

1 **BEFORE THE PUBLIC UTILITIES COMMISSION**
2 **OF THE STATE OF SOUTH DAKOTA**

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MAR 15 2005

**SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION**

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4
5 _____)
6 IN THE MATTER OF THE COMPLAINT FILED)
7 BY SUPERIOR RENEWABLE ENERGY LLC)
8 ET AL. AGAINST MONTANA DAKOTA) Docket No. EL04-016
9 UTILITIES CO. REGARDING THE JAVA)
10 WIND PROJECT)
11 _____)

12
13
14
15 **REBUTTAL TESTIMONY OF JEFF FERGUSON**
16 **ON BEHALF OF SUPERIOR RENEWABLE ENERGY LLC AND JAVA LLC**

17
18 **Q. MR. FERGUSON, HAVE YOU REVIEWED THE TESTIMONY SUBMITTED**
19 **BY MONTANA-DAKOTA UTILITIES COMPANY IN THIS PROCEEDING?**

20
21 A. Yes I have. I have reviewed the testimony of Donald R. Ball, Andrea L. Stomberg, and
22 Edward B. Kee.

23 **Q. DOES THAT INCLUDE THE SUPPLEMENTAL TESTIMONY OF MR. KEE?**

24
25 A. Yes it does.

26 **MR. FERGUSON, HAVE YOU LIKEWISE REVIEWED THE TESTIMONY**
27 **SUBMITTED BY THE SDPUC STAFF EXPERT IN THIS PROCEEDING?**

28
29 A. Yes, I have. I have reviewed the testimony of Timothy Woolf.

30
31 **Q. WOULD YOU LIKE TO OFFER ANY REBUTTAL IN RESPONSE TO THIS**
32 **TESTIMONY?**

33
34 A. Yes I would.

35 **Q. WHAT EXHIBITS HAVE YOU ATTACHED TO YOUR REBUTTAL**
36 **TESTIMONY?**

37
38 A. I have included four exhibits to my rebuttal testimony. They are numbered as a
39 continuation of the exhibits submitted with my direct testimony. The exhibits are:

1 Exhibit 2—Chart Showing Recent Steel Products Pricing

2 Exhibit 3—Form of Power Purchase Agreement

3 Exhibit 4—Power Purchase Agreement Between Exelon and Mill Run Windpower

4 Exhibit 5-- Power Purchase Agreement Between Exelon and Somerset

5 **Q. REGARDING MS. STOMBERG'S TESTIMONY, WHAT REBUTTAL WOULD**
6 **YOU LIKE TO PROVIDE?**

7
8 A. First, I would like to highlight a point in Ms. Stomberg's testimony that is very helpful to
9 Superior's position in this proceeding. In her discussion about MDU's 2003 Integrated Resource
10 Plan, Ms. Stomberg says, "Montana-Dakota determined that the plan's reliance on gas fired
11 generation exposes our customers to considerable price and reliability risk associated with fuel
12 cost..." See Andrea L. Stomberg Testimony at p. 3, lines 18-21. While John Calaway and Ken
13 Slater make the point that this alleged change of direction supports Superior's reliance on the
14 Lignite Vision 21 unit as the avoided cost unit, I think it merits noting that wind power
15 inherently provides a natural hedge against the volatile fuel prices about which Ms. Stomberg
16 expresses concern. The only fuel used by the Java Wind Facility will be the wind itself.

17 **Q. WHAT ABOUT MS. STOMBERG'S TESTIMONY DO YOU THINK IS**
18 **IMPORTANT TO EMPHASIZE IN DETERMINING MDU'S AVOIDED COST?**

19
20 A. Ms. Stomberg's testimony compliments the testimony of the Commission Staff's expert
21 Witness Woolf's regarding the impact of increased environmental regulations on conventional
22 power generation. Ms. Stomberg says, "Several years ago, we began considering construction of
23 another baseload coal plant for several reasons- the expiration of the Basin contract, the ageing
24 of our current plant fleet, new environmental regulations that may be difficult to meet with our
25 older plants..." See Andrea L. Stomberg Testimony at p. 4, lines 3-7. This testimony shows how

1 much of a factor the costs of environmental regulations play in plant costs, and therefore avoided
2 costs.

3 **Q. WHAT ADDITIONAL COMMENTS WOULD LIKE TO MAKE REGARDING**
4 **MS. STOMBERG'S TESTIMONY?**

5
6 A. Ms. Stomberg admits that MDU is presently deficit long-term capacity and further
7 admits that a new coal plant is MDU's best choice for a new capacity addition. She also states,
8 "Building a new coal fired plant can take ten years or more years from initiation to completion.
9 Because of the expiration of the Basin contract, we face an interim period of deficit capacity,
10 from October 2006 to about 2010, the earliest we feel we could have a new plant on-line" See
11 Andrea L. Stomberg Testimony at p. 4, lines 20-23. From her testimony, it is difficult at best to
12 determine what if any strategy MDU is deploying.

13 **Q. WHAT DOES THIS DISCUSSION HAVE TO DO WITH THE AVOIDED COST**
14 **DETERMINATION?**

15
16 A. Ms. Stomberg's testimony demonstrates that this interim period of deficit capacity is the
17 result of less than optimal long-term planning. The Java Wind Facility should receive full
18 compensation for the long-term avoided capacity component starting from its first day of
19 operation. Any interim period capacity calculation that arises from MDU's failure to plan
20 prudently for the long term would not reflect the actual avoided costs that MDU would have
21 experienced had it planned properly and completed its base load addition before the admitted
22 capacity shortfall arose.

23 **Q. DO YOU HAVE ANY ADDITIONAL COMMENTS REGARDING MS.**
24 **STOMBERG'S TESTIMONY?**

25
26 A. Yes, I believe that the costs estimates for MDU's base load coal plants may be even more
27 understated than shown by Ken Slater's direct supplemental testimony. In the last eighteen
28 months, the materials markets are experiencing an unprecedented amount of inflation. My

1 Exhibit 2, drawn from data was taken from Metalprices.com, a licensed vendor for the LME and
2 NYMEX / COMEX, shows how steel and steel product prices have increased 250% during that
3 time period. If any cost estimates for MDU's base load coal plants were prepared more than
4 eighteen months ago, they may not have properly taken this inflation into account.

5 **Q. WHAT SHOULD THE COMMISSION DO WITH THIS INFORMATION?**

6

7 A. The Commission should require that MDU update their construction costs estimates for
8 any plant utilized in this proceeding to include the effects of raw materials price increases to
9 determine the avoided cost.

