.

DLRR commented that the proposed system is designed in accordance with the Flooding Standard contained in Chapter 500(4)(E).

Based on the system's design and DLRR's review, the Department finds that the applicant has made adequate provision to ensure that the proposed project would meet the Flooding Standard contained in Chapter 500(4)(E) for peak flow from the project site, and channel limits and runoff areas.

The Department further finds that the proposed project would meet the Chapter 500 standards for: (1) easements and covenants; (2) management of stormwater discharges; (3) discharge to freshwater or coastal wetlands; (4) threatened or endangered species; and (5) discharges to public storm sewer systems.

12. GROUNDWATER:

The project site is not located over a mapped sand and gravel aquifer. The applicant is proposing a single well to serve the domestic water needs at the O&M building, as described in Finding 13. The applicant submitted a Post-Construction Vegetation Management Plan for the project site, dated August 2012, that was reviewed by DEA. DEA recommended the plan be revised to add the requirement that the express collector line is reviewed prior to any herbicide application in order to determine whether any new wells or water supplies have been established that would require marking additional buffer areas.

The applicant submitted a Spill Prevention, Control and Countermeasures (SPCC) plan detailing steps to be taken to prevent groundwater contamination during construction, however if the contractor is required to provide a SPCC the plan must be submitted to the Department for review and approval.

The Department finds that the proposed project would not have an unreasonable adverse effect on groundwater quality provided the applicant submits the contractor or subcontractor SPCC plans to the Department for review as outlined above. The Department may require changes to any SPCC plan or handling or storage procedure based on review of the SPCC plans or inspection of the site. The Department further finds that the proposed project would not have an unreasonable adverse effect on groundwater quality provided the applicant submits a revised Post-Construction Vegetation Management Plan with the added requirement that the express collector line be reviewed prior to any herbicide application in order to determine whether any new wells or water supplies have been established that would require marking additional buffer areas prior to operation of the facility, and submits any revised SPCC plan to the Department for review and approval.

13. WATER SUPPLY:

When completed, the proposed project is anticipated to use less than 300 gallons of water per day for the O&M building. The applicant submitted an assessment of the groundwater supplies available on the project site. This assessment was prepared by a well driller and was reviewed by the DEA.

The Department finds that the applicant has made adequate provision for securing and maintaining a sufficient and healthful water supply.

14. WASTEWATER DISPOSAL:

When completed, the proposed project is anticipated to discharge less than 300 gallons of wastewater per day for the O&M building. Wastewater would be disposed of by an individual subsurface wastewater disposal system. The applicant submitted an HHE-200 form for the proposed wastewater disposal system. This information was reviewed by DEA.

Based on DEA's comments, the Department finds that the proposed wastewater disposal system would be built on suitable soil types.

15. SOLID WASTE:

When completed, the proposed project is anticipated to generate minor amounts of general solid waste per year. All general solid wastes from the proposed project would be disposed of at Penobscot Energy Recovery Center, which is currently in substantial compliance with the Maine Solid Waste Management Rules.

All marketable timber would be removed from the project site. A single one-acre stump dump may be located on the project site. All stumps and grubbings generated would be disposed of on site, either chipped or burned, with the remainder to be worked into the soil, in compliance with the Maine Solid Waste Management Rules.

The proposed project would generate approximately 400 cubic yards of construction debris and demolition debris. All construction and demolition debris generated would be disposed of at Juniper Ridge, which is currently in substantial compliance with the Maine Solid Waste Management Rules.

Based on the above information, the Department finds that the applicant has made adequate provision for solid waste disposal.

16. FLOODING:

A portion (0.5 mile) of the electrical collector is located within the 100-year flood plain of a river, stream or brook. Four poles of the collector line would be located in the floodplain of Lindsey Brook and three poles of the collector line would be located in the floodplain of Tolman Brook. The applicant would alter 7.5 acres of floodplain forest to scrub-shrub vegetation. The applicant is not proposing to alter the topography or existing drainage ways.

The Department finds that the proposed project is unlikely to cause or increase flooding or cause an unreasonable flood hazard to any structure.

17. WETLAND IMPACTS:

The applicant retained Stantec to locate wetlands and waterbody resources on the proposed project site. The results of the applicant's surveys for wetlands and waterbodies which may be affected by the turbine sites, access roads and collection lines are summarized as follows:

- 257 wetlands were identified along the proposed access roads and the electrical collector line.
- 81 jurisdictional streams were identified, including 47 perennial streams.
- 50 vernal pools were identified, including 1 significant vernal pool, none of which would be impacted, as discussed in Finding 7.

- 67 wetlands were identified that meet the definition of wetlands of special significance.

The applicant is not proposing to fill any wetlands. The proposed project would include 2.5 acres of wetland clearing.

The Department's Wetlands and Waterbodies Protection Rules, Chapter 310, provide the framework for the Department's analysis of whether a proposed project's impacts to protected resources will be unreasonable, as that term is used in the NRPA, and whether the project meets the NRPA licensing criteria. A proposed project's impacts may be found to be unreasonable if the project will cause a loss in wetland area, functions and values and for which there is a practicable alternative that will be less damaging to the environment. For this aspect of the Department's review an applicant must provide an analysis of alternatives to the project.

A. Avoidance. The applicant submitted an alternatives analysis for the proposed project completed by Stantec and dated October 1, 2012. The applicant designed the project road and turbine pad layout in order to minimize impacts to wetlands while meeting the project purpose. The applicant used existing roads as much as possible in order to minimize new impacts to wetlands. The applicant was able to avoid permanent wetland fill in wetland areas.

B. Minimal Alteration. The amount of wetland to be altered must be kept to the minimum amount necessary for meeting the overall purpose of the project. As stated above, the applicant was able to design the project so that there is no proposed permanent fill in wetland areas. The applicant would allow cleared areas to revegetate.

C. Compensation. Compensation is required to achieve the goal of no net loss of wetland functions and values. The applicant is not required to compensate due to the fact that the proposed wetland clearing would not result in lost functions and values.

The Department finds that the applicant has avoided and minimized wetland and waterbody impacts to the greatest extent practicable, and that the proposed project represents the least environmentally damaging alternative that meets the overall purpose of the project. The proposed project would not result in an unreasonable impact to freshwater wetlands

18. SHADOW FLICKER:

In accordance with 38 M.R.S.A. §484(10), an applicant must demonstrate that the proposed wind energy development has been designed to avoid unreasonable adverse shadow flicker effects. Shadow flicker caused by wind turbines is defined as alternating changes in light intensity caused by the moving blade casting shadows on the ground and stationary objects. Shadow flicker is the sun seen through a rotating wind turbine rotor. Shadow flicker does not occur when the sun is obscured by clouds or fog or when the turbine is not rotating. The spatial relationships between a wind turbine and receptor, as

well as wind direction which cause the turbines to rotate, are key factors relating to shadow flicker occurrence and duration. At distances of greater than 1,000 feet between wind turbines and receptors, shadow flicker usually occurs when the rotor plane is in-line with the sun and receptor (as seen from the receptor), the cast shadows would be very narrow (blade thickness) and of low intensity, and the shadows would move quickly past the stationary receptor. When the rotor plane is perpendicular to the sun-receptor "view line," the cast shadow of the blades would move within a circle equal to the turbine rotor diameter.

The applicant submitted a shadow flicker analysis with its application based on the Vestas 112 MW turbines. The applicant used WindPRO, a wind modeling software program, to model expected shadow flicker effects on adjacent properties from the 16 proposed turbine locations. The applicant assumed a worst case scenario, that all receptors have a direct in-line view of the incoming shadow flicker sunlight, and did not take into account any existing vegetative buffers.

The Department generally recommends that an applicant conduct a shadow flicker model out to a distance of 1,000 feet or greater from a residential structure, and the applicant's model did so. The applicant modeled 54 receptors. All modeled receptors do not show any impact of shadow flicker; the modeling showed shadow flicker only on the project parcel. Maine currently has no numerical regulatory limits on exposure to shadow flicker; however, the industry commonly uses 30 hours per year as a limit to reduce nuisance complaints. No parcels outside the project parcel would receive any shadow flicker. Based on the WindPRO analysis, no properties outside the project parcel have been calculated to receive flicker in excess of 30 hours per year.

The Department finds the shadow flicker modeling conducted by the applicant is credible. Based upon the proposed project's location and design, the distance to the nearest shadow flicker receptor, and results of the shadow flicker analysis, the Department finds that the proposed project, in accordance with 38 M.R.S.A. §484(10), would not unreasonably cause shadow flicker to occur over adjacent properties which would not be subject to an easement allowing for shadow flicker.

19. PUBLIC SAFETY:

The proposed project would use either Vestas V-112 3.0-megawatt (MW) wind turbine generators or Siemens 3.0 wind turbine generators. The Vestas V-112 conformity with International Electrotechnial Commission standards has been certified by Det Norske Veritas and included in the applications in Appendix 27-2 dated March 19, 2010. The Siemens 3.0 certification is in progress.

The Department recognizes that locating wind turbines a safe distance away from any occupied structures, public roads or other public use areas is extremely important. In establishing a recommended safety setback, the Department considered industry standards for wind energy production in climates similar to Maine, as well as the guidelines recommended by certifying agencies such as Det Norske Veritas. Based on these sources, the Department requires that all wind turbines be set back from the

property line, occupied structures or public areas a minimum of 1.5 times the maximum blade height for the wind turbine. Based on the Department setback specifications, the minimum setback distance to the nearest property line should be 688.5 feet for the Vestas turbines, the taller of the turbine options. A review of the application indicates that all turbines are proposed to be setback 1490 feet from the nearest non-participating landowner.

In the Fourth Procedural Order, the Department requested additional information from the applicant on fire safety issues. The Department received several comments from the public regarding fire safety of wind turbines. The applicant supplied additional evidence regarding the design of the turbines, the constant monitoring of the turbine conditions, operation and maintenance procedures used to reduce fire risk, and fire protection plan and emergency communications protocols. The Department reviewed these materials under Site Law, and concluded that the proposed project would pose a minimal adverse impact to the health, safety and general welfare of the people.

The Department finds that the applicant provided documentation for the Vestas turbine of industry standard compliance that the wind generation equipment has been designed to conform to applicable industry safety standards, and has demonstrated that the proposed project would be sited such that it would not present an unreasonable safety hazard to adjacent properties or adjacent property uses. The Department further finds that the applicant has submitted sufficient evidence which demonstrates that the proposed project would be sited with appropriate safety setbacks from adjacent properties and existing uses provided that prior to construction, the applicant submits the required certification to the Department for the Siemens 3.0 turbine if the proposed project utilizes that type of turbine.

20. DECOMMISSIONING PLAN:

In order to facilitate and ensure appropriate removal of wind generation equipment when it reaches the end of its useful life or if the applicant ceases operation of turbines, the Department requires an applicant to demonstrate, in the form of a decommissioning plan, the means by which decommissioning would be accomplished. The applicant submitted a decommissioning plan which includes a description of the trigger for implementing the decommissioning, a description of work required, an estimate of decommissioning costs, a schedule for contributions to its decommissioning fund, and a demonstration of financial assurance.

A. Trigger for implementation of decommissioning. The proposed wind turbine generators are designed and certified by independent agencies for a minimum expected operational life of 20 years, however other factors may trigger the requirement for decommissioning before 20 years have passed. The applicant's proposal is that the wind generation facility, or any single turbine, would be decommissioned when it ceases to generate electricity for a continuous period of twelve months. In the case of a force majeure event which causes the project, or any single turbine, to fail to generate electricity for 12 months, the applicant proposes that it be allowed to submit to the Department for review and approval reasonable

evidence in support of a request that they not be required to decommission the project at that time.

Decommissioning would begin if twelve months of no generation occurs. An exception to the requirement would be allowed for a force majeure event, however the Department finds that the applicant's proposed definition of "force majeure" is exceedingly broad, and instead the definition would be as follows: The Department considers a force majeure to mean fire, earthquake, flood, tornado, or other acts of God and natural disasters; and war, civil strife or other similar violence. In the event of a force majeure event which results in the absence of electrical generation by one or more turbines for twelve months, by the end of the twelfth month of non-operation the applicant shall demonstrate to the Department that the project, or any single turbine, would be substantially operational and producing electricity within twenty-four months of the force majeure event. If such a demonstration is not made to the Department's satisfaction, the decommissioning must be initiated eighteen months after the force majeure event.

B. Description of work. The description of work contained in the application outlines the applicant's proposal for the manner in which the turbines and other components of the proposed project would be dismantled and removed from the site. Subsurface components would be removed to a minimum of 24 inches below grade, generating facilities would be removed and salvaged and disturbed areas would be re-seeded. At the time of decommissioning, the applicant must submit a plan for continued beneficial use of any wind energy development component proposed to be left on-site to the Department for review and approval.

C. Financial Assurance. The applicant estimates that the current cost for decommissioning the project would be $616,020. The applicant proposes that financial assurance for the decommissioning costs would be in the form of (i) performance bond, (ii) surety bond, or (iii) letter of credit, or other acceptable form of financial assurance for the total cost of decommissioning. The applicant proposes to have the financial assurance mechanism in place prior to construction and to re-evaluate the decommissioning cost at the end of years ten and fifteen. Proof of acceptable financial assurance must be submitted to the Department prior to the start of construction.

D. Notification. The applicant must notify the Department within two business days of any catastrophic turbine failure. Catastrophic turbine failure shall include the voluntary or involuntary shut-down of a turbine due to a fire event, structural failure or accidental event resulting in a turbine collapse, a force majeure event, or any mechanical breakdown the applicant anticipates would result in a turbine being off-line for a period greater than six months.

Based on the applicants' proposal outlined above, the Department finds that the applicant's proposal would adequately provide for decommissioning, provided the applicant implements the decommissioning plan as proposed and submits proof of financial assurance for the decommissioning costs as set forth above.

21. TANGIBLE BENEFITS:

In its application the applicant described tangible benefits that the project would provide to the State of Maine and to host communities, including economic benefits and environmental benefits.

A. Job Creation. The applicant states that its proposal would benefit the host communities and surrounding areas through construction-related employment opportunities. The applicant has indicated that it would hire local firms and individuals whenever possible for construction, operations, and maintenance positions related to the project. Jobs created could include tree clearing jobs, and jobs in businesses that support construction such as lodging, restaurant, fuel and concrete supply. The applicant estimates the project would create approximately 100 full-time jobs during construction and 6 to 9 permanent jobs for operation and maintenance of the facility after construction.

B. Generation of Wind Energy. The applicant estimates that the proposed project would provide an approximate average output of 157,000 megawatt-hours per year, which is enough to power over 25,000 homes.

C. Property Tax Payments. Champlain estimates that the Project would result in estimated average annual tax payments of approximately $15,933 to Kossuth Township, (net value after adjustment through a Credit Enhancement Agreement) and in estimated average annual tax payments of $287,358 to Carroll Plantation.

D. Community Benefits Agreement. The applicant has provided proposed Community Benefit Agreements with Carroll Plantation, Kossuth Township, and Washington County. The communities may use the funds at their discretion for public purposes including lowering tax rates or investment in municipal assets and/or services. Annual payments made to with Carroll Plantation, Kossuth Township, and Washington County as part of the Community Benefits Agreements total $8,875 per turbine per year for 20 years. The applicant must submit confirmation of the receipt of funds by the communities and county to the Department annually for review.

E. Other tangible benefits. Based on from area stakeholders, the applicant has also agreed to provide $300,000 to a Watershed Recreational Tourism and Conservation Fund to benefit the watershed area from Bowers Mountain extending south to Grand Lake Stream. This fund would be hosted by the Sunrise County Economic Council. Also, the applicant is evaluating the preliminary mapping of a "Ride the Wind" snowmobile trail that would link all the wind farms in the State, and the proposed project would provide $25,000 in seed money to finalize the snowmobile routes, create marketing materials and promote the trail.

Based on the proposed employment opportunities, energy generation, property tax revenue and the Community Benefits Agreements proposed by the applicant, the Department finds that the applicant has demonstrated that the proposed project would provide significant tangible benefits to the State, host communities and surrounding area

pursuant to 35-A M.R.S.A. §3454, provided that annual payments are made to Carroll Plantation, Kossuth Township, and Washington County as described above.

22. MAINE LAND USE PLANNING COMMISSION CERTIFICATION:

The proposed project was reviewed by the Land Use Planning Commission (LUPC) to determine if the project is an allowed use in the subdistricts affected and if the project meets the Commission's land use standards applicable to the project that are not considered in the Department's review. The LUPC standards for this project include land division history, vehicular circulation, access and parking, lighting, minimal dimensional requirements, vegetation clearing, signs, and general criteria for approval.

In a Commission Determination, dated January 4, 2013 and signed by LUPC Director Nicholas Livesay, the LUPC certified that the project is an allowed use in the subdistricts affected and complies with LUPC standards, subject to conditions. The conditions, detailed by the Commission Determination, may be enforced by either the LUPC or the Department.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S.A. Sections 480-A et seq. and Section 401 of the Federal Water Pollution Control Act:

A. The proposed activity would not interfere with existing navigational uses, but the proposed activity would interfere with existing recreational uses and significantly compromise views from a SRSNS and would have an unreasonable adverse effect on the scenic character and existing uses related to scenic character of the resource, the proposed activity would unreasonably interfere with existing scenic and aesthetic uses.

B. The proposed activity would not cause unreasonable erosion of soil or sediment.

C. The proposed activity would not unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.

D. The proposed activity would not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic habitat, travel corridor, freshwater, estuarine, or marine fisheries or other aquatic life, provided the applicant was to implement turbine curtailment and provide a final mortality monitoring methodology to the Department as described in Finding 7, and all buffers were marked prior to construction as described in Finding 9.

E. The proposed activity would not unreasonably interfere with the natural flow of any surface or subsurface waters.

F. The proposed activity would not violate any state water quality law including those governing the classifications of the State's waters.

G. The proposed activity would not unreasonably cause or increase the flooding of the alteration area or adjacent properties.

H. The proposed activity is not on or adjacent to a sand dune.

I. The proposed activity is not on an outstanding river segment as noted in 38 M.R.S.A. Section 480-P.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 35-A M.R.S.A. §§ 3401-3457, and 38 M.R.S.A. Sections 481 et seq.:

A. The applicant has provided adequate evidence of financial capacity and technical ability to develop the project in a manner consistent with state environmental standards provided that the applicant meets the requirements of Finding 3.

B. The proposed activity would significantly compromise views from a SRSNS and would have an unreasonable adverse effect on the scenic character and existing uses related to scenic character of the resource. The applicant has made adequate provisions for air quality, water quality, the control of noise and other natural resources in the municipality or in neighboring municipalities provided that the applicant was to implement the post-construction noise monitoring program, and were to investigate all noise complaints as described in Finding 5; the applicant were to install FAA-approved radar-activated lighting prior to the start of construction as described in Finding 6; the applicant were to implement turbine curtailment and provide a final mortality monitoring methodology to the Department as described in Finding 7; and all buffers were marked prior to construction as described in Finding 9.

C. The proposed development would be built on soil types which are suitable to the nature of the undertaking and would not cause unreasonable erosion of soil or sediment nor inhibit the natural transfer of soil, provided that the applicant meets the requirements of Finding 10.

D. The proposed development meets the standards for stormwater management in Section 420-D and the standard for erosion and sedimentation control in Section 420-C provided that the applicant meets the requirements of Finding 11.

E. The proposed development would not pose an unreasonable risk that a discharge to a significant groundwater aquifer would occur provided that the applicant meets the requirements of Finding 12.

F. The applicant has made adequate provision of utilities, including water supplies, sewerage facilities and solid waste disposal required for the development and the development would not have an unreasonable adverse effect on the existing or proposed utilities in the municipality or area served by those services.

G. The activity would not unreasonably cause or increase the flooding of the alteration area or adjacent properties nor create an unreasonable flood hazard to any structure.

H. The proposed development would not unreasonably cause shadow flicker effects to occur over adjacent properties.

I. The activity would not present an unreasonable safety hazard to adjacent properties or adjacent property uses.

J. The applicant has made adequate provisions to achieve decommissioning of the wind power facility provided the decommissioning plan is implemented as described in Finding 20 and financial assurance of funds for decommissioning is demonstrated as set forth in Finding 20.

K. The activity would provide significant tangible benefits to the host communities and surrounding area, provided that the applicant implements the Community Benefit Agreement as discussed in Finding 21.

THEREFORE, the Department DENIES the application of CHAMPLAIN WIND, LLC to construct a 16-turbine, grid-scale, wind energy development as described in Finding 1.

DONE AND DATED IN AUGUSTA, MAINE, THIS 5th DAY of August, 2013.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Filed
AUG 5 2013
State of Maine
Board of Environmental Protecti

BY: _____
Patricia W. Aho, Commissioner

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES

JD/L#25800ANBNCN/ATS#75284/75285/76298

DEP INFORMATION SHEET

Appealing a Department Licensing Decision

Dated: March 2012 **Contact: (207) 287-3901**

SUMMARY

There are two methods available to an aggrieved person seeking to appeal a licensing decision made by the Department of Environmental Protection's ("DEP") Commissioner: (1) in an administrative process before the Board of Environmental Protection ("Board"); or (2) in a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

A judicial appeal of final action by the Commissioner or the Board regarding an application for an expedited wind energy development (35-A M.R.S.A. § 3451(4)) or a general permit for an offshore wind energy demonstration project (38 M.R.S.A. § 480-HH(1)) or a general permit for a tidal energy demonstration project (38 M.R.S.A. § 636-A) must be taken to the Supreme Judicial Court sitting as the Law Court.

This INFORMATION SHEET, in conjunction with a review of the statutory and regulatory provisions referred to herein, can help a person to understand his or her rights and obligations in filing an administrative or judicial appeal.

I. ADMINISTRATIVE APPEALS TO THE BOARD

LEGAL REFERENCES

The laws concerning the DEP's *Organization and Powers*, 38 M.R.S.A. §§ 341-D(4) & 346, the *Maine Administrative Procedure Act*, 5 M.R.S.A. § 11001, and the DEP's *Rules Concerning the Processing of Applications and Other Administrative Matters* ("Chapter 2"), 06-096 CMR 2 (April 1, 2003).

HOW LONG YOU HAVE TO SUBMIT AN APPEAL TO THE BOARD

The Board must receive a written appeal within 30 days of the date on which the Commissioner's decision was filed with the Board. Appeals filed after 30 calendar days of the date on which the Commissioner's decision was filed with the Board will be rejected.

HOW TO SUBMIT AN APPEAL TO THE BOARD

Signed original appeal documents must be sent to: Chair, Board of Environmental Protection, c/o Department of Environmental Protection, 17 State House Station, Augusta, ME 04333-0017; faxes are acceptable for purposes of meeting the deadline when followed by the Board's receipt of mailed original documents within five (5) working days. Receipt on a particular day must be by 5:00 PM at DEP's offices in Augusta; materials received after 5:00 PM are not considered received until the following day. The person appealing a licensing decision must also send the DEP's Commissioner a copy of the appeal documents and if the person appealing is not the applicant in the license proceeding at issue the applicant must also be sent a copy of the appeal documents. All of the information listed in the next section must be submitted at the time the appeal is filed. Only the extraordinary circumstances described at the end of that section will justify evidence not in the DEP's record at the time of decision being added to the record for consideration by the Board as part of an appeal.

WHAT YOUR APPEAL PAPERWORK MUST CONTAIN

Appeal materials must contain the following information at the time submitted:

1. *Aggrieved Status*. The appeal must explain how the person filing the appeal has standing to maintain an appeal. This requires an explanation of how the person filing the appeal may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions or conditions objected to or believed to be in error.* Specific references and facts regarding the appellant's issues with the decision must be provided in the notice of appeal.
3. *The basis of the objections or challenge.* If possible, specific regulations, statutes or other facts should be referenced. This may include citing omissions of relevant requirements, and errors believed to have been made in interpretations, conclusions, and relevant requirements.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license or permit to changes in specific permit conditions.
5. *All the matters to be contested*. The Board will limit its consideration to those arguments specifically raised in the written notice of appeal.
6. *Request for hearing.* The Board will hear presentations on appeals at its regularly scheduled meetings, unless a public hearing on the appeal is requested and granted. A request for public hearing on an appeal must be filed as part of the notice of appeal.
7. *New or additional evidence to be offered.* The Board may allow new or additional evidence, referred to as supplemental evidence, to be considered by the Board in an appeal only when the evidence is relevant and material and that the person seeking to add information to the record can show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process or that the evidence itself is newly discovered and could not have been presented earlier in the process. Specific requirements for additional evidence are found in Chapter 2.

OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, made easily accessible by DEP. Upon request, the DEP will make the material available during normal working hours, provide space to review the file, and provide opportunity for photocopying materials. There is a charge for copies or copying services.
2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing your appeal.* DEP staff will provide this information on request and answer questions regarding applicable requirements.
3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed the license normally remains in effect pending the processing of the appeal. A license holder may proceed with a project pending the outcome of an appeal but the license holder runs the risk of the decision being reversed or modified as a result of the appeal.

WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD

The Board will formally acknowledge receipt of an appeal, including the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials accepted by the Board Chair as supplementary evidence, and any materials submitted in response to the appeal will be sent to Board members with a recommendation from DEP staff. Persons filing appeals and interested persons are notified in advance of the date set for Board consideration of an appeal or request for public hearing. With or without holding a public hearing, the Board may affirm, amend, or reverse a Commissioner decision or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, a license holder, and interested persons of its decision.

II. JUDICIAL APPEALS

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court, see 38 M.R.S.A. § 346(1); 06-096 CMR 2; 5 M.R.S.A. § 11001; & M.R. Civ. P 80C. A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. Failure to file a timely appeal will result in the Board's or the Commissioner's decision becoming final.

An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S.A. § 346(4).

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

ADDITIONAL INFORMATION

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board's Executive Analyst at (207) 287-2452 or for judicial appeals contact the court clerk's office in which your appeal will be filed.

Note: The DEP provides this INFORMATION SHEET for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.

Division 1-2

Request:

Has National Grid done any analysis relating to the magnitude of the potential ratepayer impact of the ISO-NE negative pricing rule changes for the Bowers Wind PPA? If so, please provide that analysis.

Response:

Because negative pricing never existed in the ISO-NE market, it is difficult to predict the impact of the ISO-NE negative pricing rule changes. Particularly, it is challenging to predict the magnitude of the negative pricing in any hour, as well as the number of hours this is likely to occur.

Currently, the lowest bid price in the market is $0.00. The Company looked at historical ISO-NE prices for the Maine load zone to see how many hours the real time price dropped to $0.00. Over the course of a year (from July 1, 2012 to June 30, 2013), the real time price dropped to zero for 62 hours, or less than 1% of the time. This look back only provides an estimate of how often the price could go negative, but it is not an effective tool for predicting the magnitude of the potential negative pricing in a given hour.

For a rough estimate on the magnitude of the potential impact to Rhode Island customers of the ISO-NE negative pricing rule changes, it can be assumed that, if the real time price went to -$150/MWh every hour during those 62 hours over a year and the average hourly output for the Bowers Wind project is 18.3 MW, the potential impact would be $170,190: $170,190 = 18.3 MW x $150 / MWh x 62 hours.

Please see Confidential Attachment DIV 1-3 for a more detailed breakdown of this analysis.

Prepared by or under the supervision of: Corinne M. Abrams

Division 1-3

Request:

Please provide all internal memos, presentations, analyses and other documents on ISO-NE negative pricing issue.

Response:

Please see Confidential Attachment DIV 1-3 for a live spreadsheet of the Company's analysis of the ISO-NE negative pricing issue, which the Company is providing on the enclosed CD-ROM. This analysis is further explained in the Company's response to Division 1-2. Because the information contained in the MS Excel spreadsheet contains confidential and proprietary pricing information, the Company is seeking protective treatment of this CD-ROM pursuant to Commission Rule 1.2(g).

In addition, the Company's Massachusetts affiliate has obtained certain presentations from other Massachusetts utilities regarding negative pricing that relate to the Massachusetts solicitation process. While these presentations serve as a one data point for negative pricing, the presentations were developed for the purpose of the Massachusetts solicitation process, and not for the purpose of evaluating the price for the Champlain Wind PPA. Because these presentations were obtained from third parties in the context of a review in another jurisdiction and are confidential, the Company is not providing the presentations in this docket. However, the Company is willing to permit the Division to view these presentations, subject to an appropriate confidentiality agreement, if desired.

Division 1-4

Request:

Please provide the assumptions behind the ESAI energy price forecast including the vintage and source of the gas forecast.

Response:

Please see the ESAI Forecast Methodology from June 2012 provided as Confidential Attachment DIV 1-4. Because the document contains confidential and proprietary forecast information, the Company is seeking protective treatment of the entire document pursuant to Commission Rule 1.2(g).

The gas prices were based on NYMEX futures quotations for July 26, 2012.

Division 1-5

Request:

Please provide a description of the REC price forecasting methodology used by ESAI.

Response:

Please see Confidential Attachment DIV 1-4.

Division 1-6

Request:

In Exhibit 3 (Confidential), did the Company calculate the price scores using the same forecasts of market prices as was used in Exhibit 2 (Confidential)? If not, please explain why not and provide the price forecasts used in Exhibit 3 (Confidential). Please provide the live spreadsheets that calculated these price scores.

Response:

Yes, the Company calculated the price scores in Exhibit 3 using the same forecasts of market prices as was used in Exhibit 2. Please see Confidential Attachment DIV 1-6 for the live spreadsheets calculating these price scores, which the Company is providing on the enclosed CD-ROM. Because the information contained in the MS Excel spreadsheet contains confidential and proprietary information, the Company is seeking protective treatment of this CD-ROM pursuant to Commission Rule 1.2(g).

Prepared by or under the supervision of: Corinne M. Abrams

Division 1-7

Request:

Please provide a live spreadsheet showing the calculations and inputs for Exhibit 2 (Confidential).

Response:

Please see Confidential Attachment DIV 1-7 for the live spreadsheet used to create Exhibit 2 (Confidential), which the Company is providing on the enclosed CD-ROM. Because the information contained in the MS Excel spreadsheet contains confidential and proprietary information, the Company is seeking protective treatment of this CD-ROM pursuant to Commission Rule 1.2(g).

Prepared by or under the supervision of: Corinne M. Abrams

Division 1-8

Request:

In Exhibit 3 (Confidential), please provide a more detailed breakdown of the non-price scores.

Response:

Please see Attachment DIV 1-8. Pursuant to Commission Rule 1.2(g), the Company is seeking confidential treatment of certain bidder evaluation information contained in Attachment DIV 1-8. The Company is providing a redacted version of Attachment DIV 1-8 for the public filing.

2012 Rhode Island Renewable Energy RFP Non Pricing Scoring Sheet

Project			[redacted]
	Max Points	Rating	
Siting and Permitting	4.0		
	1.5		Extent to which site control has been achieved and acquisition of any necessary real property rights, including right of ways
	1.5		Identification of required permits and approvals and status of plan to obtain permits and approvals
	1.0		Community relations plan
Subtotal			
Project Development Status and Operational Viability	5.0		
	1.0		Reasonableness of critical path schedule and demonstrated ability to meet major milestones
	1.5		Credibility of fuel resource plan
	1.5		Commercial access to and reliability of the proposed technology
	1.0		Progress in interconnection process
Subtotal			
Experience and Capability of Bidder and Project Team	4.0		Project development experience Project financing experience Operations and maintenance experience Experience in ISO-NE market
Financing	4.0		Credibility of the financing plan Financial strength of the bidder
Economic Benefit	3.0		Direct employment Indirect employment Tax revenues
Total	20.0		

2012 Rhode Island Renewable Energy RFP Non Pricing Scoring Sheet

Project			[redacted]
	Max Points	Rating	
Siting and Permitting	4.0	[redacted]	
	1.5	[redacted]	Extent to which site control has been achieved and acquisition of any necessary real property rights, including right of ways
	1.5	[redacted]	Identification of required permits and approvals and status of plan to obtain permits and approvals
	1.0	[redacted]	Community relations plan
Subtotal		[redacted]	
Project Development Status and Operational Viability	5.0	[redacted]	
	1.0	[redacted]	Reasonableness of critical path schedule and demonstrated ability to meet major milestones
	1.5	[redacted]	Credibility of fuel resource plan
	1.5	[redacted]	Commercial access to and reliability of the proposed technology
	1.0	[redacted]	Progress in interconnection process
Subtotal		[redacted]	
Experience and Capability of Bidder and Project Team	4.0	[redacted]	Project development experience Project financing experience Operations and maintenance experience Experience in ISO-NE market
Financing	4.0	[redacted]	Credibility of the financing plan Financial strength of the bidder
Economic Benefit	3.0	[redacted]	Direct employment Indirect employment Tax revenues
Total	20.0	[redacted]	

2012 Rhode Island Renewable Energy RFP Non Pricing Scoring Sheet

Project			
	Max Points	Rating	
Siting and Permitting	4.0		
	1.5		Extent to which site control has been achieved and acquisition of any necessary real property rights, including right of ways
	1.5		Identification of required permits and approvals and status of plan to obtain permits and approvals
	1.0		Community relations plan
Subtotal			
Project Development Status and Operational Viability	5.0		
	1.0		Reasonableness of critical path schedule and demonstrated ability to meet major milestones
	1.5		Credibility of fuel resource plan
	1.5		Commercial access to and reliability of the proposed technology
	1.0		Progress in interconnection process
Subtotal			
Experience and Capability of Bidder and Project Team	4.0		Project development experience Project financing experience Operations and maintenance experience Experience in ISO-NE market
Financing	4.0		Credibility of the financing plan Financial strength of the bidder
Economic Benefit	3.0		Direct employment Indirect employment Tax revenues
Total	20.0		

2012 Rhode Island Renewable Energy RFP Non Pricing Scoring Sheet

Project			[redacted]
	Max Points	Rating	
Siting and Permitting	4.0		
	1.5		Extent to which site control has been achieved and acquisition of any necessary real property rights, including right of ways
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	1.0		Community relations plan
Subtotal			
Project Development Status and Operational Viability	5.0		
	1.0		Reasonableness of critical path schedule and demonstrated ability to meet major milestones
	1.5		Credibility of fuel resource plan
	1.5		Commercial access to and reliability of the proposed technology
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Subtotal			
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2012 Rhode Island Renewable Energy RFP Non Pricing Scoring Sheet

Project			[redacted]
	Max Points	Rating	
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Subtotal			
Project Development Status and Operational Viability	5.0		
	1.0		Reasonableness of critical path schedule and demonstrated ability to meet major milestones
	1.5		Credibility of fuel resource plan
	1.5		Commercial access to and reliability of the proposed technology
	1.0		Progress in interconnection process
Subtotal			
Experience and Capability of Bidder and Project Team	4.0		Project development experience Project financing experience Operations and maintenance experience Experience in ISO-NE market
Financing	4.0		Credibility of the financing plan Financial strength of the bidder
Economic Benefit	3.0		Direct employment Indirect employment Tax revenues
Total	20.0		

2012 Rhode Island Renewable Energy RFP Non Pricing Scoring Sheet

Project			[redacted]
	Max Points	Rating	
Siting and Permitting	4.0	[redacted]	
	1.5		Extent to which site control has been achieved and acquisition of any necessary real property rights, including right of ways
	1.5		Identification of required permits and approvals and status of plan to obtain permits and approvals
	1.0		Community relations plan
Subtotal			
Project Development Status and Operational Viability	5.0		
	1.0		Reasonableness of critical path schedule and demonstrated ability to meet major milestones
	1.5		Credibility of fuel resource plan
	1.5		Commercial access to and reliability of the proposed technology
	1.0		Progress in interconnection process
Subtotal			
Experience and Capability of Bidder and Project Team	4.0		Project development experience Project financing experience Operations and maintenance experience Experience in ISO-NE market
Financing	4.0		Credibility of the financing plan Financial strength of the bidder
Economic Benefit	3.0		Direct employment Indirect employment Tax revenues
Total	20.0		

2012 Rhode Island Renewable Energy RFP Non Pricing Scoring Sheet

Project			[redacted]
	Max Points	Rating	
Siting and Permitting	4.0		
	1.5		Extent to which site control has been achieved and acquisition of any necessary real property rights, including right of ways
	1.5		Identification of required permits and approvals and status of plan to obtain permits and approvals
	1.0		Community relations plan
Subtotal			
Project Development Status and Operational Viability	5.0		
	1.0		Reasonableness of critical path schedule and demonstrated ability to meet major milestones
	1.5		Credibility of fuel resource plan
	1.5		Commercial access to and reliability of the proposed technology
	1.0		Progress in interconnection process
Subtotal			
Experience and Capability of Bidder and Project Team	4.0		Project development experience Project financing experience Operations and maintenance experience Experience in ISO-NE market
Financing	4.0		Credibility of the financing plan Financial strength of the bidder
Economic Benefit	3.0		Direct employment Indirect employment Tax revenues
Total	20.0		

2012 Rhode Island Renewable Energy RFP Non Pricing Scoring Sheet

Project	[redacted]		
	Max Points	Rating	
Siting and Permitting	4.0	[redacted]	
	1.5		Extent to which site control has been achieved and acquisition of any necessary real property rights, including right of ways
	1.5		Identification of required permits and approvals and status of plan to obtain permits and approvals
	1.0		Community relations plan
Subtotal			
Project Development Status and Operational Viability	5.0		
	1.0		Reasonableness of critical path schedule and demonstrated ability to meet major milestones
	1.5		Credibility of fuel resource plan
	1.5		Commercial access to and reliability of the proposed technology
	1.0		Progress in interconnection process
Subtotal			
Experience and Capability of Bidder and Project Team	4.0		Project development experience Project financing experience Operations and maintenance experience Experience in ISO-NE market
Financing	4.0		Credibility of the financing plan Financial strength of the bidder
Economic Benefit	3.0		Direct employment Indirect employment Tax revenues
Total	20.0		

Division 1-9

Request:

Please provide a red-line comparison between the Bowers Wind PPA and the Black Bear Hydro PPA.

Response:

Please see Attachment DIV 1-9 for a redlined comparison of the Champlain Wind PPA (Bowers Wind) and the Black Bear Hydro PPA. Please note that the Black Bear Hydro PPA was amended pursuant to a First Amendment to Power Purchase Agreement dated as of May 7, 2012 ("Black Bear Hydro Amendment") and filed with the Commission in Docket No. 4319. The redlined comparison included in Attachment DIV 1-9 incorporates the changes reflected by the Black Bear Hydro Amendment.

~~COMPOSITE VERSION INCLUDING FIRST AMENDMENT~~

POWER PURCHASE AGREEMENT

BETWEEN

THE NARRAGANSETT ELECTRIC COMPANY, D/B/A NATIONAL GRID, AS BUYER

AND

~~BLACK BEAR DEVELOPMENT HOLDINGS~~CHAMPLAIN WIND, LLC AS SELLER

As of ~~February 17~~August 2, 201~~2~~3

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Exhibits

POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT (~~as amended from time to time in accordance with the terms hereof,~~ this **"Agreement"**) is entered into as of ~~February 17~~August 2, 201~~2~~3 (the **"Agreement Date"**), by and between The Narragansett Electric Company, d/b/a National Grid, a Rhode Island corporation (**"Buyer"**), and ~~Black Bear Development Holdings~~Champlain Wind, LLC, a Delaware limited liability company (**"Seller"**). Buyer and Seller are individually referred to herein as a **"Party"** and are collectively referred to herein as the **"Parties**.**"**

WHEREAS, Seller is developing the ~~Orono "B" hydroelectric~~Bowers Wind generating facility located in ~~Orono~~Carroll Plantation and Kossuth Township, Maine, which is more fully described in Exhibit A hereto (the **"Facility"**), which shall qualify as a Newly Developed Renewable Energy Resource (hereafter defined); and

WHEREAS, Buyer is authorized under R.I.G.L. ch. 39-26.1 to enter into long-term contracts for the purchase of energy, capacity and renewable energy certificates from a renewable generator meeting the requirements of that statute; and

WHEREAS, Buyer and Seller desire to enter into this Agreement whereby Buyer shall purchase from Seller all Products (as defined herein) generated by or associated with the Facility;

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

In addition to terms defined in the recitals hereto, the following terms shall have the meanings set forth below. Any capitalized terms used in this Agreement and not defined herein shall have the same meaning as ascribed to such terms under the ISO-NE Practices and ISO-NE Rules.

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

"Agreement" shall have the meaning set forth in the first paragraph of this Agreement.

"Agreement Date" shall have the meaning set forth in the first paragraph hereof.

"Bundled Price" shall have the meaning set forth in Exhibit E hereof.

"Business Day" shall mean 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.

"Buyer's Taxes" shall have the meaning set forth in Section 5.4(a) hereof.

"Capacity" shall mean all capacity from the Facility as determined by ISO-NE's Seasonal Claimed Capability rating (or successor or replacement rating used to measure capability) as defined in the ISO-NE Rules that is obligated to deliver and receive payments in the Forward Capacity Market (or its successor market) as set forth in the ISO-NE Rules, including without limitation as both a "New" and an "Existing" Capacity Resource as those terms are used in the ISO-NE Rules.

"Capacity Commitment Period" shall have the meaning set forth in the ISO-NE Rules.

"Capacity Supply Obligations" shall have the meaning set forth in the ISO-NE Rules.

"**Cash**" shall mean U.S. dollars held by or on behalf of a Party as Posted Collateral hereunder.

"Certificates" shall mean 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.

"Code" shall mean the U.S. Internal Revenue Code of 1986, as amended from time to time or any successor law, and regulations issued pursuant thereto.

"**Collateral Account**" shall have the meaning specified in Section 6.5(a)(iii)(B) hereof.

"**Collateral Interest Rate**" shall mean the rate published in *The Wall Street Journal* as the "Prime Rate" from time to time (or, if more than one such rate is published, the arithmetic mean of such rates), or, if such rate is no longer published, a successor rate agreed to by Buyer and Seller, in each case determined as of the date the obligation to pay interest arises, but in no event more than the maximum rate permitted by applicable Law in transactions involving entities having the same characteristics as the Parties.

"**Collateral Requirement**" shall mean at any time the amount of Development Period Security or Operating Period Security required under this Agreement at such time.

"Commercial Operation Date" shall mean the date on which the conditions set forth in Section 3.3(b) have been satisfied, as set out in a written notice from Seller to Buyer.

"Congestion Point" shall have the meaning specified in Section 4.8(b) hereof.

"Contract Capacity" shall mean the Seasonal Claimed Capability of the Facility for the applicable month, as determined in accordance with the ISO-NE Rules.

"Contract Maximum Amount" shall mean 49.~~1675~~ MWh per hour of Energy and a corresponding amount of all other Products.

"Contract Year" shall mean the twelve (12) consecutive calendar months starting on the first day of the calendar month following the Commercial Operation Date and each subsequent twelve (12) consecutive calendar month period.

"Contract Value" shall have the meaning set forth in Section 9.3(b) hereof.

"Control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Cover Damages" shall mean, with respect to any Delivery Shortfall, an amount equal to (a) the positive net amount, if, any, by which the Replacement Price exceeds the applicable Price that would have been paid pursuant to Section 5.1 and Exhibit E hereof, multiplied by the quantity of that Delivery Shortfall, plus (b) any applicable penalties and other costs assessed by ISO-NE or any other Person against Buyer as a result of Seller's failure to deliver such Products in accordance with the terms of this Agreement. Buyer shall provide a statement for the applicable period explaining in reasonable detail the calculation of any Cover Damages.

"Credit Support" shall have the meaning specified in Section 6.2(d) hereof.

"**Credit Support Delivery Amount"** shall have the meaning specified in Section 6.3 hereof.

"**Credit Support Return Amount**" shall have the meaning specified in Section 6.4 hereof.

"Critical Milestones" shall have the meaning set forth in Section 3.1 hereof.

"**Custodian**" shall have the meaning specified in Section 6.5(a)(i) hereof.

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

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

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

~~"~~**"Delay Damages"** shall have the meaning specified in Section 3.6 hereof.

"Deliver" or **"Delivery"** shall mean with respect to (i) Energy, to supply Energy into Buyer's ISO-NE account at the Delivery Point in accordance with the terms of this

Agreement and the ISO-NE Rules, (ii) RECs, to supply RECs in accordance with Section 4.7(e) and (iii) Capacity, delivery consistent with Section 4.8.

"Delivery Point" shall mean the specific Node on the Pool Transmission Facilities, as determined by ISO-NE, where Seller shall transmit its Energy to Buyer, as shown in Exhibit ~~G~~F.

"Delivery Shortfall" shall have the meaning set forth in Section 4.3 hereof.

"Development Period Security" shall have the meaning set forth in Section 6.2(a) hereof.

~~**"Determination Date"** shall have the meaning set forth in Section 2.2(e) hereof.~~

"**Disputing Party**" shall have the meaning set forth in Section 6.6(a) hereof.

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

"Effective Date" shall have the meaning set forth in Section 2.1 hereof.

"Eligible Renewable Energy Resource" shall have the meaning set forth in Section 5.0 of the Code of Rhode Island Rules 90-060-015 (as amended from time to time).

"Energy" shall mean electric "energy," as such term is defined in the ISO-NE Tariff, generated by the Facility as measured in kWh (unless otherwise noted) in Eastern Prevailing Time, less such Facility's station service use, generator lead losses and transformer losses, which quantity for purposes of this Agreement will never be less than zero.

"Environmental Attributes" shall mean any and all generation attributes under the Renewable Energy Standard and/or under any and all other 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, up to and including the Contract Maximum Amount, during the Services Term, including but not limited to: (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 Certificates issued pursuant to the GIS in connection with Energy generated by the Facility; and (c) any voluntary emission reduction credits obtained by Seller in accordance with the terms of this Agreement in connection with the generation of Energy

by the Facility; provided, however, that Environmental Attributes shall not include: (i) any production tax credits; (ii) any investment tax credits or other tax credits associated with the construction or ownership of the Facility; (iii) any cash payments or grants made in lieu of such tax credits; (iv) any tax credit or cash grant introduced after the date of this Agreement intended to supplement, replace or enhance the tax credits described in the foregoing clauses (i) , (ii) or (iii); (v) any depreciation deductions permitted under the Code with respect to the Facility (including any bonus or accelerated depreciation); or (vi) any Financing, grants, guarantees or other credit support relating to the development, construction, ownership, operation or maintenance of the Facility.

~~**"Escalation Date"** shall have the meaning set forth in Section 5.1(b) hereof.~~

~~**"Escalation Rate"** shall mean two percent (2%) per annum.~~

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

"EWG" shall mean an exempt wholesale generator under 15 U.S.C. § 79z-5a, as amended from time to time.

"Facility" shall have the meaning set forth in the Recitals.

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

"Financial Closing Date" shall mean the date of signing of the initial agreements for any Financing of the Facility.

"Financing" shall mean indebtedness, whether secured or unsecured, loans, guarantees, notes, equity, convertible debt, sale-leaseback or other tax-equity transactions, bond issuances, recapitalizations and all similar financing or refinancing.

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

"Forward Capacity Auction" shall have the meaning set forth in the ISO-NE Rules.

"**Forward Capacity Market**" shall have the meaning set forth in the ISO-NE Rules.

"Generator Maintenance Outages" shall have the meaning set forth in the ISO-NE Rules.

"Generator Planned Outages" shall have the meaning set forth in the ISO-NE Rules.

"Generation Unit" shall mean a facility that converts a fuel or an energy resource into electrical energy.

"GIS" shall mean the New England Power Pool Generation Information System or any successor thereto, which includes a generation information database and certificate system, operated by NEPOOL, its designee or successor entity, that accounts for generation attributes of electricity generated or consumed within New England.