10 **Q. OK, LET US TURN NOW TO THE POWER PURCHASE AGREEMENT THAT**
11 **YOU HAVE SUBMITTED WITH YOUR TESTIMONY AS EXHIBIT 3. DID YOU**
12 **DRAW FROM ANY PARTICULAR INDUSTRY SOURCE IN PREPARING THIS**
13 **CONTRACT?**

14

15 A. Yes, the form of this power purchase agreement comes from two wind power contracts
16 that were entered into by Exelon Generation Company, LLC, one with Mill Run Windpower,
17 LLC and the other with Somerset Windpower LLC. I have attached copies of those contracts as
18 Exhibits 4 and 5 to my testimony.

19 **WHAT IS THE LENGTH OF YOUR PROPOSED CONTRACT?**

20

21 A. The proposed Java Wind Facility power purchase agreement is for a period of 20 years. I
22 believe that this period is most consistent with the purposes of PURPA and the Commission's
23 Decision and Order implementing PURPA. I do not believe that a ten year contract will enable
24 Superior to obtain financing to construct the project because it does not yield a long enough
25 period of predictable, stable cash flows to be able to attract both a debt and equity component for
26 the financing.

27 **Q. WHAT IS THE PRICE PAYABLE UNDER THE TERMS OF YOUR**
28 **CONTRACT?**

29

1 A. Although I have left these price terms blank on the form of my agreement, I believe that
2 the Commission should adopt avoided cost of energy and the avoided cost of capacity
3 calculations as described by our expert, Ken Slater.

4 **Q. HOW ARE THE CAPACITY PAYMENTS TO BE DETERMINED?**

5
6 A. The capacity payments are to be determined based on principals outlined by Ken Slater
7 and me originally and discussed at length by Timothy Woolf in his testimony on behalf of the
8 Commission Staff.

9 **Q. WHAT PERFORMANCE PROVISIONS HAVE YOU INCLUDED IN YOUR**
10 **PROPOSED AGREEMENT?**

11
12 A. I have included milestones for finance, the start of construction and commissioning of the
13 Java Wind Facility.

14 **Q. WHAT IS YOUR PROPOSED MILESTONE FOR COMMERCIAL**
15 **OPERATION?**

16
17 A. That milestone is no later than December 31, 2006. It is dependent, however, on the
18 cessation of all appeals and related legal activity coming from this proceeding. Until these legal
19 uncertainties are resolved, Superior believes that additional time must be provided for Superior
20 to reach first commercial operation.

21 **Q. ARE THERE ANY DEDUCTIONS FOR WIND INTEGRATION OR OTHER**
22 **"CLEARLY IDENTIFIABLE COSTS" AS SUGGESTED BY MR. KEE?**

23
24 A. No, there are not. MDU has never identified to Superior such costs so they have not been
25 included in the contract. Even if there were such costs, I expect them to be much, much lower
26 than the amount identified by Mr. Kee.

27 **Q. WHAT ABOUT FINANCIAL SECURITY TO GUARANTEE PERFORMANCE**
28 **OF THE JAVA WIND FACILITY?**

29

1 A. The proposed Superior power purchase agreement includes provisions for posting of an
2 investment grade commercial letter of credit or an equivalent security to secure all of Superior's
3 obligations for the life of the PPA.

4 **Q. ARE THERE ANY RISKS MANAGEMENT PROVISIONS LIKE THOSE**
5 **PROPOSED BY MR. KEE?**

6
7 A. No, there are not. I thought that Mr. Kee's implication that a generator's ownership
8 structure would somehow benefit from shutting down the facility early was nonsensical.
9 Furthermore, there is no precedence in PURPA for a utility's right to acquire a QF's assets.

10 **Q. WHAT OTHER KEY TERMS ARE THERE IN THIS CONTRACT THAT YOU**
11 **BELIEVE YOU SHOULD HIGHLIGHT FOR THE COMMISSION?**

12
13 A. As customary, the contract stipulates that Java is responsible for all costs associated with
14 delivering the power to the metering point and MDU is responsible for all costs beyond the
15 metering point. This is a standard provision in power purchase contracts.

16 **Q. DOES THIS CONCLUDE YOUR TESTIMONY**

17
18 A. Yes it does.

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

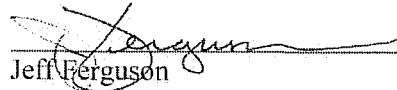
_____)
IN THE MATTER OF THE COMPLAINT FILED)
BY SUPERIOR RENEWABLE ENERGY LLC)
ET AL. AGAINST MONTANA DAKOTA)
UTILITIES CO. REGARDING THE JAVA)
WIND PROJECT)
_____)

Docket No. EL04-016

AFFIDAVIT

County of Harris
State of Texas

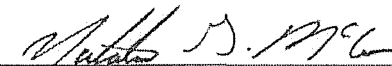
Jeff Ferguson, Chief Operating Officer, Superior Renewable Energy LLC (Superior), being first duly sworn, deposes and says that the Rebuttal Testimony of Jeff Ferguson on Behalf of Superior and Java LLC submitted in the above-captioned proceeding was prepared by him, with the assistance of others working under his direction and supervision, that he is familiar with the contents thereof, and that the statements set forth therein are true and correct to the best of his knowledge, information and belief.



Jeff Ferguson

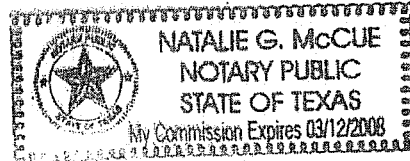
Subscribed and sworn before me

this 11th day of March 2005.