"Good Utility Practice" shall mean compliance with all applicable laws, codes and regulations, all ISO-NE Rules and ISO-NE Practices, and any practices, methods and acts engaged in or approved by a significant portion of the electric industry in New England during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision is made, could have been expected to accomplish the desired result consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather is intended to include acceptable practices, methods and acts generally accepted in the electric industry in New England.

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

"Interconnecting Utility" shall mean the utility providing interconnection service for the Facility to the transmission or distribution system of that utility.

"Interconnection Agreement" shall mean an agreement between Seller and the Interconnecting Utility regarding the interconnection of the Facility to the transmission or distribution system of the Interconnecting Utility, as the case may be, as the same may be amended from time to time.

"Interconnection Point" shall have the meaning set forth in the Interconnection Agreement.

"**Interest Amount**" shall mean with respect to a Party and an Interest Period, the sum of the daily interest amounts for all days in such Interest Period; each daily interest amount to be determined by such Party as follows: (a) the amount of Cash held by such Party on that day (but excluding any interest previously earned on such Cash); multiplied by (b) the Collateral Interest Rate for that day; divided by (c) 360.

"**Interest Period**" shall mean the period from (and including) the last Business Day on which an Interest Amount was Transferred by Buyer (or if no Interest Amount has yet been Transferred by Buyer, the Business Day on which Cash was Transferred to Seller) to (but excluding) the Business Day on which the current Interest Amount is to be Transferred.

"Internal Bilateral Transaction" means the purchase or sale of electric energy or regulation obligations between two market participants internal to NEPOOL.

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

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

"ISO-NE Rules" shall mean all rules and procedures adopted by NEPOOL, ISO-NE, or the RTO, and governing wholesale power markets and transmission in New England, as such rules may be amended from time to time, including but not limited to, the ISO-NE Tariff, the Market Rules (as defined in 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.

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

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

"kW" shall mean a kilowatt.

"kWh" shall mean a kilowatt-hour.

"Late Payment Rate" shall have the meaning set forth in Section 5.3 hereof.

"Law" shall mean all federal, state and local statutes, regulations, rules, orders, executive orders, decrees, policies, judicial decisions and notifications, including without limitation those pertaining to public health, pollution, natural resources or the environment.

"Lender" shall mean any party providing debt Financing for the development, construction, and ownership of the Facility, or any refinancing of that Financing, and shall include any assignee or transferee of such a party and any trustee, collateral agent or similar entity acting on behalf of such a party.

"**Letter of Credit**" shall mean an irrevocable, non-transferable, standby letter of credit, issued by a Qualified Institution utilizing a form acceptable to the Party in whose favor such letter of credit is issued. All costs relating to any Letter of Credit shall be for the account of the Party providing that Letter of Credit.

"**Letter of Credit Default**" shall mean with respect to an outstanding Letter of Credit, the occurrence of any of the following events (a) the issuer of such Letter of Credit shall fail to be a Qualified Institution; (b) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit if such failure shall be continuing after the lapse of any applicable grace period; (c) the issuer of the Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; or (d) the Letter of Credit shall expire or terminate or have a Value of $0 at any time the Party on whose account that Letter of Credit is issued is required to provide Credit Support hereunder and that Party has not Transferred replacement Credit Support meeting the requirements of this Agreement; provided, however, that no Letter of Credit Default shall occur in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be cancelled or returned in accordance with the terms of this Agreement.

"LMP" shall mean the Locational Marginal Price, as defined in the ISO-NE Rules and the ISO-NE Tariff.

"Maine DEP Permit" shall mean the principal permit required for the construction and operation of the Facility from the Maine Department of Environmental Protection pursuant to the Maine Site Location of Development Act and the Maine Natural Resources Protection Act.

"Market Participant" shall have the meaning set forth in the ISO-NE Rules.

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

"Moody's" shall mean Moody's Investors Service, Inc., and any successor thereto.

"MW" shall mean a megawatt.

"MWh" shall mean a megawatt-hour (one MWh shall equal 1,000 kWh).

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

"NEPOOL Agreement" shall mean the Second Amended and Restated New England Power Pool Agreement dated as of February 1, 2005, as amended and/or restated from time to time.

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

"Network Upgrades" shall mean any upgrades to the Pool Transmission Facilities and the Interconnecting Utility's transmission and distribution systems, including any System Modifications under the Interconnection Agreement, necessary for Delivery of the Energy to the Delivery Point, including those that are necessary for the Facility's Capacity to be recognized as a Capacity Resource pursuant to the ISO-NE Rules, as

determined and identified in the interconnection study approved in connection with construction of the Facility.

"**Newly Developed Renewable Energy Resource**" shall mean, pursuant to R.I.G.L. § 39-26.1-2(6), an electrical generation unit that uses exclusively an Eligible Renewable Energy Resource, and either (x) has neither begun operation, nor have the developers of the unit implemented investment or lending agreements necessary to finance the construction of the unit or (y) is located within the state of Rhode Island and obtained project financing on or after January 1, 2009.

"Node" shall have the meaning set forth in the ISO-NE Rules.

"Non-Defaulting Party" shall mean the Party with respect to which a Default or Event of Default has not occurred.

"Non-Peak Months" shall mean the months of September, October, April and May.

"**Notification Time**" shall mean 1:00 p.m. Eastern Prevailing Time on a Business Day**.**

"**Obligations**" shall have the meaning specified in Section 6.1 hereof.

"Operating Period Security" shall have the meaning set forth in Section 6.2(b) hereof.

"Operational Limitations" of the Facility are the parameters set forth in Exhibit A describing the physical limitations of the Facility, including the ~~time required for start-up, the limitation on the number of scheduled start-ups per Contract Year and the~~ minimum operating limit(s) for the Facility.

"Party" and **"Parties"** shall have the meaning set forth in the first paragraph of this Agreement.

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

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

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

"**Posted Collateral**" shall mean all Credit Support and all proceeds thereof that have been Transferred to or received by a Party under this Agreement and not Transferred to

the Party providing the Credit Support or released by the Party holding the Credit Support. Any Interest Amount or portion thereof not Transferred will constitute Posted Collateral in the form of Cash.

"Price" shall mean the purchase price(s) for Products referenced in Section 5.1 hereof and Exhibit E hereto.

"Products" shall mean Energy, Capacity and RECs; provided, however, that Energy, Capacity and RECs generated by the Facility in excess of the Contract Maximum Amount or prior to the Commercial Operation Date shall not be deemed Products.

"Projected Annual Energy Output" shall mean the historic average of actual generation of the Facility since the Commercial Operation Date or, solely for the period up to and including the Contract Year immediately after the Contract Year in which the Commercial Operation Date occurred, ~~31,268~~159,149 MWh, in each case in MWh per Contract Year.

"PUC" shall mean the Rhode Island Public Utilities Commission and shall include its successors.

"QF" shall mean a cogeneration or small power production facility which meets the criteria as defined in Title 18, Code of Federal Regulations, §§ 292.201 through 292.207, as amended from time to time.

"Qualified Institution" shall mean a major U.S. commercial bank or trust company, the U.S. branch office of a foreign bank, or another financial institution, in any case, organized under the laws of the United States or a political subdivision thereof having assets of at least $10 billion and a credit rating of at least (A) "A~~2~~3" from Moody's or "A-" from S&P, if such entity is rated by both S&P and Moody's or (B) "A-" by S&P or "A~~2~~3" by Moody's, if such entity is rated by either S&P or Moody's but not both.

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

"Reference Market-Maker" shall mean a leading dealer in the relevant market that is selected in a commercially reasonable manner and is not an affiliate of either party.

"Regulatory Approval" shall mean the PUC's approval of this Agreement without material modification or conditions pursuant to R.I.G.L. §§ 39-26.1-3 through 39-26.1-5 and the regulations promulgated thereunder, including the recovery by Buyer of its costs incurred under this Agreement and remuneration equal to two and three-quarters percent (2.75%) of Buyer's actual annual payments under this Agreement pursuant to R.I.G.L. § 39-26.1-4, which approval shall be final and not subject to appeal or rehearing and shall be acceptable to Buyer in its sole discretion.

"Rejected Purchase" shall have the meaning set forth in Section 4.4 hereof.

"Renewable Energy Certificates" or **"RECs"** shall mean all of the Certificates and any and all other Environmental Attributes associated with the Products or otherwise produced by the Facility which conform with the eligibility criteria set forth in the applicable Rhode Island regulations and are eligible to satisfy the Renewable Energy Standard, and shall represent title to and claim over all Environmental Attributes associated with the specified MWh of generation from such Newly Developed Renewable Energy Resource.

"**Renewable Energy Standard**" shall mean the requirements established pursuant to R.I.G.L. § 39-26-1 et seq. and the regulations promulgated thereunder that requires all retail electricity sellers in Rhode Island (except Block Island Power Company and Pascoag Utility District) to provide a minimum percentage of electricity from Eligible Renewable Energy Resources, and such successor laws and regulations as may be in effect from time to time.

"Replacement Energy" shall mean Energy purchased by Buyer as replacement for any Delivery Shortfall.

"Replacement Price" shall mean the price at which Buyer, acting in a commercially reasonable manner, purchases Replacement Energy and Replacement RECs plus (i) transaction and other out-of-pocket costs reasonably incurred by Buyer in purchasing such Replacement Energy and Replacement RECs and (ii) additional transmission charges, if any, reasonably incurred by Buyer to transmit Replacement Energy to the Delivery Point; provided, however, that (a) in no event shall Buyer be required to utilize or change its utilization of its owned or controlled assets, contracts or market positions to minimize Seller's liability, (b) Buyer shall have no obligation to purchase Replacement Energy and/or Replacement RECs, and (c) if Buyer does not purchase Replacement Energy and/or Replacement RECs, the market value of Energy and/or RECs at the time of the Delivery Shortfall (as reasonably determined by Buyer) will replace the price at which Buyer purchases Energy and/or Replacement RECs in the calculation of the Replacement Price.

"Replacement RECs" shall mean any generation or environmental attributes, including any Certificates or other certificates or credits related thereto reflecting generation by a Newly Developed Renewable Energy Resource that are purchased by Buyer as replacement for any Delivery Shortfall.

"Request Date" shall have the meaning set forth in Section 6.6(a) hereof.

"**Requesting Party**" shall have the meaning set forth in Section 6.6(a) hereof.

"Resale Damages" shall mean, with respect to any Rejected Purchase, an amount equal to (a) the positive net amount, if any, by which the applicable Price that would have been paid pursuant to Section 4.4 hereof for such Rejected Purchase, had it been accepted, exceeds the Resale Price multiplied by the quantity of that Rejected Purchase, plus (b)

any applicable penalties assessed by ISO-NE or any other Person against Seller as a result of Buyer's failure to accept such Products. Seller shall provide a written statement explaining in reasonable detail the calculation of any Resale Damages.

"Resale Price" shall mean the price at which Seller, acting in a commercially reasonable manner, sells or is paid for a Rejected Purchase, plus transaction and other out-of-pocket costs reasonably incurred by Seller in re-selling such Rejected Purchase; provided, however, that in no event shall Seller be required to utilize or change its utilization of the Facility or its other assets, contracts or market positions in order to minimize Buyer's liability for such Rejected Purchase.

"**Rounding Amount**" shall have the meaning specified in Section 6.2(c) hereof.

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

"S&P" shall mean Standard & Poor's ~~Ratings Group, a division of McGraw Hill, Inc.~~Financial Services LLC, and any successor thereto.

"Schedule" or "Scheduling" shall mean the actions of Seller and/or its designated representatives pursuant to Section 4.2, ~~of notifying, requesting and confirming to ISO-NE the quantity of Energy to be delivered on any given day or days (or in any given hour or hours)~~the ISO-NE Rules and the ISO-NE Practices of dispatching the Facility's Energy into the ISO-NE administered markets during the Services Term at the Delivery Point.

"Seasonal Claimed Capability" shall mean the maximum dependable load carrying ability of the Facility in the summer or winter, excluding capacity required for use by the Facility, as determined by ISO-NE pursuant to the ISO-NE Rules.

"Seller's Taxes" shall have the meaning set forth in Section 5.4(a) hereof.

"Services Term" shall have the meaning set forth in Section 2.2(b) hereof.

"**Substitute Credit Support**" shall have the meaning ~~assigned~~set forth in Section 6.5(f) hereof.

"Supply Forecast" shall have the meaning set forth in Section 9.3(b) hereof.

"Term" shall have the meaning set forth in Section 2.2(a) hereof.

"Termination Payment" shall have the meaning set forth in Section 9.3(b) hereof.

"Transfer" shall mean, with respect to any Posted Collateral or Interest Amount, and in accordance with the instructions of the Party entitled thereto:

(a) in the case of Cash, payment or transfer by wire transfer into one or more bank accounts specified by the Party to whom such Cash is being delivered; and

(b) in the case of Letters of Credit, delivery of the Letter of Credit or an amendment thereto to the Party to whom such Letter of Credit is being delivered.

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

"Unit Contingent" means that Seller is obligated to deliver Products only to the extent that the Facility operates ~~and~~, generates and delivers Products to the Delivery Point.

"Valuation Agent" means the Requesting Party; provided, however, that that in all cases, if an Event of Default has occurred and is continuing with respect to the Party designated as the Valuation Agent, then in such case, and for so long as the Event of Default continues, the other Party shall be the Valuation Agent.

"Valuation Date" shall mean each Business Day.

"Valuation Percentage" shall have the meaning specified in Section 6.2(d) hereof.

"Valuation Time" shall mean the close of business on the Business Day before the Valuation Date or date of calculation, as applicable.

"Value" shall mean, with respect to Posted Collateral or Credit Support, the Valuation Percentage multiplied by the amount then available under the Letter of Credit to be unconditionally drawn by Buyer.

"Zonal Price Separation" shall mean, in any hour, the ~~Locational Marginal Price~~LMP for the Rhode Island Load Zone in that hour *minus* the ~~Locational Marginal Price~~LMP for the Node on the Pool Transmission Facilities to which the Facility is interconnected in that hour.

2. EFFECTIVE DATE; CONDITIONS; TERM

2.1 Effective Date. The **"Effective Date"** shall be the date that the conditions described in Section 8.1 hereof has been satisfied or waived by Buyer (unless this Agreement is terminated prior to that date in accordance with its terms).

2.2 Term.

(a) The **"Term"** of this Agreement is the period beginning on the Agreement Date and ending upon the final settlement of all obligations hereunder after the expiration of the Services Term or the earlier termination of this Agreement in accordance with its terms.

(b) The **"Services Term"** is the period during which Buyer is obligated to purchase Products Delivered to Buyer by Seller, commencing on the Commercial Operation Date and continuing for a period of fifteen (15) years from the Commercial Operation Date, unless this Agreement is earlier terminated in accordance with the provisions hereof.

(c) At the expiration of the Services Term under Section 2.2(b), the Parties shall no longer be bound by the terms and provisions hereof (including, without limitation, any payment obligation hereunder), except (i) to the extent necessary to provide invoices and make payments or refunds with respect to Products delivered prior to such expiration or termination, (ii) to the extent necessary to enforce the rights and the obligations of the Parties arising under this Agreement before such expiration or termination, (iii) as set forth in Section 2.2(d) and (iv) the obligations of the Parties hereunder with respect to confidentiality and indemnification shall survive the expiration or termination of this Agreement.

(d) ~~At the expiration of the Services Term,~~ Buyer shall have the right, exercisable in Buyer's sole discretion, to negotiate in good faith with Seller for no more than sixty (60) days, the terms of the sale by Buyer of such Energy, Capacity and/or RECs generated by the Facility (or a portion thereof, as selected by Buyer) to Buyer or its designee on an exclusive basis for a term of years beginning immediately after the expiration of the Services Term. If Buyer wishes to enter into such negotiation, Buyer shall notify Seller of such decision at least ~~one hundred eighty~~twenty four (~~180~~24) ~~days~~months prior to the expiration of the Services Term, and such negotiations shall commence at least ~~one hundred fifty~~twenty three (~~150~~23) ~~days~~months prior to the expiration of the Services Term. Seller shall supply in a timely manner, information regarding the Facility which is customary to allow Buyer to perform due diligence and to negotiate in good faith for the purchase of such Energy, Capacity and RECs.

3. FACILITY DEVELOPMENT AND OPERATION

3.1 Critical Milestones.

(a) Subject to the provisions of Section 3.1(c~~) and Section 8.1(a~~), commencing on the Effective Date, Seller shall develop the Facility in order to achieve the following milestones (**"Critical Milestones"**) on or before ~~December 31, 2013~~the following dates:

(i) receipt of the Maine DEP Permit, in final, unappealable form, by December 31, 2015;

(ii) ~~(i)~~ receipt of all other Permits necessary to construct the Facility, as set forth in Exhibit B, in final, unappealable form by December 31, 2015;

(iii) ~~(ii)~~ acquisition of all required real property and other site control rights necessary for construction and operation of the Facility, interconnection of the Facility to the Interconnecting Utility, construction of any Network Upgrades (not including those Network Upgrades required solely to permit the Facility's Capacity to be recognized as a Capacity Resource pursuant to the ISO-NE Rules) and performance of Seller's obligations under this Agreement as set forth on Exhibit B by December 31, 2015;

(iv) ~~(iii)~~ closing of Financing required in order for Seller to proceed with the construction of the Facility, including, as applicable, Seller's financial obligations with respect to interconnection of the Facility to the Interconnecting Utility and construction of ~~the~~any Network Upgrades (not including those Network Upgrades required solely to permit the Facility's Capacity to be recognized as a Capacity Resource pursuant to the ISO-NE Rules) by February 29, 2016;

(v) ~~(iv)~~ issuance of a full notice to proceed by Seller to its general construction contractor and commencement of construction of the Facility by March 31, 2016; and

(vi) ~~(v)~~ achievement of the Commercial Operation Date by March 31, 2017.

(b) Seller shall provide Buyer with written notice of the achievement of each Critical Milestone within seven (7) days after that achievement, which notice shall include information demonstrating with reasonable specificity that such Critical Milestone has been achieved. Seller acknowledges that Buyer requires such written notice solely for monitoring purposes, and that nothing set forth in this Agreement shall create or impose upon Buyer any responsibility or liability for the development, construction, operation or maintenance of the Facility.

(c) In addition to any extension of a date for a Critical Milestone as a result of a ~~delay in receipt of the Regulatory Approval under Section 8.3(a) or a~~ Force Majeure under Section 10.1, Seller may elect to extend the dates for the Critical Milestones not yet achieved (i) by one year without posting additional Development Period Security and, (ii) after such initial one-year extension, by up to two additional six-month periods by posting additional Development Period Security of $~~3~~250,000 for each such six-month period. In no event may

Seller exercise the right to extend the Critical Milestone date under this Section 3.1(c) by more than two (2) years in total, and in no event shall ~~(i)~~ any extension of the Critical Milestone ~~Date as a result of a delay in receipt of the Regulatory Approval exceed 75 days or (ii) any extension of the Critical Milestone~~ dates as a result of one or more Force Majeure events exceed a cumulative total of twelve (12) months in addition to any extensions under this Section 3.1(c). Any such election under this Section 3.1(c) shall be made in a written notice delivered to Buyer on or prior to the date for a Critical Milestones that has not yet been achieved (as such date may have previously been extended).

(d) The Parties agree that time is of the essence with respect to the dates for the Critical Milestones (as the same may be extended pursuant to Section 3.1(c)) and is part of the consideration to Buyer in entering into this Agreement.

(e) If Seller fails to make material progress toward the Commercial Operation Date, as reasonably determined by either Buyer or the PUC based on Seller's progress with respect to the milestones set forth in Section 3.1(a), within three (3) years after the Agreement Date, Buyer may terminate this Agreement by written notice to Seller delivered within sixty (60) days after the third anniversary of the Agreement Date (which termination shall be effective upon delivery of such notice), and upon such termination neither Party will have any further liability to the other hereunder except for obligations arising under ~~Section 6.1 and~~ Article 12.

3.2 Construction.

(a) Progress Reports. At the end of each calendar quarter after the Effective Date and until the Commercial Operation Date, Seller shall provide Buyer with a progress report regarding Critical Milestones not yet achieved, including projected time to completion of the Facility, in accordance with the form attached hereto as Exhibit C, and shall provide ~~supporting documents and detail regarding the same,~~ upon Buyer's request, such supporting documents regarding the same as is produced during the normal course of developing and constructing the Facility or is requested from Buyer by any Governmental Entity. Seller shall permit Buyer and its advisors and consultants to review and discuss with Seller and its advisors and consultants such progress reports during business hours and upon reasonable notice to Seller.

(b) Site Access. Buyer and its representatives shall have the right but not the obligation, during business hours and upon reasonable notice to Seller, to inspect the Facility site and monitor the construction of the Facility.

3.3 Commercial Operation.

(a) Seller's obligation to Deliver the Products and Buyer's obligation to pay Seller for such Products commences on the Commercial Operation Date; provided that Energy, Capacity and RECs generated prior to the Commercial Operation Date shall not be deemed Products.

(b) The Commercial Operation Date shall occur on the date on which the Facility is substantially completed as described in Exhibit A and capable of regular commercial operation in accordance with Good Utility Practice, the manufacturer's guidelines for all material components of the Facility, all requirements of the ISO-NE Rules and ISO-NE Practices for the delivery of the Products to Seller have been satisfied, and all performance testing for the Facility has been successfully completed, provided Seller has also satisfied, and continues to satisfy, the following conditions precedent as of such date:

(i) completion of all transmission and interconnection facilities and any Network Upgrades (not including those Network Upgrades required solely to permit the Facility's Capacity to be recognized as a Capacity Resource pursuant to the ISO-NE Rules), including final acceptance and authorization to interconnect the Facility from the ~~Interconnecting Utility~~ISO-NE in accordance with the Interconnection Agreement;

(ii) Seller has obtained and demonstrated possession of all Permits required for the lawful construction and operation of the Facility, for the interconnection of the Facility to the Interconnecting Utility (including any Network Upgrades required for such interconnection) and for Seller to perform its obligations under this Agreement, including but not limited to Permits related to environmental matters, all as set forth on Exhibit B;

(iii) Seller has (i) qualified the Facility as an Eligible Renewable Energy Resource pursuant to and (ii) otherwise satisfied the requirements for the Facility to be a Newly Developed Renewable Energy Resource;

(iv) Seller has acquired all real property rights and other site control rights needed to construct and operate the Facility, to interconnect the Facility to the Interconnecting Utility, to construct ~~the~~any Network Upgrades (not including those Network Upgrades required solely to permit the Facility's Capacity to be recognized as a Capacity Resource pursuant to the ISO-NE Rules) and to perform Seller's obligations under this Agreement;

(v) Seller has established all ISO-NE-related accounts and entered into all ISO-NE-related agreements ~~(including without limitation registration of the Facility as a "settlement only generator" in the ISO-NE Settlement Market System)~~ required for the performance of Seller's

obligations in connection with the Facility and this Agreement, which agreements shall be in full force and effect, including the registration of the Facility in the GIS;

(vi) Seller has provided to Buyer I.3.9 confirmation from ISO-NE regarding approval of generation entry, has submitted the Asset Registration Form (as defined in ISO-NE Practices) for the Facility to ISO-NE and has taken such other actions as are necessary to effect the transfer of the Energy to Buyer in the ISO-NE Settlement Market System;

(vii) Seller has successfully completed all pre-operational testing and commissioning for the Facility in accordance with manufacturer guidelines;

(viii) Seller has satisfied and continues to satisfy all Critical Milestones as the same may be extended pursuant to Section 3.1(c);

(ix) no Default or Event of Default by Seller shall have occurred and remain uncured except as waived by Buyer;

(x) Seller has obtained any and all necessary authorizations from FERC to sell Energy and Capacity from the Facility at market-based rates and shall be in compliance with such authorization; and

(xi) the Facility, as constructed to date, is owned by and under the sole control of Seller (including without limitation with respect to the operation, maintenance and management of the Facility) ~~and is either owned or leased by Seller~~, and Seller is a party to all material contracts relating to the construction, operation, management and maintenance of the Facility.