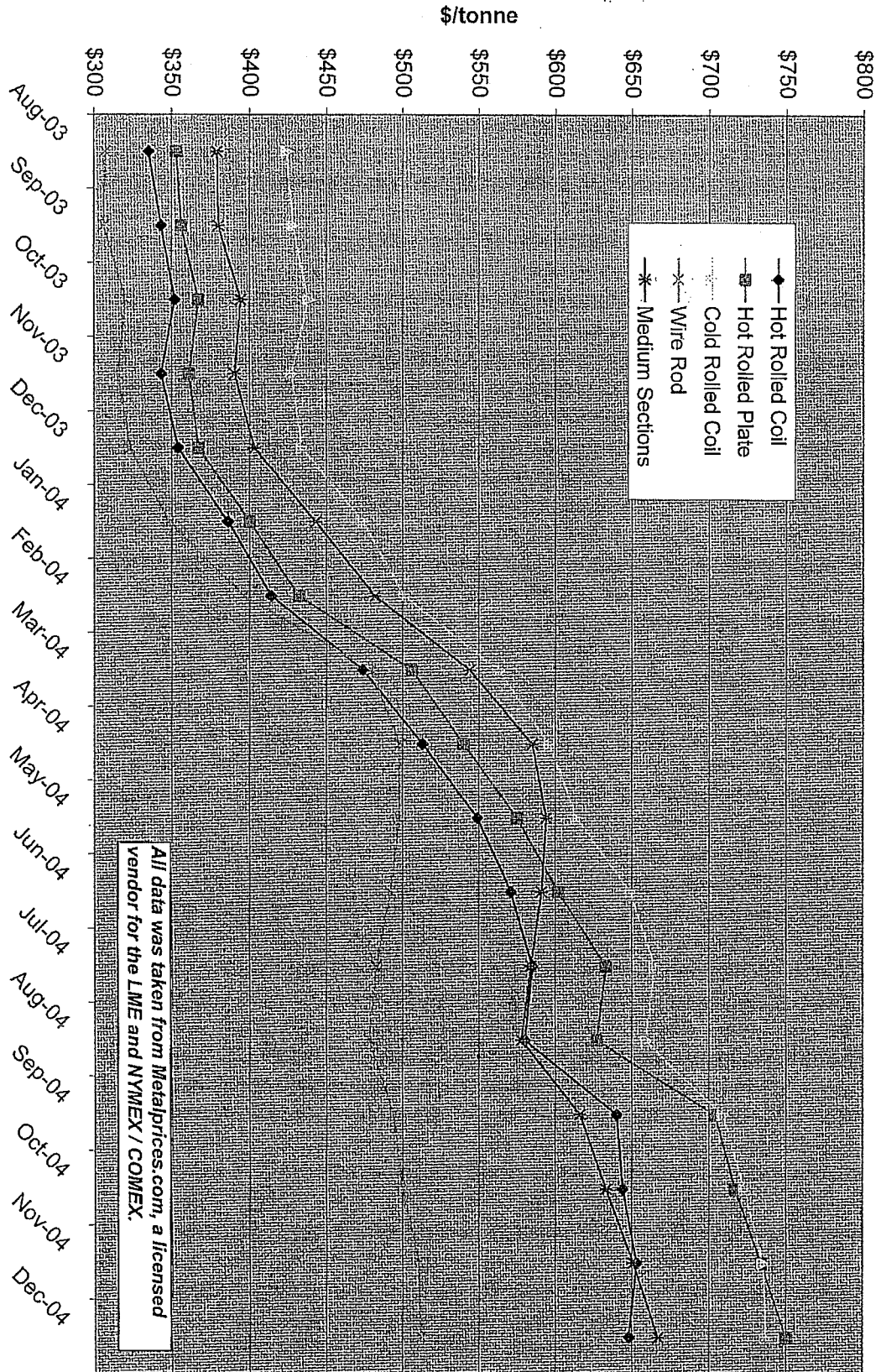
Notary Public

My Commission Expires: 3/12/2008



**Exhibit 2
To The
Testimony of Jeff Ferguson**

Historical Steel Prices - August 2003 Through December 2004



**Exhibit 3
to the Rebuttal Testimony
of Jeff Ferguson**

**POWER PURCHASE AGREEMENT
BETWEEN
MDU RESOURCES GROUP INC.
AND
JAVA WIND LLC**

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POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT (this "Agreement") is entered into as of _____, 2005, by and between Java Wind LLC, a Delaware limited liability company ("Seller"), and MDU Resources Group Inc., a _____ corporation ("Buyer"). Buyer and Seller are sometimes referred to in this Agreement individually as a "Party" and collectively as the "Parties."

WHEREAS, Seller will construct and own, operate and maintain, or arrange for the operation and maintenance of, a wind-powered electric generating plant with a nameplate capacity of approximately 30.6 MW and an estimated annual output of approximately 124,000 megawatt hours (the "Plant") to be located at a site in Walworth County, South Dakota to be selected by Seller, as further defined on Exhibit A attached hereto;

WHEREAS, Buyer desires to purchase all of the Electrical Output and Capacity from the Plant; and

WHEREAS, Seller will retain all right, title and interest in and to the Renewable Energy Credits associated with the Plant, including, without limitation, the right to sell all Renewable Energy Credits associated with the Plant to Persons other than Buyer;

NOW THEREFORE, in consideration of these premises and the mutual promises set forth below, Seller and Buyer agree as follows:

ARTICLE 1 DEFINITIONS

AAA: has the meaning given in Section 17.7(b).

Affiliate: means, when used with reference to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the specified Person. For purposes of the foregoing, "control," "controlled" and "under common control" with respect to any Person means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person or entity, whether through the ownership of voting securities, partnership interests or other ownership interests, by contract or otherwise.

After-Tax Basis: means, with respect to any payment received or deemed to have been received by any Person, the amount of such payment (the "Base Payment") supplemented by a further payment (the "Additional Payment") to such Person so that the sum of the Base Payment plus the Additional Payment shall, after deduction of the amount of all taxes required to be paid by such Person in respect of the receipt or accrual of the Base Payment and the Additional Payment (taking into account any current or previous credits or deductions arising from the underlying event giving rise to such payments), be equal to the amount required to be received. Such calculations shall be made on the assumption that the recipient is subject to Federal income taxation at the highest statutory rate applicable to corporations for the relevant period or periods, is subject to state and local income taxation at the highest statutory rates applicable to

corporations doing business in the state of South Dakota and shall take into account the deductibility (for Federal income tax purposes) of state and local income taxes.

Agreement: is defined in the preamble to this Agreement.

Alternate: has the meaning provided in Section 5.6.

Authorized Representative: has the meaning provided in Section 5.6.

Business Day: means any Day that banks are open for business in New York, New York.

Buyer: has the meaning provided in the preamble to this Agreement.

Capacity: means the megawatt output potential a machine or system is capable of producing or carrying under specified conditions.

Central Monitoring and Control System: means Seller's control and monitoring system for the Plant, including central computer, remote personal computer system (exclusive of remote personal computers), software, passwords and all licenses and ancillary and individual wind turbine controllers.

Claims: means any claims, judgments, losses, liabilities, costs, expenses (including reasonable attorneys' fees) and damages of any nature whatsoever (except workers' compensation claims) in relation to personal injury, death or property damage incurred or made by third parties.

Code: means the Internal Revenue Code of 1986, as amended.

Commencement of Construction: means the earlier to occur of (a) Seller's issuance of a Notice to Proceed to a supplier of wind turbines for the Plant or (b) commencement of grading at the Plant site.

Commercial Operation: shall occur for a wind turbine when (a) such wind turbine is able to generate Electrical Output, (b) such wind turbine has been commissioned, and (c) all related facilities and rights have been completed or obtained, including such facilities and rights contemplated by the Interconnection Agreement, to allow regular operation of such wind turbine.

Commercial Operation Date: means the later of (a) January 1, 2006, and (b) the date designated by Seller as the first date that the Plant is able to generate Electrical Output, which date will be no earlier than the Day following the Day on which (a) all related facilities and rights have been completed or obtained, including such facilities and rights contemplated by the Interconnection Agreement, to allow regular operation for 8760 hours of a year less hours allowed for Planned Outages pursuant to Section 5.3, and (b) Commercial Operation for at least seventy percent (70%) (rounded to the next whole wind turbine) of the wind turbines has been achieved.

Commercially Reasonable or Commercially Reasonable Efforts: means, with respect to any action required to be made, attempted or taken by a Party under this Agreement, the level

of effort in light of the facts known to such Party at the time a decision is made that: (a) can reasonably be expected to accomplish the desired action at a reasonable cost; (b) is consistent with Prudent Industry Practices; and (c) takes into consideration the amount of notice of the need to take such action, the duration and type of action and the competitive environment in which such action occurs.

Contest: means, with respect to any Person, a contest of (a) any Governmental Approval or any act or omission by Governmental Agencies, or (b) the amount or validity of any claim pursued by or against such Person in good faith and by appropriate legal, administrative or other proceedings diligently conducted.

Contract Year: means the twenty (20) 12-Month periods during the Term commencing upon the last Day of the Month during which the Commercial Operation Date occurs and ending twenty (20) years from such date, which may be extended in accordance with Section 2.1.

Day: means the 24-hour period beginning and ending at 12:00 midnight.

Delivery Excuse: means, at any time during the Term, any of the following: (a) any Event of Default of Buyer (as defined in Section 15.1(b)) under this Agreement; (b) any delay or failure by Buyer in giving any approval, or deciding whether to give any approval, within the times required under this Agreement that is not the result of Force Majeure affecting the performance of the Buyer; (c) any delay or failure by Buyer in performing any obligation under this Agreement that is not the result of Force Majeure affecting the performance of the Buyer; and (d) any failure of Buyer to have adequate transmission rights to take delivery of the Electric Output at the Point of Metering, in accordance with the Agreement, that is not the result of Force Majeure affecting the performance of the Buyer.

Effective Date: means the date of execution and delivery of this Agreement by Seller and Buyer.

Electrical Output: means the entire electric energy output of the Plant, net of Station Service Power – Non-Retail, and therefore delivered to the Point of Metering, as measured by the meters installed pursuant to Article 8 of this Agreement.

Emergency Condition: means a condition or situation that presents an imminent physical threat of danger to life, health or property, or could reasonably be expected to cause a significant disruption on the distribution system operated by Buyer or the transmission system operated by a Transmission Provider.

Event of Default: has the meaning provided in Section 15.1.

FERC: means the Federal Energy Regulatory Commission, or any successor agency.

Financing Documents: means, collectively, the contracts, agreements and documents by and between the Seller and the Financing Parties, pursuant to which the financing for the acquisition, development, construction, ownership, operation, maintenance or leasing of the Plant is documented.

Financing Parties: means any entity (including any trustee or agent on behalf of such entity) providing debt financing or refinancing to Seller for the acquisition, development, construction, ownership, operation, maintenance or leasing of the Plant.

Force Majeure Event: means an event, condition or circumstance described in Section 14.1.

Forced Outage: means an unplanned component failure, transmission system failure, or other condition that requires all or a portion of the Plant or the Interconnection Facilities to be removed from service immediately.

Government Agency: means any federal, state, local, territorial, tribal or municipal government and any department, commission, board, bureau, agency, instrumentality, judicial or administrative body thereof having jurisdiction over the Plant, Buyer or Seller, as the case may be.

Governmental Approval: means any authorization, consent, approval, license, ruling, permit, exemption, variance, order, judgment, decree, declarations of or regulation by any Government Agency relating to the acquisition, development, ownership, leasing, occupation, construction, start-up, testing, operation or maintenance of the Plant or to the execution, delivery or performance of this Agreement.

Guaranty: has the meaning set forth in Section 2.4.

Interconnection Agreement: means the Interconnection Agreement to be entered into between Seller and Buyer, providing for the interconnection of the Plant to the Buyer's Utility T&D System, as more fully described in Article 7 of this Agreement.

Interconnection Facilities: means all the facilities installed for the purpose of interconnecting the Plant to Point of Interconnection, including, but not limited to all the bus, breakers and associated equipment, relay and switching equipment, and safety equipment.

Investment Grade: means a rating on a Person's senior unsecured long-term debt of BBB- or higher by S&P or Baa3 or higher by Moody's and which does not contain a "credit watch", "negative outlook" or other rating downgrade alert by either S&P or Moody's.

Law: means any statute, law, rule or regulation or any judicial or administrative interpretation thereof having the effect of the foregoing imposed by a Government Agency, whether in effect now or at any time in the future.

Letter of Credit: means an irrevocable standby letter of credit, issued by a financial institution acceptable to Buyer or Seller, as the case may be, on terms reasonably acceptable to Buyer or Seller, as the case may be. For purposes of this definition, an institution shall be deemed acceptable to both Parties if it has a rating on its senior unsecured long-term debt of A- or higher by S&P and A3 or higher by Moody's (without a "credit watch", "negative outlook" or other rating decline alert by either S&P or Moody's).

Meters: has the meaning set forth in Section 8.1.

Month: means a calendar month.

Moody's: means Moody's Investors Service, Inc. or any successor to Moody's Investors Service, Inc.

MW: means megawatt.

MWh: means megawatt hour.

Name Plate Capacity Rating: means the sum, expressed in MWs, of the manufacturer's rated electric energy output of each of the wind turbines comprising the Plant. The Name Plate Capacity Rating of the Plant is 30.6 MW.

Off Peak Hours: means the hours commencing at 10:00pm and ending at 7:00am on the applicable day of the Term.

On Peak Hours: means the hours commencing at 7:00am and ending at 10:00pm on the applicable day of the Term.

Operating Procedures: has the meaning provided in Section 5.6.

Party: has the meaning set forth in the preamble to this Agreement.

Person: means any individual, corporation, partnership, limited liability company, joint venture, trust, unincorporated organization or Government Agency or any business entity whose existence may be authorized by a Government Agency.