3.4 Operation of the Facility.

(a) Compliance With Utility Requirements. Seller shall comply with, and cause the Facility to comply with: (i) Good Utility Practice~~; (ii) the Operational Limitations;~~ and (ii~~i~~) all applicable rules, procedures, operating policies, criteria, guidelines and requirements lawfully imposed by ISO-NE, any Transmission Provider, the Interconnecting Utility, NERC and/or any regional reliability entity, including, in each case, all practices, requirements, rules, procedures and standards related to Seller's construction, ownership or leasing, operation and maintenance of the Facility and its performance of its obligations under this Agreement (including obligations related to the generation, Scheduling, interconnection and transmission of

Energy, the sale of Capacity and the transfer of RECs), whether such requirements were imposed prior to or after the Agreement Date or the Effective Date. Seller shall be solely responsible for registering, to the extent required, as the "Generator Owner" and "Generator Operator" of the Facility with NERC and any applicable regional reliability entities (other than solely as the Asset Owner for the Facility under the ISO-NE Rules).

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

(c) Maintenance and Operation of Facility; Outages. Seller shall, at all times during the Term, construct, maintain and operate the Facility, or cause the Facility to be constructed, maintained and operated, in accordance with Good Utility Practice and in accordance with Exhibit A to this Agreement. Seller shall bear all costs related thereto. Seller may contract with other Persons to provide discrete construction, operation and maintenance functions, so long as Seller maintains sole ownership of or the sole leasehold interest in, and overall control over the construction, operation and maintenance of, the Facility throughout the Term. Seller shall use commercially reasonable efforts, consistent with Good Utility Practice, to schedule all Generator ~~Maintenance~~Planned Outages resulting in the unavailability of more than three (3) of the Facility's wind turbines during Non-Peak Months, ~~and shall schedule all~~provided that there shall be no restriction on Seller's ability to conduct Generator Planned Outages at times during ~~Non-Peak Months~~which Seller's most current forecasts under Section 3.4(f) project average Energy Delivery, absent such Generator Planned Outages, of less than 10 MW. Seller shall provide Buyer with a schedule setting forth all Generator Planned Outages that will result in unavailability of more than three (3) of the Facility's wind turbines for the next twelve (12) months no later than January 15th of each calendar year of the Services Term, and shall provide Buyer with notice of any Generator Maintenance Outage that involves an outage of more than three (3) of the Facility's wind turbines within twenty-four (24) hours after Seller schedules such Generator Maintenance Outage. Seller shall have the right to modify its schedule of Generator Planned Outages upon reasonable advance notice to Buyer, in order to respond to changes in wind forecasts.

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

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

(f) Forecasts. Commencing at least thirty (30) days prior to the Commercial Operation Date and continuing throughout on a monthly basis during the Services Term, and at such other times upon the reasonable written request of Buyer, Seller shall update and deliver to Buyer ~~on a monthly basis and~~ in a form reasonably acceptable to Buyer, a rolling twelve (12) month ~~rolling~~ forecast~~s~~ (diurnal matrix) of Energy production by the Facility, which forecasts

shall be prepared in good faith and in accordance with Good Utility Practice based on historical performance, maintenance schedules, Seller's generation projections and other relevant data and considerations. Any notable changes from prior forecasts or historical energy delivery shall be noted and an explanation provided. The provisions of this section are in addition to Seller's requirements under ISO-NE Rules and ISO-NE Practices, including ISO-NE Operating Procedure No. 5, and the Transmission Provider's rules and regulations.

(g) Eligible Renewable Energy Resource. Seller shall be solely responsible for certifying the Facility with the PUC as an Eligible Renewable Energy Resource pursuant to Section 6.0 of the Code of Rhode Island Rules 90-060-015 (as amended from time to time) and maintaining such certification throughout the Services Term; provided, however, that if the Facility ceases to qualify as an Eligible Renewable Energy Resource solely as a result of a change in Law, Seller shall only be required to use commercially reasonable efforts to maintain such certification after that change in Law.

(h) Compliance Reporting. If Buyer is subject to any certification or compliance reporting requirement with respect to the Products delivered to Buyer hereunder, then Seller shall provide any information in its possession (or, if not in Seller's possession, available to it and not reasonably available to Buyer) requested by Buyer to permit Buyer to comply with any such reporting requirement.

(i) Insurance. Throughout the Term, and without limiting any liabilities or any other obligations of Seller hereunder, Seller shall secure and continuously carry the insurance coverage specified on Exhibit D. Within thirty (30) days prior to the start of each Contract Year, Seller shall provide Buyer with a certificate of insurance which (i) shall include Buyer as an additional insured on each policy (except worker's compensation/employer's liability policies), (ii) shall not include the legend "certificate is not evidence of coverage" or any statement with similar effect, and (iii) if any coverage is written on a "claims-made" basis, the certification accompanying the policy shall conspicuously state that the policy is "claims made." Seller shall provide Buyer with thirty (30) days prior written notice of- any cancellation or diminution of coverage with respect to any insurance policy.

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

(k) Compliance with Law. Without limiting the generality of any other provision of this Agreement, Seller shall be responsible for complying with all applicable requirements of Law, including all applicable rules, procedures, operating policies, criteria, guidelines and requirements imposed by FERC and any other Governmental Entity, whether imposed pursuant to existing Law or procedures or pursuant to changes enacted or implemented during the Term, including all risks of environmental matters relating to the Facility or the Facility site. Seller shall indemnify Buyer against any and all claims arising out of or related to such environmental matters and against any costs imposed on Buyer as a result of Seller's violation of any applicable Law, or ISO-NE or NERC requirements. For the avoidance of doubt,

Seller shall be responsible for procuring, at its expense, all Permits and governmental approvals required for the construction and operation of the Facility in compliance with Law.

(l) FERC Status. Seller shall maintain the Facility's status as a QF or EWG at all times after the Commercial Operation Date and shall obtain and maintain any requisite authority to sell the output, including Energy and Capacity, of the Facility at market-based rates or an exemption from the requirement that it have such authority.

3.5 Interconnection and Delivery Services.

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

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

3.6 Delay Damages.

(a) If the Commercial Operation Date is not achieved by the date set forth therefor in Section 3.1(a) (as extended pursuant to Sections 3.1(c)~~, 8.3(a)~~ and 10.1, if applicable), Seller shall pay to Buyer damages for each month from and after such date until the Commercial Operation Date at the rate of $~~10~~49,500~~0~~ per month up to a maximum of twelve (12) months of delay, pro rated for partial months (**"Delay Damages"**). Delay Damages shall be due under this Section 3.6(a) without regard to whether Buyer exercises its right to terminate this Agreement pursuant to Section 9.3; provided, however, that if Buyer exercises its right to terminate this Agreement under Section 9.3, Delay Damages shall be due and owing to the extent that such Delay Damages were due and owing at the date of such termination.

(b) Each Party agrees and acknowledges that (i) the damages that Buyer would incur due to Seller's delay in achieving the Commercial Operation Date would be difficult or impossible to predict with certainty, and (ii) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Delay Damages as agreed to by the Parties and set forth herein are a fair and reasonable calculation of such damages. Notwithstanding the foregoing, this Article shall not limit the amount of damages payable to Buyer if this Agreement is terminated as a result of Seller's failure to achieve the Commercial Operation Date. Any such termination damages shall be determined in accordance with Article 9.

(c) By the fifteenth (15th) day following the end of the calendar month in which Delay Damages first become due and continuing until the fifteenth (15th) day of each calendar month during the period in which Delay Damages accrue (and the following months if applicable), Buyer shall deliver to Seller an invoice showing Buyer's computation of such

Delay Damages and any amount due Buyer in respect thereof for the preceding calendar month. Such invoices shall be payable in accordance with Section 5.2(b). If Seller fails to pay such amounts when due, Buyer may draw upon the Development Period Security for payment of such Delay Damages, and, subject to Article 9, Buyer may exercise any other remedies available for Seller's default hereunder.

4. DELIVERY OF PRODUCTS

4.1 Obligation to Sell and Purchase Products.

(a) During the Services Term and subject to Section 4.1(b), Seller shall sell and Deliver, and Buyer shall purchase and receive, all of the Products produced by the Facility and capable of being Delivered, up to and including the Contract Maximum Amount, in accordance with the terms and conditions of this Agreement. The aforementioned obligations for Seller to sell and Deliver the Products and for Buyer to purchase and receive the same is Unit Contingent and shall be subject to the operation of the Facility.

(b) Buyer shall not be obligated to purchase or accept any Products to the extent that such Products exceed the Contract Maximum Amount in any hour.

(c) During the Services Term, Seller shall Deliver all of the Products produced by the Facility, up to and including the Contract Maximum Amount, exclusively to Buyer, and Seller shall not sell, divert, grant, transfer or assign such Products or any Certificate or other attribute associated with such Products to any Person other than Buyer during the Services Term. Seller shall not enter into any agreement or arrangement under which such Products can be claimed during the Services Term by any Person other than Buyer. Seller shall have the exclusive right, exercised in its sole discretion, to sell or convey the Products and any Energy, RECs or Capacity to any Person prior to the Services Term. Notwithstanding the foregoing, nothing herein shall limit or restrict the right of Seller to sell Products and receive payment thereof in connection with (x) Products in excess of the Contract Maximum Amount and/or (y) Resale Damages.

(d) In the event that ISO-NE no longer treats Capacity as a separate product and/or has discontinued or substantially altered the Forward Capacity Market (or any successor thereto) such that Capacity no longer has value in the New England bulk power market, the Parties agree that the Bundled Price of Energy as set forth in Exhibit E hereunder shall be ~~modified such that the mutually agreed upon price shall reflect the historical economics of the combined Energy and~~ adjusted to eliminate the adjustment to the Bundled Price under Section 4 of Exhibit E and to take into account any other revenue streams available to Seller as a result of the change in the treatment of Capacity ~~payments and adjustments hereunder~~, with corresponding revisions to this Agreement ~~to the extent required~~as appropriate.

(e) To the extent that during the Term Seller or any Affiliate of Seller plans to expand~~s~~ the Facility or to construct another wind generating facility within a five (5) mile radius of the Facility, prior to selling the energy, capacity or generation attributes from any such

expansion or additional facility to another Person, Seller or such Affiliate shall give written notice thereof to Buyer. Upon Buyer's receipt of such notice, Buyer shall have the right to negotiate in good faith with Seller or such Affiliate for no more than sixty (60) days, unless otherwise agreed to by Seller or such Affiliate, the terms of the sale of such energy, capacity and/or generation attributes (or a portion thereof) to Buyer or its designee on an exclusive basis. If Buyer wishes to enter into such negotiation, Buyer shall notify Seller or such Affiliate of such decision within fifteen (15) days of receipt of Seller's or such Affiliate's notice. Seller or such Affiliate shall supply in a timely manner, information regarding such expansion(s) which is customary to allow Buyer to perform due diligence and to negotiate in good faith for the purchase of such energy, capacity and generation attributes. If Buyer and Seller or such Affiliate fail to reach agreement following such negotiation, prior to Seller or an Affiliate of Seller entering into a new agreement or an amendment to an existing agreement to sell any of the energy, capacity or generation attributes from any such expansion to another Person, Seller shall first take the actions set forth in this Section 4.1(e), as follows:

(i) Where the term of such agreement is one (1) year or more, Seller shall first offer to Buyer in writing to amend this Agreement to incorporate the terms and conditions of such other agreement or amendment. Buyer shall have twenty (20) days to either: (1) accept all of the terms and conditions of such other agreement or amendment; or (2) accept only the pricing and term provisions included in such other agreement or amendment; or (3) decline all of the terms and conditions of such other agreement or amendment. In the event Buyer chooses either option (1) or (2) above, Seller and Buyer shall amend this Agreement to reflect the accepted terms and conditions and, to the extent Buyer determines such amendment requires approval of or filing with the PUC or another Governmental Entity, Buyer shall use commercially reasonable efforts to apply for such approval or make such filing in accordance with, and subject to, Section 18. No amendment of this Agreement under this Section 4.1(e)(i) shall affect the quantity of Products to be received and purchased by Buyer under this Agreement.

(ii) Where the term of such agreement is less than one (1) year, Seller or such Affiliate of Seller shall first offer to enter into such agreement for such output with Buyer on the same terms and conditions. Buyer shall have twenty (20) days to either accept or reject such agreement. In the event Buyer chooses to enter into such agreement, Buyer and Seller or such Affiliate of Seller shall promptly execute such agreement. To the extent Buyer determines such agreement requires approval of or filing with the PUC or another Governmental Entity, Buyer will use commercially reasonable efforts to apply for such approval or make such filing consistent with Section 18, and such agreement shall not become effective unless and until such approval is obtained or such filing is made.

(iii) If Buyer fails to notify Seller of its choice within twenty (20) days after Buyer's receipt of the offer from Seller or an Affiliate of Seller under clause (i) or (ii) above, Buyer shall be deemed to have elected to decline all of the terms and conditions of such other agreement or amendment. If any required filing with or approval by the PUC or another Governmental Entity with respect to any amendment or agreement under this Section 4.1(e) as described above is not made or received within one hundred eighty (180) days after Buyer and Seller or an Affiliate of Seller enter into such amendment or agreement, then such amendment or agreement shall be void and of no further force and effect.

(iv) If Buyer declines to enter into a new agreement or an amendment to this Agreement under this Section 4.1(e) or the filing with or approval of the PUC or another Governmental Entity relating to such agreement or amendment is not received within one hundred eighty (180) days after Buyer and Seller or an Affiliate of Seller enter into such agreement or amendment, then Seller or such Affiliate of Seller may proceed with the proposed sale of such energy, capacity or generation attributes from such expansion to another Person under the terms and conditions offered to Buyer.

(v) This Section 4.1(e) shall only apply to bilateral agreements, and any transactions conducted in ISO-NE's Real-Time or ~~Day-Ahead~~Day Ahead markets shall not be subject to this Section 4.1(e).

4.2 Scheduling and Delivery of Energy.

(a) During the Services Term, Seller shall Schedule Deliveries of Energy hereunder with ISO-NE within the defined Operational Limitations of the Facility and in accordance with this Agreement, all ISO-NE Practices and ISO-NE Rules, as applicable. Seller shall transfer the Energy to Buyer in the Real Time Energy Market in such a manner that Buyer may resell such Energy in the Real Time Energy Market, and Buyer shall have no obligation to pay for any Energy not transferred to Buyer in the Real Time Energy Market or for which Buyer is not credited in the ISO-NE Settlement Market System (including, without limitation, as a result of an outage on any electric transmission or distribution system). As of the Effective Date, Delivery of the Energy is contemplated to occur at the Delivery Point and within the ISO-NE Settlement Market System ~~through Buyer being~~. Seller will register~~ed as the Asset Owner for~~ the Facility ~~in such ISO-NE Settlement Market System,~~as a generation asset and Seller will take all actions reasonably requested by Buyer in order to ~~register Buyer as~~assign the ~~Asset Owner for~~Energy produced by the Facility during the Services Term to Buyer in the ISO-NE Settlement Market System. Buyer may, in its sole discretion and in conformity with ISO-NE Rules and ISO-NE Practices, direct Seller to (i) Schedule Delivery of the Energy in the ~~Day-Ahead~~Day Ahead Energy Market (but only if such Delivery of Energy in the Day Ahead Energy Market is required under the ISO-NE Rules or by any Law), and/or (ii) Deliver the Energy to Buyer or at

Buyer's direction through Internal Bilateral Transactions executed through ISO-NE and settled at the Rhode Island Load Zone or at the Node on the Pool Transmission Facilities to which the Facility is interconnected, in each case in accordance with all ISO-NE Practices and ISO-NE Rules. Any such Internal Bilateral Transactions will specify hourly delivery of Energy and will be entered into daily, ~~and~~with any necessary adjustments ~~will be~~being made pursuant to ISO-NE settlement protocols, and Seller will not receive any payment associated with a Marginal Loss Revenue Fund allocation in connection with such Internal Bilateral Transactions. Any such Internal Bilateral Transactions will be entered into the ~~Day-Ahead Energy Market and/or the~~ Real Time Energy Market~~, as applicable~~ or if required under the ISO-NE Rules or by any Law, the Day Ahead Energy Market. In the event (x) such an Internal Bilateral Transaction is used for Delivery of the Energy in any hour or (y) the ISO-NE Rules or ISO-NE Practices or settlement protocols with respect to the delivery of Energy in any hour are revised and, as a result of either clause (x) or (y), Seller's account in the ISO-NE Settlement Market System is debited or credited for the ~~Locational Marginal Price~~LMP in the Rhode Island Load Zone for that hour, the Price paid by Buyer to Seller under Section 5.1 and Exhibit E shall ~~include an adjustment~~be adjusted, positively or negatively, by an amount equal to the Zonal Price Separation for that hour in order to account for any such debit or credit to Seller's account in the ISO-NE Settlement Market System.

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

(c) Without limiting the generality of this Section 4.2, Seller or its agent or designee shall at all times during the Services Term be designated as the "Lead Market Participant" (or any successor designation) for the Facility and shall be solely responsible for any obligations and liabilities, including all charges, penalties and financial assurance obligations, imposed by ISO-NE or under the ISO-NE Rules and ISO-NE Practices with respect to the Facility.

(d) Notwithstanding the other provisions of this Section 4.2, Seller and Buyer may, by mutual agreement, determine that Buyer shall be designated as the "Asset Owner" for the Facility, or a similar designation, under the ISO-NE Rules and, in the event of such agreement, will use commercially reasonable efforts to cooperate to effect that designation.

4.3 Failure of Seller to Deliver Products. In the event that Seller fails to satisfy any of its obligations to Deliver any of the Products hereunder in accordance with Section 4.1 and Section 4.2, and such failure is not excused under the express terms of this Agreement (a **"Delivery Shortfall"**), Seller shall pay Buyer an amount for such Delivery Shortfall equal to the Cover Damages. Such payment shall be due no later than the date for Buyer's payment for the applicable month as set forth in Section 5.2 hereof. Each Party agrees and acknowledges that (i) the damages that Buyer would incur due to a Delivery Shortfall would be difficult or impossible to predict with certainty, and (ii) it is impractical and difficult to assess actual damages in the

circumstances stated, and therefore the Cover Damages as agreed to by the Parties and set forth herein is a fair and reasonable calculation of such damages.

4.4 Failure by Buyer to Accept Delivery of Products. If Buyer fails to accept ~~or pay for~~ all or part of any of the Products to be purchased by Buyer hereunder and such failure to accept is not excused under the terms of this Agreement (a **"Rejected Purchase"**), then Buyer shall pay Seller, on the date payment would otherwise be due in respect of the month in which the failure occurred, an amount for such Rejected Purchase equal to the Resale Damages. Each Party agrees and acknowledges that (i) the damages that Seller would incur due to a Rejected Purchase would be difficult or impossible to predict with certainty, and (ii) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Resale Damages as agreed to by the Parties and set forth herein is a fair and reasonable calculation of such damages.

4.5 Delivery Point.

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

(b) Other than with respect to Zonal Price Separation for Internal Bilateral Transactions to the extent described in Section 4.2(a), Seller shall be responsible for all applicable congestion, losses and other charges associated with transmission and/or distribution interconnection, service and delivery charges, including all related Interconnecting Utility and ISO-NE fees and other charges, in connection with the Delivery of Energy to and at the Delivery Point.

(c) Buyer shall be responsible for all losses, transmission charges, ancillary service charges, line losses, congestion charges and other ISO-NE or applicable system costs or charges associated with transmission incurred, in each case, in connection with the transmission of Energy delivered under this Agreement from and after the Delivery Point.

4.6 Metering.

(a) Metering. All electric metering associated with the Facility, including the Facility meter and any other real-time meters, billing meters and back-up meters (collectively, the **"Meters"**), shall be installed, operated, maintained and tested at Seller's expense in accordance with Good Utility Practice and any applicable requirements and standards issued by NERC, the Interconnecting Utility, and ISO-NE; provided that each Meter shall be tested at Seller's expense once each Contract Year. The Meters shall be used for the registration, recording and transmission of information regarding the Energy output of the Facility. Seller shall provide Buyer with a copy of all metering and calibration information and documents regarding the Meters promptly following receipt thereof by Seller.

(b) Measurements. Readings of the Meters at the Facility by the Interconnecting Utility ~~(or an independent Person mutually acceptable to the Parties)~~ shall be conclusive as to the amount of Energy generated by the Facility; provided however, that Seller, upon request of Buyer and at Buyer's expense (if more frequently than annually as provided for in Section 4.6(a)), shall cause the Meters to be tested by the Interconnecting Utility in whose territory the Facility is located, and if any Meter is out of service or is determined to be registering inaccurately by more than two percent (2%), (i) the measurement of Energy produced by the Facility shall be adjusted as far back as can reasonably be ascertained, but in no event shall such period exceed six (6) months from the date that such inaccuracy was discovered, in accordance with the filed tariff of such Interconnecting Utility, and any adjustment shall be reflected in the next invoice provided by Seller to Buyer hereunder and (ii) Seller shall reimburse Buyer for the cost of such test of the Meters. Meter readings shall be adjusted to take into account the losses to Deliver the Energy to the Delivery Point. Seller shall make recorded meter data available monthly to Buyer at no cost.

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

(d) Audit of Meters. Buyer shall have reasonable access to the Meters upon request and during normal business hours and the right to audit all information and test data related to such Meters.

(e) Notice of Malfunction. Seller shall provide Buyer with prompt notice of any malfunction or other failure of the Meters or other telemetry equipment necessary to accurately report the quantity of Energy being produced by the Facility. If any Meter is found to be inaccurate by more than two percent (2%), the meter readings shall be adjusted as far back as can reasonably be ascertained, but no event shall such period exceed six (6) months from the date that such inaccuracy was discovered, and any adjustment shall be reflected in the next invoice provided by Seller to Buyer hereunder.

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

4.7 RECs.

(a) Seller shall transfer to Buyer all of the right, title and interest in and to the Facility's Environmental Attributes, including the RECs, associated with the Facility's Energy Delivered during the Services Term in accordance with the terms of this Section 4.7.

(b) All Energy provided by Seller to Buyer from the Facility under this Agreement shall meet the requirements for eligibility pursuant to the Renewable Energy Standard; provided, however, that if the Facility ceases to qualify as a Newly Developed Renewable Energy Resource solely as a result of a change in Law, Seller shall only be required to use commercially reasonable efforts to ensure that all Energy provided by Seller to Buyer from the Facility under this Agreement meets the requirements for eligibility pursuant to the Renewable Energy Standard after that change in Law~~; provided that commercially reasonable efforts shall not include a judicial appeal of a denial of the Facility's qualification as a Newly Developed Renewable Energy Resource~~.

(c) At Buyer's request and at Seller's sole cost, Seller shall, to the extent possible under applicable Law seek qualification under the renewable portfolio standard or similar law of New York and/or one or more New England states (in addition to Rhode Island) and/or any federal renewable energy standard. Seller shall use commercially reasonable efforts, consistent with Good Utility Practice, to maintain such qualification at all times during the Services Term, or until Buyer indicates such qualification is no longer necessary~~; provided that commercially reasonable efforts shall not include a judicial appeal of a denial of such qualification~~. Seller shall also submit any information required by any state or federal agency (including without limitation the PUC) with regard to administration of its rules regarding Environmental Attributes or its renewable energy standard or renewable portfolio standard to Buyer or as directed by Buyer.

(d) Seller shall comply with all GIS Operating Rules relating to the creation and transfer of all RECs to be purchased by Buyer under this Agreement and all other GIS Operating Rules to the extent required for Buyer to achieve the full value of such RECs. In addition, at Buyer's request, Seller shall register with and comply with the rules and requirements of any other tracking system or program that tracks, monetizes or otherwise creates or enhances value for Environmental Attributes, which compliance shall be at Seller's sole cost if such registration and compliance is requested in connection with Section 4.7(c) above and shall be at Buyer's sole cost in other instances.