Planned Outage: means the removal of all or a portion of the Plant, the substation or the Interconnection Facilities from service to perform repairs that are scheduled in advance and have a predetermined duration (e.g., overhauls, inspections and testing).

Planned Start Date: has the meaning assigned to such term in Section 2.2.

Plant: means an approximately 30.6 MW wind power electricity plant comprised of Seller's wind turbines, supervisory control and data acquisition system, and other facilities and equipment located in Walworth County, South Dakota.

Point of Interconnection: means the Plant's interconnection point with Buyer's 115 kv line between the Glenham Substation and the Bowdle Substation through a three ring bus to be constructed by Buyer, as more fully described in Section 7.1 herein and in the Interconnection Agreement.

Point of Metering: means the high side of Seller's collection substation located at the plant.

Prime Rate: has the meaning provided in Section 10.2(b).

Prudent Industry Practice: means any of the practices, methods, standards and acts (including, but not limited to, the practices, methods and acts engaged in or approved by a

significant portion of the wind power generation industry in the United States) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, could have been expected to accomplish the desired result consistent with good business practices, reliability, economy, safety and expedition, and applicable Governmental Approvals and Law. Prudent Industry Practice is not intended to be the optimum practice, method, standard or act to the exclusion of all others, but rather is intended to be any of the practices, methods, standards or acts generally acceptable in the region.

PTC: means the renewable electricity production tax credit described in Section 45 of the Code .

PUC: means the South Dakota Public Utilities Commission.

Renewable Energy Credits: means any credits, credit certificates, renewable energy credits, offsets, allowances or similar items, and any other environmental or renewable energy attributes associated with the generation of electricity from wind turbines, such as those for greenhouse gas reduction or the generation of green power or energy from renewable resources, any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO), carbon dioxide (CO₂), methane (CH₄) and all reporting rights with respect to such avoided emissions, whether created by any Government Agency and/or independent certification board or created pursuant to private bilateral contracts, in each case generally recognized in the electric power generation industry, and generated by or associated with the Plant, but specifically excluding any and all state and federal production tax credits, investment tax credits and any other tax credits which are or will be generated by the Plant.

S&P: means Standard & Poor's Rating Group, a division of The McGraw-Hill Companies, Inc. or any successor to Standard & Poor's Rating Group, a division of The McGraw-Hill Companies, Inc.

Seller: has the meaning provided in the preamble to this Agreement.

Station Service Power – Non-Retail: means electric energy used to operate the Plant that is generated by the Plant.

Station Service Power – Retail: means electric energy used to operate the Plant other than such electric energy generated by the Plant, whether the Plant is generating electric energy or not.

Summer Months: means the calendar months of April through September.

Taxes: has the meaning provided in Article 11.

Term: has the meaning provided in Section 2.1.

Transmission Provider: means any provider of transmission, distribution or control area services or any independent system operator or regional transmission organization, regional

reliability council or any other Person empowered to exercise authority over the scheduling or operating of the Plant.

Transmission Provider Requirements: means all tariffs, operational manuals, rules and regulations established by the Transmission Provider and the normal business practices, as they may be amended and modified from time to time, of the Transmission Provider.

Transmission Services: means services that allow a transmission service customer to use the transmission facilities of other electric utilities to efficiently and economically utilize generation resources to reliably serve its loads and to deliver energy to another transmission customer.

Utility T&D System: means the electrical transmission and distribution system of Buyer as in existence on the date hereof.

Winter Months: means the calendar months of March through October.

ARTICLE 2

TERM, FINANCIAL CLOSING, COMMENCEMENT OF OPERATION

2.1 Term

This Agreement will become effective as of the Effective Date and will continue in effect for a period ending on the date that is twenty (20) years from the last Day of the Month during which the Commercial Operation Date occurs (the "Term"), unless otherwise extended or terminated in accordance with the provisions of this Agreement. To the extent that, after the Commercial Operation Date of the Plant, Seller is prevented or delayed in delivering Electrical Output associated with the Name Plate Capacity Rating by a Force Majeure Event in accordance with Section 14.1, then the Term will be extended by the period of such Force Majeure Event, on a Day-for-Day basis for each Day on which a Force Majeure Event continues for more than eight hours.

2.2 Planned Start Date

The Planned Start Date will be no later than December 31, 2006 as such date may be extended on a Day-for-Day basis for any delay in achieving the Commercial Operation Date that results from (i) a Force Majeure Event, (ii) a Delivery Excuse, (iii) an Emergency Condition, or (iv) a delay in the Commencement of Construction beyond [REDACTED].

2.3 Commencement of Operation

The respective rights and obligations of Buyer and Seller under this Agreement relating to the commercial operation of the Plant will commence on the Commercial Operation of the first wind turbine.

2.4 Seller's Credit Support.

As security for the performance by Seller of its obligations hereunder, within one hundred twenty (120) days after the Effective Date, Seller shall provide Buyer with a Letter of Credit in the amount of \$250,000 which shall be effective through the earlier of the date which is one year from the effective date of the Letter of Credit or the fifteenth (15th) Day after the Commercial Operation Date. As continuing security for the performance by Seller of its obligations hereunder, Seller shall provide Buyer with an annual Letter of Credit in the amount of \$750,000, which Seller shall maintain during the period commencing thirty (30) days before the date the above Letter of Credit terminates and terminating ten (10) days after the end of the Term of this Agreement.

The Letter of Credit shall provide that it may be drawn by Buyer only if (i) Seller has failed to renew or extend such Letter of Credit within thirty (30) Days prior to its termination date, or (ii) Seller is in material breach of its obligations hereunder. In the event that Buyer draws on the Letter of Credit, Buyer shall (a) hold all such funds drawn in trust in an interest-bearing account as security for Seller's obligations hereunder, (b) use such funds to satisfy Seller's obligations hereunder, and (c) return all of such funds with interest earned thereon (less amounts properly utilized pursuant to clause (b)) to Seller upon the delivery by Seller of a replacement Letter of Credit, Guaranty or other form of credit support reasonably acceptable to Buyer or upon the termination of this Agreement, whichever is earlier.

Notwithstanding the above, Seller shall have the right at its sole option in lieu of providing any Letter of Credit to provide Buyer with an unconditional guaranty (a "Guaranty") from an entity that has an Investment Grade rating from S&P or Moody's.

ARTICLE 3 EARLY TERMINATION RIGHTS

3.1 Seller's Early Termination Rights

Seller may terminate this Agreement without further obligation on the part of either Party if it is unable to successfully secure construction financing for the Plant by July 31, 2006 on terms and conditions satisfactory to Seller in its sole discretion.

3.2 Buyer's Early Termination Rights

Buyer may terminate this Agreement without further obligation on the part of either Party if Seller has failed to (a) secure construction financing (which may be provided by Seller or one of its Affiliates) for the Plant by July 31, 2006 or (b) Commencement of Construction has not occurred by September 31, 2006.

In order to exercise the termination right pursuant to this Section 3.2, the Buyer must provide written notice of termination to the Seller thirty (30) Days before the date specified for termination, and the Agreement will terminate on the effective date of such termination set forth therein (so long as the Commercial Operation Date has not been achieved on or before such date of termination).

3.3 Other Early Termination Rights

(a) If any Force Majeure Event claimed by a Party continues for an uninterrupted period of more than twenty-four (24) Months from the date of notice provided by such Party in accordance with Section 14.2(a), then the other Party may, at any time following the end of such period, terminate this Agreement immediately upon written notice to the affected Party, without further obligation by the terminating Party, except as to payment of any costs and liabilities incurred before the effective date of such termination; provided, such notice of termination must be given during the period that performance continues to be delayed or prevented by the Force Majeure Event.

(b) A Party may terminate this Agreement in accordance with Article 15.

ARTICLE 4 SALE AND PURCHASE COMMITMENTS; PAYMENT

4.1 Sale and Purchase of Electrical Output and Capacity

During the Term of this Agreement, Seller shall deliver and sell to Buyer and Buyer shall accept and purchase from Seller (a) all of the Electrical Output of the Plant delivered to the Point of Metering during each hour; and (b) all Capacity associated with the Plant, provided, that Seller makes no representation, warranty or guaranty as to the quality or characteristics of such Capacity or the amount of Capacity that Buyer may be able to have accredited by or use to satisfy Capacity obligations imposed by any Government Agency or Transmission Provider, any independent certification board or created pursuant to private bilateral contracts, in each case generally recognized in the electric power generation industry. So long as no Event of Default or Delivery Excuse has occurred and is continuing with respect to Buyer, Seller will not have the right to sell to third parties any of the Electrical Output or Capacity associated with the Plant.

4.2 Renewable Energy Credits; Cooperation

Seller shall retain ownership of all of the Renewable Energy Credits associated with the Electrical Output of the Plant. Buyer acknowledges and agrees that Buyer shall have no right, title, interest (legal, equitable, beneficial or otherwise) or claim in or to any of the Renewable Energy Credits, and Buyer agrees upon written request from Seller to execute and deliver to Seller such additional documents, instruments and assurances and to take such additional actions as are reasonably necessary to fully vest all right, title and interest in and to the Renewable Energy Credits in Seller and to enable Seller to own, market, sell, trade or otherwise dispose of the Renewable Energy Credits. Without limiting the generality of the foregoing, Buyer agrees in good faith to cooperate and use Commercially Reasonable Efforts to enable Seller to successfully own, market, sell, trade or otherwise dispose of the Renewable Energy Credits associated with the Electrical Output of the Plant in accordance with any "renewable attributes trading system" or the like developed by the PUC or any other Government Authority or Transmission Provider or in connection with any market for or bilateral trading of Renewable Energy Credits. Buyer shall use Commercially Reasonable Efforts to cooperate with Seller to ensure the Renewable Energy Credits fall within the parameters contained within any Green-E

Renewable Energy Certification Requirements of the Center for Resource Solutions, San Francisco and such other parameters or certification requirements as may be implemented by a Government Agency or independent certification board that may become commonly used to assess the environmental quality of electric energy during the Term. Buyer acknowledges that the cooperation requirements in this Section 4.2 are a material inducement to Seller entering into this Agreement.

Buyer agrees that Seller shall be entitled to specific performance and injunctive or other equitable relief as a remedy for any breach by Buyer of this Section 4.2, and Buyer agrees to waive any requirement for the securing or posting of any bond in connection with the foregoing remedies.

4.3 Payment

(a) Purchase Price. Buyer will pay Seller for the Electrical Output and Capacity delivered to Buyer at the Point of Metering as follows. For Capacity, Buyer shall pay Seller each month in the manner specified in Section 10.2 an amount equal to ~~[\$100,000]~~ per kW-year multiplied by ~~[1000]~~ kW, with the result thereof divided by twelve (12). For Electrical Output, Buyer shall pay Seller the amounts set forth in Exhibit B attached hereto.

(b) Buyer's Failure to Accept Delivery of Energy. In the event that Buyer fails to accept delivery of all of the Electrical Output tendered at the Point of Metering by Seller as provided herein for any reason other than due to a Force Majeure Event that physically prevents such acceptance by Buyer at the Point of Metering, then Buyer shall pay to Seller as liquidated damages (and not as a penalty) an amount equal to the positive difference, if any, between (i) (x) the amount that would have been payable by Buyer to Seller hereunder if such tendered Electrical Output had been accepted by Buyer, plus (y) the fair market value of any lost Renewable Energy Credits as a result of Buyer's failure to accept such tendered Electrical Output, plus (z) the amount of any payment or penalty that is due from Seller to any third party as a result of Buyer's failure to accept such tendered Electrical Output; and (ii) the net amount, if any, that Seller, using Commercially Reasonable Efforts under the circumstances actually realizes through remarketing of such Electrical Output to Persons other than Buyer, provided, that in the event Seller is unable to remarket such Electrical Output, then the net amount described in clause (ii) herein shall be \$0, and if such failure to accept delivery of Electrical Output occurs during the first ten (10) Contract Years, then the damages owed by Buyer shall also include the then-current amount of the Production Tax Credit (on a per MWh basis) on an After-Tax Basis for each MWh of such Electrical Output that Seller was unable to remarket. Seller shall include in a monthly invoice delivered to Buyer pursuant to Article 10 the amount owed by Buyer pursuant to this Section 4.3(c) and a description in reasonable detail of the calculation of such amount.

4.4 Measurement and Quality of Electricity

All Electrical Output will be measured at the Point of Metering and will meet the specifications established by the Interconnection Agreement, as the same may be amended from time to time. For purposes of monthly billing in accordance with Article 10, Seller will ensure that the Meters are read at the end of each Month.

ARTICLE 5
OPERATION AND MAINTENANCE OF THE FACILITY

5.1 Seller's Core Obligation

Seller will operate and maintain, or cause the operation and maintenance of, the Plant in accordance with Prudent Industry Practices and otherwise in accordance with this Agreement.

5.2 Seller's Choice of Operator

Seller will, during the Term, only employ or contract with appropriately qualified (as determined in Seller's reasonable opinion) personnel for the purposes of operating and maintaining the Plant.