(e) Prior to the delivery of any Energy hereunder, either (i) Seller shall cause Buyer to be registered in the GIS as the initial owner of all Certificates to be Delivered hereunder to Buyer or (ii) Seller and Buyer shall effect an irrevocable forward transfer of the Certificates to be Delivered hereunder to Buyer in the GIS. The Parties agree that an irrevocable forward transfer of Certificates shall qualify as delivery entitling Seller to bill and receive payment for RECs on a monthly basis in accordance with Section 5.2 herein. In the event any Certificates associated with the RECs to be delivered to Buyer under this Agreement are not actually deposited in Buyer's GIS account (or in a GIS account designated by Buyer to Seller in writing) on the date such Certificates are created in the GIS, Buyer shall notify Seller accordingly in writing and Seller shall, within ten (10) Business Days of receipt of such notice, credit Buyer with the value of the RECs associated with those Certificates, calculated in accordance with Section 2 of Exhibit E provided that Seller has received or been credited with such value by Buyer. Notwithstanding the foregoing or any other provision of this Agreement (including

without limitation Exhibit E) to the contrary, Buyer shall withhold from any payment due to Seller under Section 5.2 after either (x) the date that is seven (7) months prior to the end of the Services Term or (y) the date on which Buyer has exercised a right to terminate this Agreement prior to the expiration of the Services Term an amount equal to the value of the RECs (calculated in accordance with Section 2 of Exhibit E) that would otherwise be included in that payment, and such withheld amount shall be paid to Seller within fifteen (15) days after the Certificates associated with those RECs have been deposited in Buyer's GIS account (or in a GIS account designated by Buyer to Seller in writing).

(f) The Parties intend for the transactions entered into hereunder to be physically settled, meaning that the RECs are intended to be Delivered in the GIS account of Buyer or its designee as set forth in this Section 4.7.

4.8 Capacity.

(a) Seller's Delivery of Capacity and Buyer's purchase of Capacity under ~~the~~this Agreement shall be solely through financial settlement pursuant to Exhibit E. Buyer shall neither take title to any Capacity nor be responsible for any actions or conditions in the Forward Capacity Market with respect to such Capacity. Subject to all other terms of this Agreement, the actions of Seller in the Forward Capacity Market, as set forth in this Section 4.8, are for the economic benefit of Buyer, as set forth in Exhibit E.

(b) ~~Beginning with~~The Parties recognize that the Facility is not currently eligible for participation in the Forward Capacity ~~Auction for the Capacity Commitment Period beginning on June 1 of the third (3rd) Contract Year~~Market as a result of constraints on the transmission system at Orrington, Maine (the **"Congestion Point"**). During the Term, if the said transmission system constraints at the Congestion Point are eliminated or if the Facility otherwise becomes eligible to participate in the Forward Capacity Market, Seller shall thereafter take commercially reasonable actions necessary (i) to ~~secure Capacity Supply Obligations for the Facility, including but not limited to~~ qualify~~ing~~ the Facility for participation in the Forward Capacity Auctions (or reconfiguration auctions) as a New Capacity Resource or an Existing Capacity Resource (as applicable) with the maximum Seasonal Claimed Capability available for the Facility ~~and shall~~, (ii) to bid and clear in the Forward Capacity Auctions, (iii) to secure a Capacity Supply Obligation equivalent to the Seasonal Claimed Capability of the Facility, (iv) to avoid being de-listed from the Forward Capacity Market, and (v) to participate in every Capacity Commitment Period in the Forward Capacity Market covered by the remainder of the Services Term~~. Seller shall use commercially reasonable efforts to complete, or make utilization of, all~~;, provided, however, that Seller will not be required to incur more than $150,000 in out-of-pocket costs for any Network Upgrades ~~required to permit the Facility's Capacity to be recognized as a Capacity Resource that is qualified for the Forward Capacity Auction for the Capacity Commitment Period beginning on June 1 of the third (3rd) Contract Year and in each Forward Capacity Auction thereafter in accordance with the terms~~that are necessary in order for Seller to satisfy the requirements of this Section 4.8(b).

~~(c) Seller shall take commercially reasonable actions to bid in the Facility's Capacity (i) to clear in the Forward Capacity Auction, (ii) to secure a Capacity Supply Obligation equivalent to the Seasonal Claimed Capability of the Facility and (iii) to avoid being de-listed from the Forward Capacity Market, unless otherwise approved by Buyer in its sole discretion. Such approval shall be sought by Seller by requesting approval in writing from Buyer at least one-hundred and twenty (120) days in advance of the qualification deadline for the Forward Capacity Auction in which Seller wishes to submit a static or permanent de-list bid, or at least one-hundred and twenty (120) days in advance of the start of the Forward Capacity Auction in which Seller wishes to submit a dynamic de-list bid.~~

(c) In the event the transmission system constraints at the Congestion Point are eliminated or the Facility otherwise becoming eligible to participate in the Forward Capacity Market, within sixty (60) days after Seller is notified that the Facility is qualified for participation in the Forward Capacity Market, and annually thereafter at least two hundred seventy (270) days prior to the bid date for any subsequent Forward Capacity Auctions, Seller shall provide to Buyer a proposal as to the amount of Capacity it will bid into such Forward Capacity Auction and the price it will bid for such Capacity. Buyer will have forty-five (45) days after Buyer's receipt of such proposal to provide written comments to Seller. In the event that Buyer does not provide written comments to Seller within such forty-five (45) day period, Buyer shall be deemed to have accepted such proposal as submitted and Seller shall bid that amount of Capacity at that price in such Forward Capacity Auction. In the event that Buyer provides written comments to Seller within the forty-five (45) day period provided, for a period of forty-five (45) days after receipt of Buyer's comments, the Parties shall negotiate in good faith to establish the parameters of a mutually acceptable bid into such Forward Capacity Auction, subject to the provisions of this Section 4.8 and Section 4 of Exhibit E.

(d) Subject to the ISO-NE Rules relating to confidentiality of information provided by ISO-NE, Seller shall, upon Buyer's request, submit copies of all bidding documentation Seller provides to ISO-NE to Buyer to demonstrate compliance with the bidding requirements under this Section 4.8.

(e) During the Services Term, Seller shall be responsible for all performance requirements mandated by the ISO-NE Rules and ISO-NE Practices, including performance requirements (and payment of penalties, if any, other than Peak Energy Rents) associated with the Forward Capacity Market.

(f) Any failure of Seller to perform its obligations under this Section 4.8 shall not be a Default or Event of Default; provided that, in the event that the Project in the future is eligible for participation in the Forward Capacity Market, the Bundled Price paid by Buyer for the Products shall ~~at all times~~thereafter be adjusted as set forth in this Section 4.8 and in Section 4 of Exhibit E ~~without regard to whether Seller has performed its obligations under this Section 4.8 or whether the Facility's Capacity has qualified or cleared in the Forward Capacity Market at any time. The parties acknowledge that, notwithstanding Section 4.8(b), the adjustment to the Bundled Price under Section 4 of Exhibit E commences in the fourth (4th) Contract Year.~~

5. PRICE AND PAYMENTS FOR PRODUCTS

5.1 Price for Products.

~~(a)~~ All Products Delivered to Buyer in accordance with this Agreement shall be purchased by Buyer at the Price specified in Exhibit E and in accordance with this Section 5.1. Other than the (i) payment for the Products under this Section 5.1, (ii) payments related to Meter testing under Section 4.6(b), (iii) payments related to Meter malfunctions under Section 4.6(e), (iv) payment of any Resale Damages under Section 4.4, (v) payment of interest on late payments under Section 5.3, (vi) payments for reimbursement of Buyer's Taxes under Section 5.4(a), (vii) return of any Credit Support under Section 6.4 or Section 6.5, and (viii) payment of any Termination Payment due from Buyer under Section 9.3, Buyer shall not be required to make any other payments to Seller under this Agreement, and Seller shall be solely responsible for all costs incurred by it in connection with the performance of its obligations under this Agreement.

~~(b) Escalation of Price. Consistent with Exhibit E and subject to Section 2.2(e), the Bundled Price shall escalate by the Escalation Rate on each Escalation Date. For purposes of this Agreement, the **"Escalation Date"** shall initially be the first January 1 following the Commercial Operation Date and each January 1 thereafter; provided, however, that if the Commercial Operation Date is extended pursuant to Section 3.1(c), Section 8.3(a) or Section 10.1, then each Escalation Date occurring after such extension shall be delayed by the period of that extension. All delays in the Escalation Date occurring under this Section 5.1(b) shall be cumulative (i.e., shall also take into account all prior extensions), such that the period of time between January 1 of a year and the Escalation Date corresponding to that year shall be equal to the total number of days of all extensions under Section 3.1(c), Section 8.3(a) and Section 10.1. Notwithstanding any provision of this Agreement to the contrary, in no event shall there be (x) more than fourteen (14) Escalation Dates after the Commercial Operation Date. Upon any extension of the Commercial Operation Date, Seller shall deliver a certification in the form of Exhibit F setting forth the total number of days of such extension and establishing the new annual Escalation Date. Buyer shall approve such certification in its sole discretion, and any dispute regarding such certification shall be resolved in accordance with Article 11.~~

5.2 Payment and Netting.

(a) Billing Period. The calendar month shall be the standard period for all payments under this Agreement. On or before the fifteenth (15th) day following the end of each month, Seller shall render to Buyer an invoice for the payment obligations incurred hereunder during the preceding month, and based on the Energy Delivered in the preceding month. Such invoice shall contain supporting detail for all charges reflected on the invoice, and Seller shall provide Buyer with additional supporting documentation and information as Buyer may reasonably request.

(b) Timeliness of Payment. Unless otherwise agreed to by the Parties, all invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each month, or the tenth (10th)

day after receipt of the invoice, or if such day is not a Business Day, then on the next Business Day. Each Party shall make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date shall be deemed delinquent and shall accrue interest at the Late Payment Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

(c) Disputes and Adjustments of Invoices.

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

(ii) Unless otherwise agreed, (i) a Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement, or adjust any invoice for any arithmetic or computational error within twenty-four (24) months of the date the invoice, or adjustment to an invoice, was rendered and (ii) if a Party does not challenge the accuracy within such twenty-four (24) month period, such invoice shall be binding upon that Party and shall not be subject to challenge. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the dispute given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment along with all available supporting documentation. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment or refund shall be

made within ten (10) days of such resolution along with interest accrued at the Late Payment Rate from and including the due date (or in the case of a refund, the payment date) but excluding the date paid. If an invoice is paid and thereafter the payment or the invoice on which the payment was based is disputed, upon notice of dispute, the Party receiving payment shall hold the amount in dispute in escrow for the benefit of the prevailing Party until the resolution of such dispute. If any amount in dispute is ultimately determined (under the terms herein) to be due to the other Party, it shall be paid or returned (as the case may be) to the other Party within ten (10) Business Days of such determination along with interest accrued at the Late Payment Rate from the (i) date due and owing in accordance with the Invoice until the date paid or (ii) if the amount was paid and is to be returned, from the date paid, until the date returned. Inadvertent overpayments shall be reimbursed or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Late Payment Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment, as directed by the other Party. Any dispute with respect to an invoice or claim to additional payment is waived unless the other Party is notified in accordance with this Section 5.2 within the referenced twenty-four (24) month period.

(d) Netting of Payments. The Parties hereby agree that they may discharge mutual debts and payment obligations due and owing to each other under this Agreement on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Products during the monthly billing period under this Agreement, including any related damages calculated pursuant to this Agreement, interest, and payments or credits, may be netted so that only the excess amount remaining due shall be paid by the Party who owes it. If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, such Party shall pay such sum in full when due. The Parties agree to provide each other with reasonable detail of such net payment or net payment request.

5.3 Interest on Late Payment or Refund. A late payment charge shall accrue on any late payment or refund as specified above at the lesser of (a) the Collateral Interest Rate plus one percent (1%), and (b) the maximum rate permitted by applicable Law in transactions involving entities having the same characteristics as the Parties (the **"Late Payment Rate"**).

5.4 Taxes, Fees and Levies.

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

(b) Seller shall bear all risks, financial and otherwise, throughout the Term, associated with Seller's or the Facility's eligibility to receive any federal or state tax credits or other incentive or subsidies or to qualify for accelerated depreciation for Seller's accounting, reporting or tax purposes.

6. SECURITY FOR PERFORMANCE

6.1 Grant of Security Interest. Subject to the terms and conditions of this Agreement, Seller hereby pledges to Buyer as security for all outstanding obligations under this Agreement (other than indemnification obligations surviving the expiration of the Term) and any other documents, instruments or agreements executed in connection therewith (collectively, the **"Obligations"**), and grants to Buyer a first priority continuing security interest, lien on, and right of set-off against all Posted Collateral delivered to or received by Buyer hereunder. Upon the return by Buyer to Seller of any Posted Collateral, the security interest and lien granted hereunder on that Posted Collateral will be released immediately and, to the extent possible, without further action by either Party.

6.2 Seller's Support.

(a) Seller shall be required to post Credit Support in the amount of $~~12~~4,500,000 to secure Seller's Obligations until the Commercial Operation Date (**"Development Period Security"**). One-half of the Development Period Security shall be provided to Buyer within fifteen (15) days after the Agreement Date, and the remaining one-half of the Development Period Security shall be provided to Buyer within fifteen (15) days after the ~~Effective Date~~receipt of the Regulatory Approval. Buyer shall return any undrawn amount of the Development Period Security to Seller within thirty (30) days after the later of (x) Buyer's

receipt of an undisputed notice from Seller that the Commercial Operation Date has occurred or (y) Buyer's receipt of the full amount of the Operating Period Security. In the event of a termination of this Agreement pursuant to Section 3.1(e), Buyer shall return any undrawn amount of the Development Period Security to Seller within thirty (30) days of such termination.

(b) Beginning not later than three (3) days following the Commercial Operation Date, Seller shall provide Buyer with Credit Support to secure Seller's Obligations after the Commercial Operation Date through and including the date that all of Seller's Obligations are satisfied ("**Operating Period Security**"). The Operating Period Security shall be in the amount of $1~~20~~,485,000.

(c) The Credit Support Delivery Amount, as defined below, will be rounded up, and the Return Amount, as defined below, will be rounded down, in each case to the nearest integral multiple of $10,000 (**"Rounding Amount"**).

(d) The following items will qualify as "**Credit Support**" hereunder in the amount noted under "Valuation Percentage":

	"Valuation Percentage"
(A) Cash	100%
(B) Letters of Credit	100% unless either (i) a Letter of Credit Default shall have occurred and be continuing with respect to such Letter of Credit, or (ii) twenty (20) or fewer Business Days remain prior to the expiration of such Letter of Credit, in which cases the Valuation Percentage shall be 0%.

(e) All calculations with respect to Credit Support shall be made by the Valuation Agent as of the Valuation Time on the Valuation Date.

6.3 Delivery of Credit Support.

On any Business Day during the Services Term on which (a) the undrawn amount of any Operating Period Security provided by Seller and held by Buyer is less than the amount required under Section 6.2(b), and (b) no Event of Default has occurred and is continuing with respect to Buyer, and (~~b~~c) no termination date has occurred or has been designated as a result of an Event of Default with respect to Buyer for which there exist any unsatisfied payment obligations with respect to Buyer, then Buyer may request, by written notice, that Seller Transfer to Buyer, or cause to be Transferred to Buyer, Credit Support for the benefit of Buyer, having a Value of at least the Collateral Requirement (**"Credit Support Delivery Amount"**). Such Credit Support shall be delivered to Buyer on the next Business Day if the request is

received by the Notification Time; otherwise Credit Support is due by the close of business on the second Business Day after the request is received.

6.4 Reduction and Substitution of Posted Collateral.

On any Business Day during the Services Term on which (a) no Event of Default has occurred and is continuing with respect to Seller, (b) no termination date has occurred or has been designated as a result of an Event of Default with respect to Seller for which there exist any unsatisfied payment Obligations, and (c) the Posted Collateral posted by Seller exceeds the required Operating Period Security (rounding downwards for any fractional amount to the next interval of the Rounding Amount), then Seller may, at its sole cost, request that Buyer return Operating Period Security in the amount of such difference (**"Credit Support Return Amount"**) and Buyer shall be obligated to do so. Such Posted Collateral shall be returned to Seller by the close of business on the second Business Day after Buyer's receipt of such request. The Parties agree that if Seller has posted more than one type of Credit Support to Buyer, Seller can, in its sole discretion, select the type of Credit Support for Buyer to return; provided, however, that Buyer shall not be required to return the specified Credit Support if immediately after such return, Seller would be required to post additional Credit Support pursuant to the calculation of Operating Period Security.

6.5 Administration of Posted Collateral.

(a) Cash. Posted Collateral provided in the form of Cash to Buyer hereunder shall be subject to the following provisions.

(i) So long as no Event of Default has occurred and is continuing with respect to Buyer, Buyer will be entitled to either hold Cash or to appoint an agent which is a Qualified Institution (a **"Custodian"**) to hold Cash for Buyer. In the event that an Event of Default has occurred and is continuing with respect to Buyer, then the provisions of Section 6.5(a)(ii) shall not apply with respect to Buyer and Cash shall be held in a Qualified Institution in accordance with the provisions of Section 6.5(a)(iii)(B). Upon notice by Buyer to Seller of the appointment of a Custodian, Seller's Obligations to make any Transfer will be discharged by making the Transfer to that Custodian. The holding of Cash by a Custodian will be deemed to be the holding of Cash by Buyer for which the Custodian is acting. If Buyer or its Custodian fails to satisfy any conditions for holding Cash as set forth above, or if Buyer is not entitled to hold Cash at any time, then Buyer will Transfer, or cause its Custodian to Transfer, the Cash to a Qualified Institution and the Cash shall be maintained in accordance with Section 6.5(a)(iii)(B). Except as set forth

in Section 6.5(c), Buyer will be liable for the acts or omissions of the Custodian to the same extent that Buyer would be held liable for its own acts or omissions.

(ii) Notwithstanding the provisions of applicable Law, if no Event of Default has occurred and is continuing with respect to Buyer and no termination date has occurred or been designated as a result of an Event of Default with respect to Buyer for which there exists any unsatisfied payment obligations with respect to Buyer, then Buyer shall have the right to sell, pledge, rehypothecate, assign, invest, use, comingle or otherwise use in its business any Cash that it holds as Posted Collateral hereunder, free from any claim or right of any nature whatsoever of Seller, including any equity or right of redemption by Seller.

(iii) Notwithstanding Section 6.5(a)(ii), if neither Buyer nor the Custodian is eligible to hold Cash pursuant to Section 6.5(a)(i) then:

(A) the provisions of Section 6.5(a)(ii) will not apply with respect to Buyer; and

(B) Buyer shall be required to Transfer (or cause to be Transferred) not later than the close of business within five (5) Business Days following the beginning of such ineligibility all Cash in its possession or held on its behalf to a Qualified Institution to be held in a segregated, safekeeping or custody account (the **"Collateral Account"**) within such Qualified Institution with the title of the account indicating that the property contained therein is being held as Cash for Buyer. The Qualified Institution shall serve as Custodian with respect to the Cash in the Collateral Account, and shall hold such Cash in accordance with the terms of this Article 6 and for the security interest of Buyer and execute such account control agreements as are necessary or applicable to perfect the security interest of Seller therein pursuant to Section 9-314 of the Uniform Commercial Code or otherwise, and subject to such security interest, for the ownership and benefit of Seller. The Qualified Institution holding the Cash will invest and reinvest or procure the investment and reinvestment of the Cash in accordance with the written instructions of Buyer, subject to the approval of such instructions by Seller (which approval shall not be unreasonably withheld). Buyer shall have no responsibility for any losses resulting from any investment or reinvestment effected in accordance with Seller's approval.

(iv) So long as no Event of Default with respect to Seller has occurred and is continuing, and no termination date has occurred or been designated for which any unsatisfied payment obligations of Seller exist as the result of an Event of Default with respect to Seller, in the event that Buyer or its Custodian is holding Cash, Buyer will Transfer (or cause to be Transferred) to Seller, in lieu of any interest or other amounts paid or deemed to have been paid with respect to such Cash (all of which shall be retained by Buyer), the Interest Amount. Interest on Cash shall accrue at the Collateral Interest Rate. Interest accrued during the previous month shall be paid by Buyer to Seller on the 3rd Business Day of each calendar month and on any Business Day that posted Credit Support in the form of Cash is returned to Seller, but solely to the extent that, after making such payment, the amount of the Posted Collateral will be at least equal to the required Development Period Security or Operating Period Security, as applicable. On or after the occurrence of an Event of Default with respect to Seller or a termination date as a result of an Event of Default with respect to Seller, Buyer or its Custodian shall retain any such Interest Amount as additional Posted Collateral hereunder until the Obligations of Seller under the Agreement have been satisfied in the case of a termination date or for so long as such Event of Default is continuing in the case of an Event of Default.

(b) Buyer's Rights and Remedies. If at any time an Event of Default with respect to Seller has occurred and is continuing, then, unless Seller has paid in full all of its Obligations that are then due, including those under Section 9.3(b) of this Agreement, Buyer may exercise one or more of the following rights and remedies: (i) all rights and remedies available to a secured party under applicable Law with respect to Posted Collateral held by Buyer, (ii) the right to set-off any amounts payable by Seller with respect to any Obligations against any Posted Collateral or the cash equivalent of any Posted Collateral held by Buyer, or (iii) the right to liquidate any Posted Collateral held by Buyer and to apply the proceeds of such liquidation of the Posted Collateral to any amounts payable to Buyer with respect to the Obligations in such order as Buyer may elect. For purposes of this Section 6.5, Buyer may draw on the undrawn portion of any Letter of Credit from time to time up to the amount of the Obligations that are due at the time of such drawing. Cash proceeds that are not applied to the Obligations shall be maintained in accordance with the terms of this Article 6. Seller shall remain liable for amounts due and owing to Buyer that remain unpaid after the application of Posted Collateral, pursuant to this Section 6.5.

(c) Seller's Rights and Remedies. If at any time a termination date has occurred or been designated as the result of an Event of Default with respect to Buyer and Buyer has provided Credit Support to Seller under Section 9.3(b), then unless Buyer has paid in full all of its obligations under Section 9.3(b) of this Agreement: (i) Seller may exercise all rights and remedies available to Seller under applicable Law with respect to any Posted Collateral provided by Buyer, (ii) Buyer will be obligated immediately to return all Posted Collateral provided by Seller, including any accrued interest to Seller, or (iii) to the extent that Posted Collateral provided by Seller, including any accrued interest, is not returned pursuant to (ii) above, Seller may set-off any amounts payable by Seller with respect to any Obligations against any posted Credit Support or the cash equivalent thereof or to the extent that Seller does not set off such amounts, withhold payment of any remaining amounts payable by Seller with respect to any obligations of Buyer, up to the value of the remaining posted Credit Support held by Buyer, until that posted Credit Support is Transferred to Seller. For avoidance of doubt, (i) Buyer will be obligated immediately to Transfer any Letter of Credit to Seller and (ii) Seller may do any one or more of the following: (x) to the extent that the Letter of Credit is not Transferred to Seller as required pursuant to (i) above, set-off any amounts payable by Seller with respect to any Obligations against any such Letter of Credit held by Buyer and, to the extent its rights to set-off are not exercised, withhold payment of any remaining amounts payable by Seller with respect to any Obligations, up to the value of any remaining posted Credit Support and the value of any Letter of Credit held by Buyer, until any such Posted Credit Support and such Letter of Credit is Transferred to Seller; and (y) exercise rights and remedies available to Seller under the terms of the Letter of Credit.

(d) Letters of Credit. Credit Support provided in the form of a Letter of Credit shall be subject to the following provisions.

(i) As one method of providing increased Credit Support, Seller may increase the amount of an outstanding Letter of Credit or establish one or more additional Letters of Credit.

(ii) Upon the occurrence of a Letter of Credit Default, Seller agrees to Transfer to Buyer either a substitute Letter of Credit or Cash, in each case on or before the first (1st) Business Day after the occurrence thereof (or the third (3rd) Business Day after the occurrence thereof if only clause (a) under the definition of Letter of Credit Default applies).

(iii) Notwithstanding Sections 6.3 and 6.4, (1) Buyer need not return a Letter of Credit unless the entire principal amount is required to be returned, (2) Buyer shall consent to a reduction of the principal amount of a Letter of Credit to the extent that a Credit Support Delivery Amount would not be created thereby (as of the time of the request or as of the last time the Credit Support Delivery Amount was determined), and (3) if there is more than one form of

Posted Collateral when a Credit Support Return Amount is to be Transferred, the Secured Party may elect which to Transfer.

(e) Care of Posted Collateral. Each Party shall exercise reasonable care to assure the safe custody of all Posted Collateral to the extent required by applicable Law, and in any event a Party will be deemed to have exercised reasonable care if it exercises at least the same degree of care as it would exercise with respect to its own property. Except as specified in the preceding sentence, each Party will have no duty with respect to the Posted Collateral, including without limitation, any duty to enforce or preserve any rights thereto.

(f) Substitutions. Unless otherwise prohibited herein, upon notice to Buyer specifying the items of Posted Collateral to be exchanged, Seller may, on any Business Day, deliver to Buyer other Credit Support (**"Substitute Credit Support"**). On the Business Day following the day on which the Substitute Credit Support is delivered to Buyer, Buyer shall return to Seller the items of Credit Support specified in Seller's notice; provided, however, that Buyer shall not be required to return the specified Posted Collateral if immediately after such return, Seller would be required to post additional Credit Support pursuant to the calculation of Development Period Security or Operating Period Security set forth in Sections 6.2(a) and 6.2(b), respectively.

6.6 Exercise of Rights Against Posted Collateral

(a) Disputes regarding amount of Credit Support. If either Party disputes the amount of Credit Support to be provided or returned (such Party the "**Disputing Party**"), then the Disputing Party shall (a) deliver the undisputed amount of Credit Support to the other Party (such Party, the "**Requesting Party**") and (b) notify the Requesting Party of the existence and nature of the dispute no later than 5:00 p.m. Eastern Prevailing Time on the Business Day that the request for Credit Support was made (the "**Request Date**"). On the Business Day following the Request Date, the Parties shall consult with each other in order to reconcile the two conflicting amounts. If the Parties are not able to resolve their dispute, the Credit Support shall be recalculated, on the Business Day following the Request Date, by each Party requesting quotations from two (2) Reference Market-Makers for a total of four (4) quotations. The highest and lowest of the four (4) quotations shall be discarded and the arithmetic average shall be taken of the remaining two (2), which shall be used in order to determine the amount of Credit Support required. On the same day the Credit Support amount is recalculated, the Disputing Party shall deliver any additional Credit Support required pursuant to the recalculation or the Requesting Party shall return any excess Credit Support that is no longer required pursuant to the recalculation.

(b) Further Assurances. Promptly following a request by a Party, the other Party shall use commercially reasonable efforts to execute, deliver, file, and/or record any financing statement, specific assignment, or other document and take any other action that may be necessary or desirable to create, perfect, or validate any security interest or lien, to enable the

requesting party to exercise or enforce its rights or remedies under this Agreement, or to effect or document a release of a security interest on posted Credit Support or accrued interest.

(c) Further Protection. Seller will promptly give notice to Buyer of, and defend against, any suit, action, proceeding, or lien (other than a banker's lien in favor of the Custodian appointed by Buyer so long as no amount owing from Seller to such Custodian is overdue) that involves the Posted Collateral delivered to Buyer by Seller or that could adversely affect any security interest or lien granted pursuant to this Agreement.

7. REPRESENTATIONS, WARRANTIES, COVENANTS AND ACKNOWLEDGEMENTS

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

(a) Organization and Good Standing; Power and Authority. Buyer is a corporation duly incorporated, validly existing and in good standing under the laws of Rhode Island. Subject to the receipt of the Regulatory Approval, Buyer has all requisite power and authority to execute, deliver, and perform its obligations under this Agreement.

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

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

(d) No Proceedings. Except to the extent relating to the Regulatory Approval, there are no actions, suits or other proceedings, at law or in equity, by or before any Governmental Entity or agency or any other body pending or, to the best of its knowledge, threatened against or affecting Buyer or any of its properties (including, without limitation, this Agreement) which relate in any manner to this Agreement or any transaction contemplated hereby, or which Buyer reasonably expects to lead to a material adverse effect on (i) the validity

or enforceability of this Agreement or (ii) Buyer's ability to perform its obligations under this Agreement.

(e) Consents and Approvals. Except to the extent associated with the Regulatory Approval, the execution, delivery and performance by Buyer of its obligations under this Agreement do not and, under existing facts and Law, shall not, require any Permit or any other action by, any Person which has not been duly obtained, made or taken or that shall be duly obtained, made or taken on or prior to the date required, and all such approvals, consents, permits, licenses, authorizations, filings, registrations and actions are in full force and effect, final and non-appealable as required under applicable Law.

(f) Negotiations. The terms and provisions of this Agreement are the result of arm's length and good faith negotiations on the part of Buyer.

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

(h) No Default. No Default or Event of Default has occurred and is continuing and no Default or Event of Default shall occur as a result of the performance by Buyer of its obligations under this Agreement.

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

(a) Organization and Good Standing; Power and Authority. Seller is a limited liability company, validly existing and in good standing under the laws of Delaware. Subject to the receipt of the Permits listed in Exhibit B, Seller has all requisite power and authority to execute, deliver, and perform its obligations under this Agreement.

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

(c) Due Authorization; No Conflicts. The execution and delivery by Seller of this Agreement, and the performance by Seller of its obligations hereunder, have been duly authorized by all necessary actions on the part of Seller and do not and, under existing facts and Law, shall not: (i) contravene any of its governing documents; (ii) conflict with, result in a breach of, or constitute a default under any note, bond, mortgage, indenture, deed of trust, license, contract or other agreement to which it is a party or by which any of its properties may be bound or affected; (iii) assuming receipt of the Permits listed on Exhibit B, violate any order,

writ, injunction, decree, judgment, award, statute, law, rule, regulation or ordinance of any Governmental Entity or agency applicable to it or any of its properties; or (iv) result in the creation of any lien, charge or encumbrance upon any of its properties pursuant to any of the foregoing.

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

(e) No Proceedings. Except to the extent associated with the Permits listed on Exhibit B, there are no actions, suits or other proceedings, at law or in equity, by or before any Governmental Entity or agency or any other body pending or, to the best of its knowledge, threatened against or affecting Seller or any of its properties (including, without limitation, this Agreement) which relate in any manner to this Agreement or any transaction contemplated hereby, or which Seller reasonably expects to lead to a material adverse effect on (i) the validity or enforceability of this Agreement or (ii) Seller's ability to perform its obligations under this Agreement.

(f) Consents and Approvals. Subject to the receipt of the Permits listed on Exhibit B on or prior to the date such Permits are required under applicable Law, the execution, delivery and performance by Seller of its obligations under this Agreement do not and, under existing facts and Law, shall not, require any Permit or any other action by, any Person which has not been duly obtained, made or taken, and all such approvals, consents, permits, licenses, authorizations, filings, registrations and actions are in full force and effect, final and non-appealable. ~~To Seller's knowledge~~As of the Agreement Date, Seller ~~shall be able~~expects to receive the Permits listed in Exhibit B in due course and as required under applicable Law to the extent that those Permits have not previously been received.

(g) Newly Developed Renewable Energy Resource. Subject to Section 4.7(b), the Facility shall be a Newly Developed Renewable Energy Resource, qualified by the PUC as eligible to participate in the Renewable Energy Standard program under R.I.G.L. § 39-26-1 et seq., and shall have a commercial operation date, as verified by the PUC, on or after December 31, 2012.

(h) Title to Facility and Products. Seller has and shall have good and marketable title to (i) the Facility and (ii) all Products sold and delivered to Buyer under this Agreement~~, in each case~~. The Products when sold to Buyer shall be free and clear of all liens, charges and encumbrances. Seller has not sold and shall not sell any such Products to any other Person (other than sales of Capacity in the Forward Capacity Market as contemplated by this Agreement), and no Person other than Seller can claim an interest in any Product to be sold to Buyer under this Agreement.

(i) Negotiations. The terms and provisions of this Agreement are the result of arm's length and good faith negotiations on the part of Seller.

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

(k) No Default. No Default or Event of Default has occurred and is continuing and no Default or Event of Default shall occur as a result of the performance by Seller of its obligations under this Agreement.

(l) Useful Life. As of the Effective Date, the projected useful life of the Facility is at least twenty-one (21) years.

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

8. REGULATORY APPROVAL

8.1 Receipt of Regulatory Approval. The obligations of the Parties to perform this Agreement, other than the Parties' obligations under Section 6.2(a), Section 6.3, Section 6.4, Section 6.5, Section 8.2, Section 8.3~~(a)~~, and Article 12, are conditioned upon and shall not become effective or binding until the receipt of the Regulatory Approval. Buyer shall notify Seller within five (5) Business Days after receipt of the Regulatory Approval or receipt of an order of the PUC regarding this Agreement that is not acceptable in form and substance to Buyer in its sole discretion.

8.2 Filing for Regulatory Approval. Buyer shall (i) use commercially reasonable efforts to file an application for the Regulatory Approval with the PUC by not later than thirty (30) days after the Agreement Date and (ii) at Buyer's sole discretion, exercise commercially reasonable efforts to obtain the Regulatory Approval, including using commercially reasonable efforts to obtain a favorable resolution in any appeal of an order of the PUC with respect to this Agreement; provided that Buyer shall have no obligation to appeal a PUC order that it determines is unacceptable. Seller shall have the right but not the obligation to intervene in the proceeding before the PUC and shall use commercially reasonable efforts to cooperate with Buyer (but only as requested by Buyer) in obtaining the Regulatory Approval.

~~8.3 Delay or Failure to Obtain Regulatory Approval.~~

~~(a) If Buyer has not notified Seller that it has received the Regulatory Approval by the date that is 105 days after the Agreement Date, then the Critical Milestone date set forth in Section 3.1(a) shall be extended by the number of days by which the date on which Buyer notifies Seller that it has received the Regulatory Approval exceeds 105 days, on a day-for-day basis, provided that the extension of the Critical Milestone date under this Section 8.3(a) shall not in any event be longer than 75 days.~~

~~(b) If Buyer has not notified Seller that it has received the Regulatory Approval by the date that is 180 days after the Agreement Date, then Seller may terminate this Agreement effective upon written notice of such termination to the Buyer and with no further liability for either Party hereunder except for any obligations arising under Section 6.3 and Article 12 which accrued prior to such termination, and in the event of such termination, Buyer shall return to Seller its Posted Collateral.~~

8.3 ~~(c)~~ Failure to Obtain Regulatory Approval. If Buyer (i) on any date notifies Seller that it has received an order of the PUC regarding this Agreement that is not acceptable in form and substance to Buyer in its sole discretion or (ii) has not notified Seller that it has received the Regulatory Approval by eighteen (18) months after the Agreement Date, then either Party may terminate this Agreement effective upon written notice of such termination to the other Party and with no further liability for either Party hereunder except for any obligations arising under Section 6.~~3~~2 and Article 12 which accrued prior to such termination, and in the event of such termination, Buyer shall return to Seller its Posted Collateral.

9. BREACHES; REMEDIES

9.1 Events of Default by Either Party. It shall constitute an event of default (**"Event of Default"**) by either Party hereunder if:

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

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

(c) Other Covenants. Other than a Delivery Shortfall (the sole remedy for which shall be the payment of Cover Damages under Section 4.3), a Rejected Purchase (the sole remedy for which shall be the payment of Resale Damages under 4.4), a failure by Seller to perform its obligations under Section 4.8 (which is addressed in Section 4.8(f)), or an Event of Default described in Section 9.1(a), 9.1(b), 9.1(d), 9.1(e) or 9.2, such Party fails to perform,

observe or otherwise to comply with any obligation hereunder and such failure continues for more than thirty (30) days after notice thereof is given by the Non-Defaulting Party to the Defaulting Party; provided, however, that such period shall be extended for an additional reasonable period if the Defaulting Party is unable to cure within that thirty (30) day period and provided that corrective action has been taken by the Defaulting Party within such thirty (30) day period and so long as such cure is diligently pursued by the Defaulting Party until such Default had been corrected, but in any event within one hundred fifty (150) days; or

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

(e) Permit Compliance. Such Party fails to obtain and maintain in full force and effect any Permit (other than the Regulatory Approval and, prior to the Commercial Operation Date, the Permits listed in Exhibit B) necessary for such Party to perform its obligations under this Agreement, and such failure continues for more than thirty (30) days after notice thereof is given by the Non-Defaulting Party to the Defaulting Party.

9.2 Events of Default by Seller. In addition to the Events of Default described in Section 9.1, it shall constitute an Event of Default by Seller hereunder if:

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

(b) Failure to Maintain Credit Support. The failure of Seller to provide, maintain and/or replenish the Development Period Security or the Operating Period Security as required pursuant to Article 6 of this Agreement, and such failure continues for more than five (5) Business Days after Buyer has provided written notice thereof to Seller; or

(c) Failure to Satisfy ISO-NE Obligations. The failure of Seller to satisfy, or cause to be satisfied (other than by Buyer), any material obligation under the ISO-NE Rules or ISO-NE Practices or any other material obligation with respect to ISO-NE after giving effect to any applicable cure period under the ISO-NE Rules or ISO-NE Practices, except in the event that such failure is also a failure of Seller to perform its obligations under Section 4.8 (which is addressed in Section 4.8(f)); or

(d) Failure to Meet Critical Milestones. The failure of Seller to satisfy any Critical Milestone by the date set forth therefor in Section 3.1(a), as the same may be extended in accordance with Section 3.1(c)~~, Section 8.3(a)~~ or Section 10.1.

9.3 Remedies.

(a) Suspension of Performance and Remedies at Law. Upon the occurrence and during the continuance of an Event of Default, the Non-Defaulting Party shall have the right, but not the obligation, to (i) withhold any payments due the Defaulting Party under this Agreement, (ii) suspend its performance hereunder, and (iii) exercise such other remedies as provided for in this Agreement or, to the extent not inconsistent with the terms of this Agreement, at law, including, without limitation, the termination right set forth in Section 9.3(b). In addition to the foregoing, the Non-Defaulting Party shall retain its right of specific performance to enforce the Defaulting Party's obligations under this Agreement.

(b) Termination and Termination Payment. Upon the occurrence of an Event of Default, a Non-Defaulting Party may terminate this Agreement at its sole discretion by providing written notice of such termination to the Defaulting Party. If the Non-Defaulting Party terminates this Agreement, it shall be entitled to calculate and receive as its sole remedy for such Event of Default a **"Termination Payment"** as follows:

(i) *Termination by Buyer Prior to Commercial Operation Date*. If Buyer terminates this Agreement because of an Event of Default by Seller occurring prior to the Commercial Operation Date, other than Seller's failure to meet the Critical Milestone in Section 3.1(a)(i) or the failure to meet another Critical Milestone while Seller's failure to meet the Critical Milestone in Section 3.1(a)(i) remains uncured, the Termination Payment due to Buyer shall be equal to the sum of (x) all Delay Damages due and owing by Seller through the date of such termination plus (y) the undrawn amount of any Development Period Security provided to Buyer by Seller. If Buyer terminates this Agreement prior to the Commercial Operation Date because of Seller's failure to meet the Critical Milestone in Section 3.1(a)(i) or the failure to meet another Critical Milestone while Seller's failure to meet the Critical Milestone in Section 3.1(a)(i) remains uncured, as the same may be extended in accordance with Section 3.1(c) or Section 10.1, the Termination Payment due to Buyer shall be equal to the sum of (x) all Delay Damages due and owing by Seller through the date of such termination plus $1,485,000, and Buyer shall return any undrawn amount of the Development Period Security (after the payment of such Termination Payment) to Seller within thirty (30) days of such termination.

(ii) ~~(i)~~ *Termination by Buyer after Commercial Operation Date*. If Buyer terminates this Agreement because of an Event of Default by Seller, the Termination Payment due to Buyer shall be equal to the amount, if positive, calculated according to the following formula:

$$\sum_{N}(RV - CV) + P$$

where:

"$\sum_{N}$" is the summation over the remainder of the Services Term.

"RV" is the replacement value of the Products for the remainder of the Services Term, calculated with reference to the applicable Replacement Price and the Supply Forecast, using a discount factor of eight percent (8.0%).

"CV" is the contract value of the Products for the remainder of the Services Term calculated with reference to the applicable Price and the Supply Forecast, using a discount factor of eight percent (8.0%) (the **"Contract Value"**).

"P" is the amount of any applicable penalties and costs incurred by Buyer in replacing the Products not Delivered to Buyer as a result of the termination of this Agreement.

All such amounts shall be determined by Buyer in good faith and in a commercially reasonable manner, and Buyer shall provide Seller with a reasonably detailed calculation of the Termination Payment due under this Section 9.3(b)(~~i~~ii).

(iii) ~~(ii)~~ *Termination by Seller Prior to Financial Closing Date.* If Seller terminates this Agreement because of an Event of Default by Buyer prior to the Financial Closing Date, the Termination Payment due to Seller shall be equal to all of Seller's out-of-pocket expenses incurred in connection with the development and construction of the Facility prior to such termination.

(iv) ~~(iii)~~ *Termination by Seller On or After Financial Closing Date*. If Seller terminates this Agreement because of an Event of Default by Buyer on or after the Financial Closing Date, the Termination Payment due to Seller shall be equal to the amount, if positive, calculated according to the following formula:

$$\sum_{N}(CV - MV) + P$$

where:

"$\sum_{N}$" is the summation over the remainder of the Services Term.

"CV" is the Contract Value.

"MV" is the market value of the Products for the remaining Services Term as determined with reference to the applicable Resale Price and the Supply Forecast, using a discount factor of eight percent (8.0%).

"P" is the amount of any applicable penalties and costs incurred by Seller in selling the Products not accepted and paid for by Buyer as a result of the termination of this Agreement.

All such amounts shall be determined by Seller in good faith and in a commercially reasonable manner, and Seller shall provide Buyer with a reasonably detailed calculation of the Termination Payment due under this Section 9.3(b)(~~iii~~iv).

(v) ~~(iv)~~ *Supply Forecast*. For purposes of determining the Termination Payment pursuant to Section 9.3(b)(~~ii~~i) ~~and~~or 9.3(b)(~~iii~~iv) above, the quantity of Products to be delivered shall be based upon the then-current Projected Annual Energy Output (the **"Supply Forecast"**).

(vi) ~~(v)~~ *Acceptability of Liquidated Damages*. Each Party agrees and acknowledges that (i) the damages that the Parties would incur due to an Event of Default would be difficult or impossible to predict with certainty, and (ii) it is impractical and difficult to assess actual damages in the circumstances stated, and therefore the Termination Payment as agreed to by the Parties and set forth herein is a fair and reasonable calculation of such damages.

(vii) ~~(vi)~~ *Payment of Termination Payment*. The Defaulting Party shall make the Termination Payment within ten (10) Business Days after the notice thereof is effective. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within ten (10) Business Days of receipt of the calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, the Defaulting Party shall first transfer Credit Support to the Non-Defaulting Party in an amount equal to the Termination Payment as calculated by the Non-Defaulting Party, which Credit Support shall be administered in accordance with Article 6. If the Parties are unable to resolve the dispute within thirty (30) days, Article 11 shall apply.

(viii) ~~(vii)~~ *Reinstatement of Agreement*. In the event that Buyer terminates this Agreement prior to the Commercial Operation Date ~~and Seller thereafter achieves~~because of Seller's failure to meet the Critical Milestone in Section 3.1(a)(i) or the failure to meet another Critical Milestone while Seller's failure to meet the Critical Milestone in Section 3.1(a)(i) remains uncured, and if within three (3) years of the date of such termination Seller seeks to enter into a contract with a third party for the sale of the Facility's Energy, Capacity and/or RECs, Seller shall notify Buyer and provide Buyer with the right to reinstate this Agreement. In the event that Buyer terminates this Agreement prior to the Commercial Operation Date for any reason other than Seller's

failure to meet the Critical Milestone in Section 3.1(a)(i) or the failure to meet another Critical Milestone while Seller's failure to meet the Critical Milestone in Section 3.1(a)(i) remains uncured, and if within one (1) year ~~after~~of the date of such termination~~, Buyer may elect~~ Seller seeks to enter into a contract with a third party for the sale of the Facility's Energy, Capacity and/or RECs, Seller shall notify Buyer and provide Buyer with the right to reinstate this Agreement ~~in accordance with its terms by providing Seller~~. Buyer shall notify Seller of whether it elects to reinstate this Agreement, in its sole discretion, within ~~at least six~~ninety (~~6~~90) ~~months' prior written~~days after receipt of Seller's notice ~~of such reinstatement~~. Upon such reinstatement, Buyer shall return to Seller any Termination Payment made by Seller, together with interest accruing at the Late Payment Rate, on or prior to the date selected for reinstatement of this Agreement. In the event that, after termination by Buyer prior to the Commercial Operation Date, Seller materially changes the design of the Facility and as a result of such design changes the Facility's total installed costs change by ten percent (10%) or more, then in such event Buyer's right to reinstatement of this Agreement shall be at an adjusted Price reflecting such increased or decreased costs. In such event, the Parties shall negotiate in good faith for a period of sixty (60) days after Buyer notifies Seller of Buyer's intent to reinstate this Agreement in order to establish such adjusted Price. If no written agreement is reached on the adjusted Price within said sixty (60) day period, this Agreement shall not be reinstated and the Parties shall have no further obligations to one another; provided, however, that if this Agreement is not reinstated because Buyer and Seller cannot reach agreement on an adjusted Price, in no event will Seller enter into another agreement for the sale of the Products from the Facility at a price that is lower than the last adjusted Price offered in writing by Seller to Buyer during such negotiations.

(c) Set-off. The Non-Defaulting Party shall be entitled, at its option and in its discretion, to withhold and set off any amounts owed by the Non-Defaulting Party to the Defaulting Party against any payments and any other amounts owed by the Defaulting Party to the Non-Defaulting Party, including any Termination Payment payable as a result of any early termination of this Agreement.

(d) Notice to Lenders; Cure Rights. Buyer shall provide a copy of any notice given to Seller under this Article 9 to one representative of the Financing providing loans to or for the benefit of Seller and one representative of the Financing providing equity to or for the benefit of Seller, of which Buyer shall have written notice, and Buyer shall afford one Lender the same opportunities to cure Defaults under this Agreement as are provided to Seller hereunder.

(e) Limitation of Remedies, Liability and Damages. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS

PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

10. FORCE MAJEURE

10.1 Force Majeure.

(a) The term **"Force Majeure"** means an unusual, unexpected and significant event: (i) that was not within the control of the Party claiming its occurrence; (ii) that could not have been prevented or avoided by such Party through the exercise of reasonable diligence; and (iii) that directly prohibits or prevents such Party from performing its obligations under this Agreement. Under no circumstances shall Force Majeure include (w) any occurrence or event that merely increases the costs or causes an economic hardship to a Party, (x) any occurrence or event that was caused by or contributed to by the Party claiming the Force Majeure, (y) Seller's ability to sell the Products at a price greater than that set out in this Agreement, or (z) Buyer's ability to procure the Products at a price lower than that set out in this Agreement. In addition, a delay or inability to perform attributable to a Party's lack of preparation, a Party's failure to timely obtain and maintain all necessary Permits (excepting the Regulatory Approval), a failure to satisfy contractual conditions or commitments, or lack of or deficiency in funding or other resources shall each not constitute a Force Majeure.

(b) If either Party is unable, wholly or in part, by Force Majeure to perform obligations under this Agreement, such performance shall be excused and suspended so long as the circumstances that give rise to such inability exist, but for no longer period. The Party whose performance is affected shall give prompt notice thereof; such notice may be given orally or in writing but, if given orally, it shall be promptly confirmed in writing, providing details regarding the nature, extent and expected duration of the Force Majeure, its anticipated effect on the ability of such Party to perform obligations under this Agreement, and the estimated duration of any interruption in service or other adverse effects resulting from such Force Majeure, and shall be updated or supplemented to keep the other Party advised of the effect and remedial measures

being undertaken to overcome the Force Majeure. Such inability shall be promptly corrected to the extent it may be corrected through the exercise of due diligence. The Party whose performance is affected shall also give prompt notice of the termination of the Force Majeure and shall resume performance of its obligations under this Agreement upon such termination. Neither party shall be liable for any losses or damages arising out of a suspension of performance that occurs because of Force Majeure.