5.3 Planned Outages

Seller must notify Buyer by September 15 of each calendar year of the schedule for all Planned Outages for the following calendar year.

5.4 Access and Information

(a) Each Party will keep complete and accurate records and all other data that the Parties mutually agree, and memorialize in the Operating Procedures, that will be required by either Party for the purpose of proper administration of this Agreement, including, without limitation, metering records, billing records kept in accordance with Section 10.2, and such records regarding ownership, management, control, operation and maintenance of the Plant as may be required by any applicable Law. Each Party will maintain such records for a minimum of six (6) years and for any additional length of time required by any applicable Law. Subject to the confidentiality requirements of Section 17.2, each Party will, upon reasonable request of the other Party, provide the other Party with prompt reasonable access to records and data that relate to this Agreement or either Party's performance of its obligations hereunder. In addition, Seller will provide to Buyer from time to time the following information with respect to the Plant:

(i) The manufacturers' guidelines and recommendations for maintenance of the Plant equipment;

(ii) A report summarizing the results of maintenance performed during each Planned Outage and any Forced Outage, and upon request of Buyer any of the technical data obtained in connection with such maintenance;

(iii) Before the Commercial Operation Date, on or before the 10th Day of each Month, a monthly progress report stating the percentage completion of the Plant and a brief summary of construction activity during the prior Month; and

(iv) Before the Commercial Operation Date, on or before the 10th Day of each Month, a monthly report containing a brief summary of construction activity contemplated for the next Month.

(b) Upon reasonable prior notice (in light of the circumstances) and subject to the safety rules and regulations of Seller, Seller will provide Buyer and its authorized agents, employees and inspectors with reasonable access to the Plant site and the Plant: (i) for the purpose of reading or testing metering equipment in accordance with Section 8.2; (ii) as necessary to witness any required capacity tests to determine the amount of Capacity associated with the Plant in accordance with applicable Transmission Provider Requirements; (iii) in connection with the operation and maintenance of the Interconnection Facilities; and (iv) for other reasonable purposes at the reasonable request of Buyer.

5.5 Operating Procedures

Buyer and Seller will endeavor to develop written operating procedures ("Operating Procedures") before synchronization with the Utility T&D System, which Operating Procedures will only be effective if made by mutual written agreement of the Parties. The Parties agree that the Operating Procedures they will endeavor to establish will cover the protocol under which the Parties will perform their respective obligations under this Agreement and will include, but will not be limited to, procedures concerning the following: (a) the method of Day-to-Day communications; (b) key personnel lists for Seller and Buyer; (c) Forced Outage and Planned Outage reporting; (d) daily capacity level and Electrical Output reporting; and (e) capacity tests conducted by and/or for Transmission Provider performed in connection with the determination of the amount of Capacity associated with the Plant.

As a means of securing effective cooperation and interchanges of information and of providing consultation on a prompt and orderly basis between the Parties in connection with various administrative, commercial and technical issues which may arise during the performance of this Agreement, the Operating Procedures will also provide that the Parties will both appoint an authorized representative (with respect to each Party, the "Authorized Representative") and may appoint an alternate (with respect to each Party, the "Alternate") to act in its Authorized Representative's absence. The Authorized Representatives and Alternates shall be managers well experienced with regard to matters relating to the implementation of the Parties' rights and obligations under this Agreement with full authority to act for and on behalf of the Parties appointing them. Each Party will notify the other in writing of its Authorized Representative and Alternate and these appointments will remain in full force and effect until written notice of substitution is delivered to the other Party.

ARTICLE 6 SCHEDULING AND DELIVERY

6.1 Seller's Delivery-Related Notice Obligations

Seller will inform Buyer, when appropriate, of any major limitations, restrictions, deratings or outages affecting the Plant for the following Day and will promptly update Seller's notice to the extent of any material changes in this information, with "major" defined as affecting more than 20% of the Name Plate Capacity Rating of the Plant.

6.2 Scheduling/Responsibility for Generation Imbalance Charges

The Parties will reasonably cooperate with each other with respect to the bidding and scheduling with the Transmission Provider of the Electrical Output to be sold and delivered by Seller and accepted and purchased by Buyer. Buyer will be responsible for all such bidding and scheduling of the Electrical Output. Seller and Buyer agree and understand that Buyer will bid and schedule the Electrical Output in a way that will avoid or minimize the imposition of generation or energy imbalance charges or the equivalent on Seller or Buyer and optimize the value of the Electrical Output and Capacity. All generation or energy imbalance charges or the equivalent, including, without limitation, all charges, penalties and settlement amounts for uninstructed deviations will be Buyer's sole responsibility.

6.3 Green-E and Other Environmental Quality Certification Requirements

Seller and Buyer agree to use Commercially Reasonable Efforts to conform the operation of the Plant to: (a) fall within the parameters contained within the Green-E Renewable Energy Certification Requirements of the Center for Resource Solutions, San Francisco, to enable qualification of the Electrical Output as renewable energy, as defined in those requirements, and (b) qualify as renewable energy under any other certification requirements by a Government Agency or independent certification board that may become commonly used to assess the environmental quality of electric energy during the Term.

6.4 Communications

Within three (3) months following the end of each Contract Year, Seller will provide Buyer with a detailed report of the actual wind speeds at the Plant site for the preceding Contract Year.

ARTICLE 7 INTERCONNECTION

7.1 Interconnection Facilities

Seller will be solely responsible for construction and maintenance of the transmission line from the Point of Metering to the Point of Interconnection. Buyer shall be solely responsible for construction and maintenance of the Interconnection Facilities and all of the costs and expenses associated with interconnection of the Plant at its Name Plate Capacity at the Point of Interconnection, including the costs of any system upgrades beyond the Point of Interconnection necessary to interconnect the Plant with Buyer's Utility T&D System for delivery of the Electrical Output to the Point of Interconnection; provided, however, that Seller shall pay amounts designated in the pending Interconnection Agreement between the Seller and Buyer as accepted by FERC.

7.2 Point of Metering

Seller will have the responsibility, at its expense, to deliver the Electrical Output to Buyer at the Point of Metering. Buyer shall be responsible for arranging and paying for all charges for any and all transmission services (including, without limitation, all ancillary service

charges), transmission or wheeling services, ancillary services, balancing, control area services, transaction charges and line losses with respect to Buyer's transmission of Electrical Output beyond the Point of Metering. Buyer will be responsible for accessing any Open Access Same Time Information Systems (OASIS) necessary to obtain transmission service, tagging, transmission scheduling or similar protocols with the Transmission Provider during the Term hereof.