(c) Notwithstanding the foregoing, if the Force Majeure prevents full or partial performance under this Agreement for a period of twelve (12) months or more, the Party whose performance is not prevented by Force Majeure shall have the right to terminate this Agreement ~~upon~~without further recourse to either Party if the Force Majeure continues for more than sixty (60) days after such Party delivers written notice to the other Party ~~and without further recourse.~~(delivered not sooner than ten (10) months after the commencement of the Force Majeure). Upon such termination, Buyer shall promptly return to Seller any undrawn Operating Period Security provided by Seller pursuant to Section 6.2 herein.

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

11. DISPUTE RESOLUTION

In the event of any dispute, controversy or claim between the Parties arising out of or relating to this Agreement (collectively, a **"Dispute"**), the Parties shall attempt in the first instance to resolve such Dispute through consultations between the Parties. If such consultations do not result in a resolution of the Dispute within fifteen (15) days after notice of the Dispute has been delivered to either Party, then such Dispute shall be referred to the senior management of the Parties for resolution. If the Dispute has not been resolved within fifteen (15) days after such referral to the senior management of the Parties, then the Parties may seek to resolve such Dispute in the courts of the State of Rhode Island. The Parties agree to the exclusive jurisdiction of the state and federal courts located in the State of Rhode Island for any legal proceedings that may be brought by a Party arising out of or in connection with this Agreement. EACH PARTY HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY DISPUTE.

12. CONFIDENTIALITY

Buyer and Seller each agrees not to disclose to any Person and to keep confidential, and to cause and instruct its Affiliates, officers, directors, employees, partners and representatives not to disclose to any Person and to keep confidential, any non-public information relating to the

terms and provisions of this Agreement, any financial statements delivered pursuant to Section 16.2, any information relating to the Products to be supplied by Seller hereunder, and such other non-public information that is designated as "Confidential." Notwithstanding the foregoing, any such information may be disclosed:

(a) to the extent Buyer determines it is appropriate in connection with efforts to obtain or maintain the Regulatory Approval or to seek rate recovery for amounts expended by Buyer under this Agreement;

(b) as required by applicable laws, regulations, rules or orders or by any subpoena or similar legal process of any Governmental Entity so long as the receiving Party gives the non-disclosing Party written notice at least three (3) Business Days prior to such disclosure, if practicable;

(c) to the Affiliates of either Party and to the consultants, attorneys, auditors, financial advisors, lenders or potential lenders, investors or potential investors and their advisors of either Party or their Affiliates, but solely to the extent they have a need to know that information;

(d) in order to comply with any rule or regulation of ISO-NE, any stock exchange or similar Person or for financial disclosure purposes;

(e) to the extent the non-disclosing Party shall have consented in writing prior to any such disclosure; and

(f) to the extent that the information was previously made publicly available other than as a result of a breach of this Article 12;

provided, however, in each case, that the Party seeking such disclosure shall, to the extent practicable, use commercially reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce or seek relief in connection with this Article 12.

13. INDEMNIFICATION

Except as set forth in Sections 3.4(k) and 3.5(b) and in Exhibit D, neither Party shall indemnify, defend or hold harmless the other Party or its partners, shareholders, directors, officers, employees or agents from and against any liabilities, damages, losses, penalties, claims, demands, suits or proceedings claimed by, due to or instituted by any third party as a result of either Party's execution, delivery or performance of this Agreement.

14. ASSIGNMENT AND CHANGE OF CONTROL

14.1 Prohibition on Assignments. Except as permitted under this Article 14, this Agreement may not be assigned by either Party without the prior written consent of the other

Party, which consent may not be unreasonably withheld, conditioned or delayed. The Party requesting the other Party's consent to an assignment of this Agreement will reimburse such other Party for all costs and expenses such other Party incurs in connection with that consent, without regard to whether such consent is provided. When assignable, this Agreement shall be binding upon, shall inure to the benefit of, and may be performed by, the successors and assignees of the Parties, except that no assignment, pledge or other transfer of this Agreement by either Party shall operate to release the assignor, pledgor, or transferor from any of its obligations under this Agreement unless the other Party (or its successors or assigns) consents in writing to the assignment, pledge or other transfer and expressly releases the assignor, pledgor, or transferor from its obligations thereunder.

14.2 Assignor Remains Liable. Unless specifically agreed in writing, any assignment by a Party as contemplated by this Section 14 shall not be construed to relieve the assignor of any of its obligations under this Agreement, nor shall any such assignment be deemed to modify or otherwise affect any of the rights of the non-assigning Party hereunder.

14.3 Change in Control over Seller. Buyer's consent shall be required for any ~~direct or indirect transfer of more than fifty percent (50%) of the voting or economic interests in Seller or for any change in the Person exercising day-to-day management of~~change in Control over Seller, other than with respect to Northeast Wind Partners II, LLC obtaining Control over Seller, which consent shall not be unreasonably withheld, conditioned or delayed and shall be provided if Buyer reasonably determines that such ~~transfer or~~ change in Control does not have a material adverse effect on Seller's creditworthiness or Seller's ability to perform its obligations under this Agreement.

14.4 Permitted Assignment by Buyer. Buyer shall have the right to assign this Agreement without consent of Seller (a) in connection with (i) any merger or consolidation of Buyer with or into another Person; (ii) any exchange of all of the common stock or other equity interests of Buyer or Buyer's parent for cash, securities or other property; or (iii) any acquisition, reorganization, or other similar corporate transaction involving all or substantially all of the common stock or other equity interests in, or assets of, Buyer; provided that (A) the proposed assignee agrees in writing to assume all of Buyer's obligations under this Agreement and (B) the proposed assignee delivers to Seller a legal opinion as to due power and authority, due authorization, enforceability and regulatory approvals, or (b) to a Person whose credit rating as established by S&P or Moody's is equal or better than BBB- from S&P or Baa3 from Moody's after giving effect to the proposed assignment of this Agreement; provided that (i) the proposed assignee agrees in writing to assume all of Buyer's obligations under this Agreement and (ii) the proposed assignee delivers to Seller a legal opinion as to due power and authority, due authorization, enforceability and regulatory approvals.

14.5 Permitted Assignment by Seller. Seller may pledge, encumber or assign the Facility, this Agreement or the accounts, revenues or proceeds under the Agreement to any Lender as security for the financing of the Facility. Buyer shall execute a consent to assignment that is in form and substance reasonably satisfactory to Seller and such Lender that incorporates

terms and conditions customary for a transaction of this type (including the provisions included in Section 9.3(d)); provided, however, that Buyer shall not be obligated to enter into any consent which shall affect Buyer's rights under this Agreement. Buyer shall not unreasonably withhold, condition or delay providing its consent to an assignment to a Lender. Seller may assign this Agreement to an Affiliate of Seller, upon Buyer's consent, which shall not be unreasonably withheld or delayed; upon such consent Seller shall be novated from this Agreement and such Affiliate shall assume all obligations under the remaining Term of this Agreement; provided that Seller may assign this Agreement to a wholly-owned Affiliate of Seller in connection with the consummation of a lease of the Facility to such Affiliate without Buyer's consent, so long as (i) Seller also assigns the Interconnection Agreement to such Affiliate and (ii) Seller remains liable for all obligations under this Agreement notwithstanding such assignment.

14.6 Prohibited Assignments. Any purported assignment of this Agreement not in compliance with the provisions of this Article 14 shall be null and void.

15. TITLE; RISK OF LOSS

Title to and risk of loss related to the Energy shall transfer from Seller to Buyer at the Delivery Point. Title and risk of loss related to the RECs shall transfer to Buyer when the same are credited to Buyer's GIS account(s) or the GIS account(s) designated by Buyer to Seller in writing. Seller shall retain risk of loss with respect to the Capacity, consistent with Section 4.8. Seller warrants that it shall deliver to Buyer the Products free and clear of all liens, claims, charges or encumbrances therein or thereto by any Person.

16. AUDIT

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

16.2 Consolidation of Financial Information. ~~. The Parties agree that accounting principles generally accepted in the~~ Buyer believes that United States ~~and International~~Generally Accepted Accounting Principles (GAAP) as published by the Financial Accounting Standards ~~may~~Board (FASB) may be interpreted or revised in the future to require Buyer to ~~evaluate whether Buyer must~~ consolidate Seller's financial information on Buyer's financial statements. ~~Buyer shall require access to financial records and personnel to determine if consolidated financial reporting is required. If~~ If at any time during the term of this Agreement Buyer reasonably determines ~~at any time~~ that such consolidation is required, Buyer shall ~~require~~

~~the following from Seller~~ provide reasonable advance written notice to Seller and thereafter require that Seller provide Buyer, at Buyer's sole expense, with Seller's audited annual and unaudited quarterly (except year-end) financial statements. Seller shall thereafter provide Buyer with audited annual financial statements and notes to financial statements within ~~twenty-five~~ninety (~~25~~90) days after the end of the calendar year, and Seller shall thereafter provide unaudited quarterly financial statements within forty-five (45) days of every calendar quarter ~~for the Term of this Agreement:~~(except year-end).

~~(a) complete financial statements and notes to financial statements for such quarter;~~

~~(b) financial schedules underlying such financial statements; and~~

~~(c) access to records and personnel to enable Buyer's independent auditor to conduct financial audits (in accordance with generally accepted auditing standards) and internal control audits (in accordance with Section 404 of the Sarbanes-Oxley Act of 2002). Any information provided to Buyer under this Section 16.2 shall be treated as confidential except that such information may be disclosed for financial statement purposes.~~

17. NOTICES

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

If to Buyer: Corinne Abrams
Manager, Environmental Transactions
Energy Procurement
National Grid
100 E. Old Country Road
Hicksville, NY 11801-4218
Fax: (516) 545-3130
Email: corinne.abrams@~~us.ngrid~~nationalgrid.com

With a copy to: Jennifer Brookes K. SkulleyHutchinson, Esq.
Senior Counsel
National Grid
4280 Sylvan RoadMelrose Street
WalthamProvidence, MARI 02451907-1120
Fax: (78401) 90784-57014321
Email: brooke.skulley@us.ngrid.com
Jennifer.Hutchinson@nationalgrid.com

If to Seller: Jonathan W. ChadbourneChamplain Wind, LLC
c/o First Wind
34 Tower Road
Mars Hill, ME 04758
Fax: 207-425-7930
Email: dtheriault@firstwind.com
Attention: Senior Asset Manager
Vice President, Risk Management

With a copy to: Black Bear Development HoldingsChamplain Wind, LLC
c/o ArcLight Capital PartnersFirst Wind Energy, LLC
200 Clarendon179 Lincoln Street, Suite 5500th Floor
Boston, MA 0211771.
Phone: (617) 531-6397
Fax: (617) 567-4698 617.960.2889.
Email: general.counsel@firstwind.com
With a copy to: Christine Miller
AssociateAttention: General Counsel
Black Bear Development Holdings, LLC
c/o ArcLight Capital Partners, LLC
200 Clarendon Street, 55th Floor
Boston, MA 02117
Phone: (617) 531-6338
Fax: (617) 867-4698

18. WAIVER AND MODIFICATION

This Agreement may be amended and its provisions and the effects thereof waived only by a writing executed by the Parties, and no subsequent conduct of any Party or course of dealings between the Parties shall effect or be deemed to effect any such amendment or waiver. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. The failure of either Party to enforce any provision of this Agreement shall not be construed as a waiver of or acquiescence in or to such provision. Buyer shall determine in its sole discretion whether any amendment or waiver of the provisions of this Agreement shall require approval of or filing with the PUC or another

Governmental Entity, and if Buyer determines that such approval or filing is required for any amendment or waiver of the provisions of this Agreement, then such amendment or waiver shall not become effective unless and until such approval is obtained or such filing is made.

19. INTERPRETATION

19.1 Choice of Law. Interpretation and performance of this Agreement shall be in accordance with, and shall be controlled by, the laws of the State of Rhode Island (without regard to its principles of conflicts of law).

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

19.3 Forward Contract; Commodities Exchange Act. The Parties acknowledge and agree that this Agreement and the transactions contemplated hereunder are a "forward contract" within the meaning of~~-~~ the United States Bankruptcy Code. Each Party represents and warrants, solely as to itself, that it is (i) a "forward merchant" within the meaning of the United States Bankruptcy Code and (ii) an "eligible commercial entity" and an "eligible contract participant" within the meaning of the United States Commodities Exchange Act.

19.4 Standard of Review. The Parties acknowledge and agree that the standard of review for any avoidance, breach, rejection, termination or other cessation of performance of or changes to any portion of this integrated, non-severable Agreement (as described in Section 22) over which FERC has jurisdiction, whether proposed by Seller, by Buyer, by a non-party~~ of~~, or by FERC acting *sua sponte* shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Serv. Co., 350 U.S. 332 (1956) and Federal Power Comm'n v. Sierra Pac. Power Co., 350 U.S. 348 (1956) and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish, 554 U.S. 527, 545 (2008), as may be modified by subsequent cases. Each Party agrees that if it seeks to amend any applicable power sales tariff during the Term, such amendment shall not in any way materially and adversely affect this Agreement without the prior written consent of the other Party. Each Party further agrees that it shall not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.

19.5 Change in ISO-NE Rules and Practices. This Agreement is subject to the ISO-NE Rules and ISO-NE Practices. If, during the Term of this Agreement, any ISO-NE Rule or ISO-NE Practice is terminated, modified or amended or is otherwise no longer applicable, resulting in a material alteration of a material right or obligation of a Party hereunder, the Parties agree to negotiate in good faith in an attempt to amend or clarify this Agreement to embody the Parties' original intent regarding their respective rights and obligations under this Agreement, provided that neither Party shall have any obligation to agree to any particular amendment or clarification of this Agreement. The intent of the Parties is that any such amendment or clarification reflect,

as closely as possible, the intent, substance and effect of the ISO-NE Rule or ISO-NE Practice being replaced, modified, amended or made inapplicable as such ISO-NE Rule or ISO-NE Practice was in effect prior to such termination, modification, amendment, or inapplicability, provided that such amendment or clarification shall not in any event alter (i) the purchase and sale obligations of the Parties pursuant to this Agreement, or (ii) the Bundled Price. Notwithstanding the foregoing, in the event of a change in the ISO-NE Rules or ISO-NE Practices described in Section 4.1(d), the provisions of Section 4.1(d), and not of this Section 19.5, shall apply to such change.

19.6 Joint Preparation. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

20. COUNTERPARTS; FACSIMILE SIGNATURES

Any number of counterparts of this Agreement 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 Agreement shall have the same force and effect as original signatures.

21. NO DUTY TO THIRD PARTIES

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

22. SEVERABILITY

If any term or provision of this Agreement 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 Agreement 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.

23. INDEPENDENT CONTRACTOR

Nothing in this Agreement shall be construed as creating any relationship between Buyer and Seller other than that of Seller as independent contractor for the sale of Products, and Buyer as principal and purchaser of the same. Neither Party shall be deemed to be the agent of the other Party for any purpose by reason of this Agreement, and no partnership or joint venture or fiduciary relationship between the Parties is intended to be created hereby.

24. ENTIRE AGREEMENT

This Agreement shall constitute the entire agreement and understanding between the Parties hereto and shall supersede all prior agreements and communications.

[Signature page follows]

IN WITNESS WHEREOF, each of Buyer and Seller has caused this Agreement to be duly executed on its behalf as of the date first above written.

THE NARRAGANSETT ELECTRIC COMPANY, D/B/A NATIONAL GRID

By: _____
Name:
Title:

~~**BLACK BEAR DEVELOPMENT HOLDINGS**~~**CHAMPLAIN WIND, LLC**

By: _____
Name:
Title:

EXHIBIT A

DESCRIPTION OF FACILITY

Facility: ~~Orono B Hydroelectric~~Bowers Wind Project

Technology: ~~Hydroelectric, Run of River~~Wind

Site Location: ~~19 Broadway, Orono~~Carroll Plantation and Kossuth Township, Maine

~~**Expected Project Capacity:** ISO-NE Claimed Capability of 3.428 MW (Summer); 3.623 MW (Winter)~~

Nameplate Capacity: ~~3.75~~48 MW ~~at 0.90 PF (three units rated at~~up to 49.5 MW(16 Siemens turbines at 3 MW each or 1~~.2~~5 Vestas turbines as 3.3 MW each~~-~~)

Expected Maximum Output: 49.~~1675~~ MWh per hour

Interconnection Point: ~~BHE Orono~~ISO-NE Pool Transmission Facilities at Keene Road Substation

Minimum/Maximum Operating Criteria: Turbine Cut-in Minimum Wind Speed and Turbine Cut-out Maximum Wind Speed to be designated by Seller in writing upon final turbine selection.

~~For all purposes of this Agreement, "Facility" shall exclude the existing 2.78 mega-watt (nameplate) electric generation facility referred to as the Orono hydroelectric generating facility or Orono "A" hydroelectric generating facility located at 19 Broadway, Orono, Maine.~~

EXHIBIT B

SELLER'S PERMITS AND REAL ESTATE RIGHTS

Part 1 – Permits

a. Construction Permits

Federal Permits	**Regulatory Authority(ies)**
~~Qualifying Facility Registration~~Determinations of No Hazard	Federal ~~Energy Regulatory Commission~~Aviation Administration
~~Hydroelectric License Amendment – pending~~**State Permits**	~~Federal Energy~~ **Regulatory ~~Commission~~Authority(ies)**
~~**State**~~Site Law/NRPA/401 Water Quality Certificate/Construction General Permit~~**s**~~	~~**Regulatory Authority(ies)**~~Maine DEP
~~Water Quality Certification –~~ Minor ~~a~~Amendment ~~received 8-18-11~~for Interconnect	Maine ~~Department of Environmental Protection~~DEP
Zoning Consistency Determination	Maine LUPC
Utility Line Permit	Maine DOT
Road Opening Permit	Maine DOT
Local/County Permits	**Regulatory Authority(ies)**
~~Not applicable~~None	

b. Operating Permits

Federal Permits	**Regulatory Authority(ies)**
~~Qualifying Facility Registration~~Determinations of No Hazard	Federal ~~Energy Regulatory Commission~~Aviation Administration
~~Hydroelectric License Amendment – pending~~	~~Federal Energy Regulatory Commission~~
State Permits	**Regulatory Authority(ies)**
~~Water Quality Certification – amendment received 8-18-11~~Site Law/NRPA	Maine ~~Department of Environmental Protection~~DEP
Zoning Consistency Determination	Maine LUPC
Local/County Permits	**Regulatory Authority(ies)**
~~Not applicable~~N/A	

Part 2 – Real Estate and Site Control Rights

Champlain Wind, LLC – Bowers Mountain Project –Title, Right, or Interest					
Township / County	**Tax Map & Lot**	**Current Owner**	**Champlain Wind, LLC's Interest**	**Parcel Size***	**Title Information for Champlain Wind, LLC**
Carroll Plantation, Penobscot County	Carr. 1-1	Bowers Mountain, LLC	Leasehold including appurtenant rights over Moose Road as located on Carr. 3-22	5552 acres	Memorandum of Lease at Book 12152, Page 38, as amended by Second Amendment at Book 12388, Page 144 (WCRD Book 3710, Page 183)
Kossuth Township, Washington County	Koss. 1-9.1 and 1-9.2; 1-4	Baskahegan Company	Leasehold	810 acres 114 acres	Memorandum of Lease at Book 3666, Page 49
Kossuth Township, Washington County Carroll Plantation Penobscot County	Koss. 1-7; Koss. 1-23; p/o Carr. 3-22	Lakeville Shores, Inc.	Leasehold	749 acres 42 acres	Memorandum of Lease at Book 3659, Page 188
Carroll Plantation, Penobscot County	Carr. 5-18.4	Donald and Deborah Banks	Purchase and Sale Agreement for Fee	40 acres	Transaction closed June 14, 2013. Recording information to be provided when available from recording office.
Carroll Plantation, Penobscot County	Carr. 5-17	Champlain Wind, LLC	Fee	82 acres	Deed at Book 12334, Page 96
Carroll Plantation, Penobscot County	Carr. 8-2	Daniel J. Lane	Purchase and Sale Agreement for Easement, Option for Temporary Laydown Area	150'wide corridor	Option to purchase. Memorandum at Book 12198, Page 310 Memorandum of Option for Temporary Laydown Area at Book 12159, Page 322
Carroll Plantation, Penobscot County	Carr. 8-5	Joan W. Lukacik	Purchase and Sale Agreement for Easement	150' wide corridor	Option to purchase. Memorandum at Book 12352, Page 241
Carroll Plantation, Penobscot County	Carr. 8-13	King Brothers Land Enterprise, Inc.	Purchase and Sale Agreement for Fee	200' wide corridor westerly portion	Option to purchase. Memorandum at Book 12316, Page 322
Carroll Plantation, Penobscot County	Carr. 1-3.1	Hanington Bros., Inc.	Purchase and Sale Agreement for Fee	~600 acres easterly portion	Option to purchase. Memorandum at Book 12321, Page 52, as amended by Amended and Restated Memorandum at Book 12921, Page 183
Carroll Plantation, Penobscot County	p/o Carr. 1-3.2	Champlain Wind, LLC	Fee	~148 acres easterly portion	Deed at Book 12588, Page 38
Carroll Plantation, Penobscot County	p/o Carr. 11-9	Champlain Wind, LLC	Fee	150' wide corridor westerly portion	Deed at Book 12552, Page 135
Carroll Plantation, Penobscot County	Carr. 11-9.1	Herbert C. Haynes, Jr.	Purchase and Sale Agreement for Fee or Easement, Option	300'x500' 150' wide corridor westerly portion	Option to purchase. Memorandum at Book 12316, Page 321, as

Champlain Wind, LLC – Bowers Mountain Project –Title, Right, or Interest					
Township / County	**Tax Map & Lot**	**Current Owner**	**Champlain Wind, LLC's Interest**	**Parcel Size***	**Title Information for Champlain Wind, LLC**
			for Temporary Laydown Area		amended by Supplemental Memorandum at Book 12443, Page 49 Memorandum of Option at Book 12377, Page 94
Carroll Plantation, Penobscot County		International Paper and/or assigns	Mineral release		Finalizing agreement to release mineral rights.
* Parcel size based on acreage in valuation spreadsheet from Carroll Plantation and from Maine Revenue Service for Kossuth Township.					

EXHIBIT C

FORM OF PROGRESS REPORT

For the Quarter Ending:_____

Status of construction and significant construction milestones achieved during the quarter:

Status of permitting and significant Permits obtained during the quarter:

Status of Financing for Facility:

Events during quarter expected to results in delays in Commercial Operation Date:

Critical Milestones not yet achieved and projected date for achievement:

Current projection for Commercial Operation Date:

EXHIBIT D

INSURANCE

1. Prior to the commencement of construction of the Facility, through final expiration of the Term or longer where specified below, Seller shall provide and maintain, at its own expense, insurance policies, intended to be primary (with no right of contribution by any other coverage available to National Grid USA its direct and indirect parents, subsidiaries and affiliates (the "Insured Entities")), covering all Operations, Work and Services to be performed by Seller under or in connection with this Agreement, issued by reputable insurance companies with an A.M. Best Rating of at least B+, which meet or exceed the requirements listed herein:

(a) Workers' Compensation and Employers Liability Insurance as required by the State in which the Work activities under this Agreement will be performed. If applicable, coverage shall include the U.S. Longshoreman's and Harbor Workers Compensation Act, and the Jones Act. The employer's liability limit shall be $500,000 each per accident, per person disease, and disease by policy limit.

(b) Commercial General Liability (CGL) Insurance, covering all operations to be performed by or on behalf of Seller under or in connection with this Agreement, with minimum combined single limits for bodily injury and property damage of $1,000,000 per occurrence and $2,000,000 in the aggregate.

- Coverage shall include: contractual liability (with this Agreement, and any associated written agreements, being included under the definition of "~~I~~insured ~~C~~contract" thereunder), products/completed operations, and if applicable, explosion, collapse and underground (XC&U). Nothing herein shall obligate the Seller to obtain insurance expanding the definition or coverage for an "insured contract" beyond that provided in the forms customarily in use by the insurer for energy generation facilities.
- If the products-completed operations coverage is written on a claims-made basis, the retroactive date shall not precede the effective date of this Agreement and coverage shall be maintained continuously for the duration of this Agreement and for at least two years thereafter.
- Additional Insured as required in Section 3 below,
- The policy shall contain a separation of insureds condition.
- ~~In the event Seller is a governmental entity such as a town, county, municipality etc., and such entity's liability to a third party is limited by law, regulation, code, ordinance, by-laws or statute (collectively the "Law"), this liability insurance shall contain an endorsement that waives such Law for insurance purposes only and strictly prohibits the insurance company from using such Law as a defense in either the adjustment of any claim, or in the defense of any suit directly asserted by an Insured Entity.~~

(c) Automobile Liability, covering all owned, non-owned and hired vehicles used in connection with all operations, work or services to be performed by or on behalf of Seller under or in

connection with this Agreement with a minimum combined single limit of liability for bodily injury and property damage of $1,000,000 per accident. Additional Insured as required in Section 3 below.

(d) Umbrella Liability or Excess Liability coverage, with a minimum per occurrence limit of $4,000,000. This coverage shall run concurrent to the CGL required in Section 1(b) above, shall apply excess of the required automobile, CGL and employer's liability coverage required in this Insurance Exhibit, and shall provide additional insured status as outlined in Section 3 below.

(e) Watercraft Liability, if used in connection with this Agreement, with the same minimum limits of liability as outlined in requirement 1(b) above, and naming the Insured Entities, including their officers and employees, as additional insured as outlined in Section 3.

(f) Pollution Liability (PL): covering any sudden and accidental pollution liability which may arise out of, under, or in connection with the performance of this Agreement, by or on behalf of Seller, or that arise out of Seller's use of any owned, non-owned or hired vehicles, with a combined single limit of liability for bodily injury and property damage of $1,000,000 per occurrence and in the aggregate.

This requirement may be satisfied by providing either this PL policy, which would provide additional insured status as outlined in Section 3 below; **OR** by providing coverage for sudden and accidental pollution liability under the CGL and commercial automobile insurance policies required above - limited solely by the Insurance Services Organization (ISO) standard pollution exclusion, or its equivalent.

In the event Seller is unable to secure and/or maintain any or all of this sudden and accidental pollution liability coverage, Seller agrees to indemnify and hold the Insured Entities harmless against any and all liability resulting from any coverage deficiency that is out of compliance with this insurance requirement, subject to the limits stated above.

(g) Risk of Loss: Seller shall be responsible for all risk of loss to its equipment and materials, and any other equipment and materials owned by its employees or by other third parties that may be in their care, custody and control. If this coverage is excluded from the Commercial General Liability policy, then coverage will be acceptable under Seller's property policy. In the event that any equipment or materials (Goods) are supplied by the Insured Entities, an Insured Entities' representative will provide the insurable value of the Goods to Seller in writing, both cumulatively and on a maximum per item basis. Seller will provide replacement cost insurance for these Goods under a blanket builder's risk policy, an equipment floater, or other equivalent coverage, while such Goods are under the care, custody and control of Seller. Such insurance shall cover all Goods outlined in the Agreement or as noted on subsequent contract amendments. The coverage limit shall apply on either a per location basis or a maximum per item basis, and shall name the Insured Entities as Additional Insureds with respect to their insurable interest as required in Section 3 below.

(h) Limits: Any combination of Commercial General Liability, Automobile Liability and Umbrella Liability policy limits can be used to satisfy the limit requirements in items 1 b, c & d above.

2. Self-Insurance: Proof of qualification as a qualified self-insurer, if approved in advance in writing by an Insured Entities representative, will be acceptable in lieu of securing and maintaining one or more of the coverages required in this Exhibit D. Such acceptance shall become a part of this Exhibit D by reference herein.

For Workers' Compensation, such evidence shall consist of a copy of a current self-insured certificate for the State in which the work will be performed.

In order for self- insurance to be accepted, Seller's unsecured debt must have a financial rating of at least investment grade. For purposes of this Exhibit D, "Investment Grade" means (i) if Seller has a credit rating from both S&P and Moody's then, a credit rating from S&P equal to or better than "BBB-" and a credit rating from Moody's equal to or better than "Baa3"; (ii) if Seller has a credit rating from only one of S&P and Moody's, then a Credit Rating from S&P equal to or better than "BBB-" or a credit rating from Moody's equal to or better than "Baa3; or (iii) if the Parties have mutually agreed in writing on an additional or alternative rating agency, then the equivalent credit rating assigned to an entity by such additional or alternative rating agency that is equal to or better than "BBB-" from S&P and/or "Baa3" from Moody's.

3. Additional Insured: The intent of the Additional Insured requirement under the CGL, Auto, PL, Umbrella/Excess and Watercraft policies is to include the Insured Entities, their directors, officers and employees, as Additional Insured's for liabilities associated with, or arising out of, all operations, work or services to be performed by or on behalf of Seller, including ongoing and completed operations, under this Agreement. The following language should be used when referencing the additional insured status: **National Grid USA, its subsidiaries and affiliates**.

To the extent Seller's insurance coverage does not provide the full Additional Insured coverage as required herein, Seller agrees to indemnify and hold harmless the Insured Entities against any and all liability resulting from any deficiency in Seller's insurance coverage that may be out of compliance with this insurance requirement.

4. Waiver of Recovery: Seller and its insurance carrier(s) shall waive all rights of recovery against the Insured Entities and their directors, officers and employees, for any loss or damage covered under those policies referenced in this insurance provision, or for any required coverage that may be self-insured by Seller. To the extent Seller's insurance carriers will not waive their right of subrogation against the Insured Entities, Seller agrees to indemnify the Insured Entities for any subrogation activities pursued against them by Seller's insurance carriers. However, this waiver shall not extend to the gross negligence or willful misconduct of the Insured Entities or their employees, sub-contractors or agents.

5. Contractors: In the event Seller uses ~~C~~contractors in connection with this Agreement ("Contractors"), it is expressly agreed that Seller shall have the sole responsibility to make certain that all Contractors are in compliance with these insurance requirements and remains in compliance throughout the course of this Agreement, and thereafter as required. Seller shall remain liable for the performance of the Contractor, and such sub-contract relationship shall not relieve Seller of its obligations under this agreement.

Unless agreed to in writing the by the Risk Management Department of National Grid USA Service Company, any deductible or self- insured retentions maintained by any Contractor, which shall be for the account of the Contractor, and shall not exceed $1,000,000. If requested by National Grid, Seller shall provide National Grid with an insurance certificate from its Contractor evidencing this coverage.

In the event any Contractor is unable to maintain all of the same insurance coverage as required in this Exhibit D, Seller shall notify National Grid and the Parties shall reasonably agree to replacement insurance given the scope and nature of the works of Contractor. Until such insurance is in place, such Contractor shall not perform any work in connection with this Agreement.

6. Insurance Certification: Upon execution of this Agreement, Seller shall promptly provide National Grid with (a) Certificate(s) of Insurance for all coverage's required herein at the following address: National Grid Attn: Risk Management Bldg. A-4 300 Erie Boulevard West Syracuse, NY 13202 Such certificates, and any renewals or extensions thereof, shall outline the amount of deductibles or self-insured retentions which shall be for the account of Seller. Such deductibles or self-insured retentions shall not exceed $1,000,000 unless agreed to in writing by the Risk Management Department of National Grid USA Service Company, whose approval shall not be unreasonably withheld, delayed or conditioned.

Seller shall endeavor to provide National Grid with at least 30 days prior written (10 days for non-payment of premium) notice of any cancellation or diminution of the insurance coverage required in this Exhibit D.

7. Insurance Obligation: If any insurance coverage is not secured, maintained or is cancelled and Seller fails to timely procure other insurance as specified, National Grid has the right, but not the obligation, to procure such insurance and to invoice Seller for said coverage.

8. Incident Reports: Seller shall furnish the Risk Management Department of National Grid USA Service Company with copies of any non-privileged accident or incident report(s) (collectively, the "Documents") sent to Seller's insurance carriers covering accidents, incidents or events occurring as a result of the performance of all operations, work and services performed by or on behalf of Seller under or in connection with this Agreement, excluding any accidents or incidents occurring on Seller property. If any of the National Grid Companies are named in a lawsuit involving the operations and activities of Seller associated with this Agreement, Seller shall promptly provide copies of all insurance policies relevant to this accident or incident if requested by National Grid. However, in the event such Documents are deemed by the Seller in its sole discretion to be privileged ~~and~~or confidential ~~(Attorney Client Privilege)~~, Seller shall provide the relevant facts of the accident or incident in a format that does not violate such ~~Attorney Client P~~privilege ~~-~~or confidentiality. Specifically, and without limitation, nothing herein shall obligate the Seller to provide confidential health or other personal information concerning any individual.

9. Other Coverage: These requirements are in addition to any which may be required elsewhere in this Agreement. In addition, Seller shall comply with any governmental site specific insurance requirements even if not stated herein.

10. Coverage Representation: Seller represents that it has the required policy limits available, and shall notify National Grid USA Service Company's Risk Management Department in writing when the coverage's required in this Exhibit D have been reduced as a result of claims payments, expenses, or both. However, this obligation does not apply to any claims that would be handled solely with in Seller's deductible or self-insured retention.

11. Responsibility: The complete or partial failure of Seller's insurance carrier to fully protect and indemnify the Insured Entities per the terms of the Agreement, including without limitation, this exhibit, or the inadequacy of the insurance shall not in any way lessen or affect the obligations of Seller to the Insured Entities.

12. Coverage Limitation: Nothing contained in this Exhibit D is to be construed as limiting the extent of Seller's responsibility for payment of damages resulting from all operations, work and services to be performed by or on behalf of Seller under or in connection with this Agreement, or limiting,

diminishing, or waiving Seller's obligation to indemnify, defend, and save harmless the Insured Entities in accordance with this Agreement.

EXHIBIT E

PRODUCTS AND PRICING

1. Payment. Buyer shall, in accordance with the terms of the Agreement and this Exhibit E, with respect to any month after the Commercial Operation Date, pay to Seller, in immediately available funds, for each MWh of Products Delivered by Seller during such month, the Bundled Price per MWh set forth on Appendix X hereof ~~with respect to the applicable calendar year in which such month occurs~~ (as adjusted pursuant to the applicable provisions of this Exhibit E).

2. Allocation of MWh Price. The Bundled Price per MWh for each billing period shall be allocated between Energy and RECs as follows:

~~RECs = The RECs futures settlement price as published by the Chicago Climate Futures Exchange for the applicable billing period (the "CCFE Index Price"). In the event that the CCFE Index Price is no longer published, the Parties shall in good faith undertake commercially reasonable efforts to agree on a substitute index that reflects the market value of the RECs. Should such a substitute index not be available or if the Parties are unable to agree upon such a substitute index, the RECs will be valued at the "Alternative Compliance Payment Rate" for the Renewable Energy Standard published by the PUC for the applicable billing period.~~

Energy = The $/MWh price of Energy for the applicable month shall be equal to the weighted average of the LMP in that month (also on a $/MWh basis) for the Node on the Pool Transmission Facilities to which the Facility is interconnected.

~~Energy~~ RECs = The ~~$/MWh price of Energy for the applicable month shall be equal to the~~ Bundled Price per MWh (including any adjustment under Section 3) less the ~~RECs~~Energy allocation determined under this Section 2 for the applicable billing period and the $/MWh equivalent of the adjustment for Forward Capacity Market payments as set forth in Section ~~3~~4 for that billing period~~.~~

Except as set forth in Section 4.7(e), the allocation described in this Section 2 of Exhibit E does not affect the Bundled Price payable to Seller.

3. Adjustment to Bundled Price for Zonal Price Separation. If Energy is Delivered in any month ~~through Internal Bilateral Transactions~~ and settled at the Rhode Island Load Zone in accordance with ~~Section 4.2(a) of this Agreement or if the ISO-NE Rules or ISO-NE Practices with respect to the delivery or Energy in any month are revised as specified in~~ Section 4.2(a) of this Agreement, the Bundled Price per MWh paid for Products delivered in that calendar month

shall be adjusted ~~by the sum of the Zonal Price Separations for each hour in that calendar month for which such an Internal Bilateral Transaction or revision of the ISO-NE Rules or ISO-NE Practices resulted in Seller's account in the ISO-NE Settlement Market System being debited the Locational Marginal Price in the Rhode Island Load Zone~~.in accordance with Section 4.2(a).

4. Adjustment to Bundled Price for Forward Capacity Market Payments. The Bundled Price per MWh listed above, as adjusted ~~or escalated~~ pursuant to ~~Section 5.1(b) and~~ this Exhibit E, shall be reduced on a monthly basis by any payments received by or credited to Seller for Contract Capacity attributable to the Facility sold by Seller in the Forward Capacity Market in the applicable month, which reduction shall not be reduced for any penalties incurred by Seller in the Forward Capacity Market (other than Peak Energy Rents). ~~Beginning on June 1 of the fourth (4th) Contract Year, if the Facility has not qualified as a Capacity Resource with the Seasonal Claimed Capability equivalent to the Contract Capacity or received a Capacity Supply Obligation for the relevant~~If during the Term the transmission constraints north of the Congestion Point that are in existence on the Effective Date are eliminated such that the Facility is thereafter eligible to participate in the Forward Capacity Market, and if after such eligibility Seller fails to comply with the requirements of Section 4.8 of the Agreement, then for such subsequent Capacity Commitment Periods during which the Facility fails to receive payments for Contract Capacity attributable to the Facility as a result of Seller's failure to comply with Section 4.8 of the Agreement, Buyer shall calculate the reduction due under this Section 4 assuming that the Facility had qualified as a Capacity Resource with the Seasonal Claimed Capability for the Facility equivalent to the Contract Capacity and received a Capacity Supply Obligation, based on information obtained from Seller and publicly available information from ISO-NE, which calculation shall be binding, absent manifest error. Seller shall use commercially reasonable efforts to cooperate with Buyer in calculating this reduction.

APPENDIX

Appendix X: Bundled Price per MWh

Appendix X to Exhibit E

Bundled Price per MWH

The Bundled Price per MWH shall be equal to ~~"~~$~~91~~78 per MWh ~~at the Delivery Point~~, commencing on the Commercial Operation Date. ~~Subject to Section 5.1(b), the Bundled Price per MWH shall escalate by a factor of two percent (2%) on each Escalation Date.~~

EXHIBIT F

Form of Certification of Extension and New Escalation Date

Black Bear Development Holdings, LLC (**"Seller"**) delivers this certification pursuant to Section 5.1(b) of the Power Purchase Agreement dated as of February 17, 2012 (the "**Agreement**") between Seller and The Narragansett Electric Company, d/b/a National Grid (**"Buyer"**). All capitalized terms not defined herein have the meanings given to them in the Agreement.

Seller certifies as follows:

1. Either (i) the Commercial Operation Date has been extended pursuant to Section 8.3(a) of the Agreement or (ii) Seller has elected to extend the Commercial Operation Date pursuant to Section 3.1(c) or Section 10.1 of the Agreement, and the total period of such extension is [_____] days.

2. As a result of such extension and taking into account all prior extensions of the Commercial Operation Date under the Agreement, the Escalation Date from today until the earlier of the expiration of the Term or another extension pursuant to the Agreement, shall be [_____] of each year.

3. The next such Escalation Date shall be [_____].

IN WITNESS WHEREOF, the undersigned has executed and delivered this certification this [__] day of [_____].

BLACK BEAR DEVELOPMENT HOLDINGS, LLC

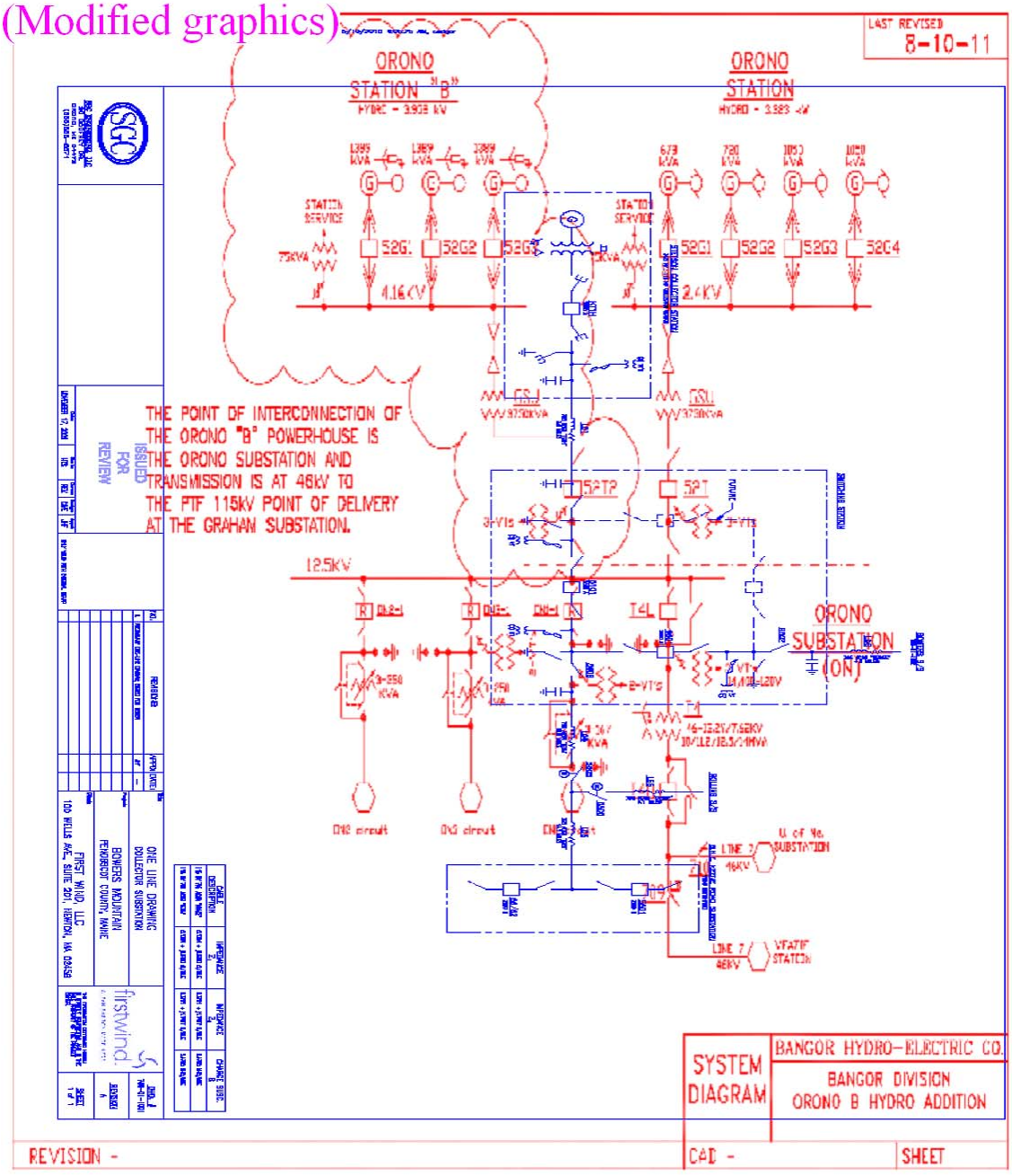
By:_____
Name:
Title:

~~EXHIBIT G~~

Diagram of Interconnection and Delivery Points

Delivery Point: Pool Transmission Facilities Node associated with the point of interconnection between the generator lead identified as Line 56 and the low side of Bangor Hydro-Electric Company's Keene Road substation.

(Modified graphics)



(Added graphics)

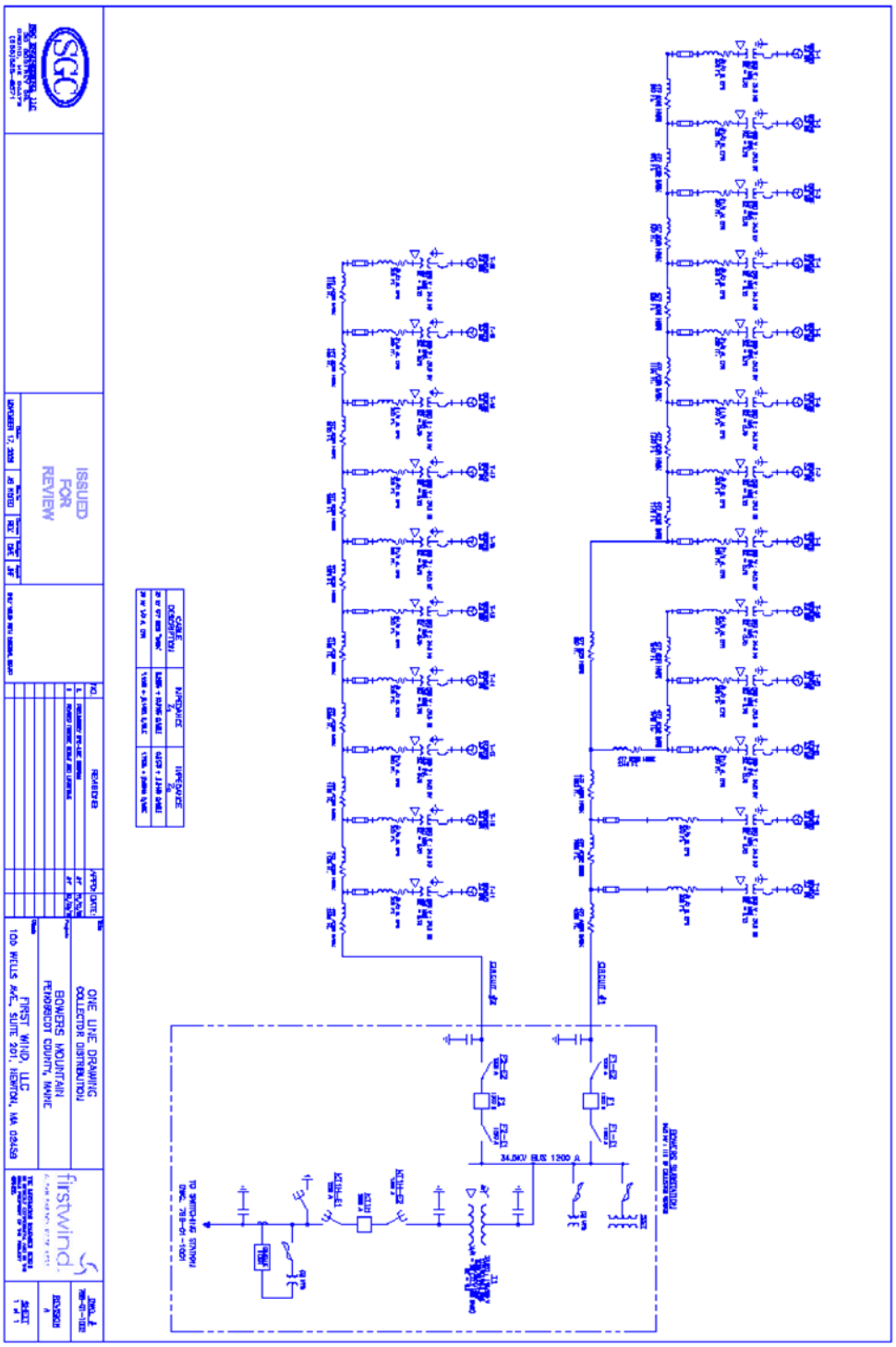


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Table Insert	21
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Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	2
Embedded Excel	0
Format Changes	0
Total Changes:	798