7.3 Risk of Loss; Exclusive Control

As between the Parties, Seller will be deemed to be in exclusive control of the Electrical Output before the Point of Metering and Buyer will be deemed to be in exclusive control of the Electrical Output at and from the Point of Metering. Risk of loss related to the Electrical Output will transfer from Seller to Buyer at the Point of Metering.

7.4 Interconnection Agreement

Seller and Buyer shall enter into an Interconnection Agreement on mutually agreeable terms consistent with the terms hereof. The Interconnection Agreement shall enable Seller (a) to interconnect the Plant with Buyer's Utility T&D System that is located in [REDACTED] and (b) to deliver the Electrical Output of the Plant and the associated Capacity to the Point of Metering.

7.5 Station Service Power – Retail

Seller will be solely responsible for obtaining and paying for all Station Service Power – Retail.

ARTICLE 8 METERING

8.1 Meter Requirements

(a) The meters and metering equipment (collectively, the "Meters") at the Point of Metering will be installed, maintained and repaired in accordance with the Interconnection Agreement and will be owned and operated by Seller in accordance with the Interconnection Agreement. The Meters will be installed such that they will measure the Electrical Output on the high side of the Plant's step-up transformers at the Point of Metering. Buyer will have no responsibility for the ownership, operation, maintenance and control of the Meters.

(b) The Meters will have telemetering equipment that will be capable of telemetering data to Buyer.

8.2 Inspection and Testing of the Meters

(a) Seller shall test and verify the accuracy of the Meters' recordings and measurements at least once every calendar year and at a time mutually convenient to Buyer and

Seller. Seller will provide Buyer with reasonable advance notice of, and permit a representative of Buyer to witness and verify such inspections, tests and adjustments.

(b) In addition to the other inspections and tests required under Section 8.2(a), the Interconnection Agreement shall enable the following inspections and tests. Upon two weeks' prior written notice by Buyer, Seller will perform additional inspections or tests of the Meters. Seller and Buyer will agree on a mutually convenient time for such inspections or tests, and Seller will permit a qualified representative of Buyer to inspect or witness such testing of the Meters. The actual expense of any such requested additional inspection or testing will be borne by Buyer unless, upon such inspection or testing, the Meters are found to register inaccurately by more than +/- 0.5%, in which event the expense of the requested additional inspection or testing will be borne by Seller.

(c) If, as a result of any test performed in accordance with this Section 8.2, any of the Meters is found to be registering outside the applicable ANSI accuracy standard in effect at the time of the test, such Meter shall be restored to the ANSI accuracy standard or an accurate meter substituted and payments pursuant to this Agreement shall be corrected in accordance with this Section 8.2(c). If the payments by Buyer to Seller must be corrected, as required in this Section 8.2(c), the account between Seller and Buyer shall be corrected for a period equal to one-half of the elapsed time since the most recent test, up to a maximum correction period of six months, by applying the percentage of inaccuracy so found. If, however, the meter became defective or inaccurate at a reasonably ascertainable time since the most recent test, the correction shall extend back to such time. Should metering equipment at any time fail to register, the energy delivered shall be determined from the best available data. The Meters shall be kept under seal, and such seals may only be broken when the meters are to be tested, adjusted, modified, or relocated in accordance with this Agreement and/or the Interconnection Agreement. When there is to be any break to a seal, Seller must notify Buyer as soon as possible.

ARTICLE 9 COMMISSIONING AND TESTING

9.1 Seller's Notice

Seller will notify Buyer of the commissioning and initial testing of the Plant and of each capacity test thereafter.

9.2 Test Energy

Seller will deliver, and Buyer will accept, all of the Electrical Output generated prior to the Commercial Operation Date. Buyer will pay the amounts designated in Section 4.3(a).

ARTICLE 10
BILLING AND PAYMENT

10.1 Billing

Seller shall be responsible for billing between the Parties and shall bill Buyer for the Electrical Output and Capacity at the prices specified in Section 4.3 and Exhibit B based on the amount of Electrical Output delivered to Buyer at the Point of Metering in accordance with Seller's readings of the Meters as provided in Section 4.4.

10.2 Payment

(a) Seller shall bill Buyer by the tenth (10th) Day of each Month for all Electrical Output and Capacity sold and purchased under this Agreement during the previous Month. Seller shall promptly provide a copy of the invoice for each month to Buyer by facsimile and US first class mail. If Buyer, in good faith, disputes the amount of any such invoice or any part thereof, Buyer will pay to Seller such amount as it acknowledges is correct. If Buyer disputes the amount due, Buyer shall provide supporting documentation to verify the amount paid. Upon the Parties' resolution of any accounting discrepancy or disagreement, Buyer and Seller agree to settle the outstanding balance which is due within five (5) Business Days following such resolution. If it is ultimately determined that Buyer owes the disputed amount, Buyer shall pay Seller the amount with interest, as determined below.

(b) Buyer's payment under this Agreement will be due on the first Business Day that is not less than fifteen (15) Days following the date of the invoice and must be made by electronic fund transfer to Seller's account. Payments received after the due date shall be considered late and shall bear interest on the payment due at a rate equal to the prime rate (the "Prime Rate") plus two percent (2%) as published in the *Wall Street Journal* from time to time, multiplied by the number of Days elapsed from and including the Day after the due date, to and including the payment date. Alternatively, any overpayment to Seller made by Buyer arising solely out of an error made by Seller shall be reimbursed to Buyer with interest at a rate equal to the Prime Rate plus two percent (2%) multiplied by the number of Days elapsed from and including the Day after the Day overpayment was made by Buyer to and including the date of reimbursement by Seller to Buyer.

(c) Each Party shall have the right from time to time, upon written request and at its own expense, to audit the other Party's books and records to verify the information provided by that Party under this Article 10.

(d) Any claim based upon error in any statement must be made within one (1) year of the date of the invoice in which the error first occurred. Following such one (1) year period, the invoice and payments related thereto shall be final.

ARTICLE 11
TAXES, FEES, AND TAX CREDITS

Seller will pay or cause to be paid all taxes, fees, levies, assessments, penalties, licenses, or charges imposed by any Government Agency (collectively, "Taxes") on or with

respect to Electrical Output and Capacity before or at the Point of Metering. Buyer will pay or cause to be paid all Taxes on or with respect to the Electrical Output and Capacity imposed after the Point of Metering. In the event Seller is required to remit or pay Taxes that are Buyer's responsibility under this Agreement, Buyer shall promptly reimburse Seller for such Taxes. If Buyer is required to remit or pay Taxes that are Seller's responsibility under this Agreement, then Seller shall promptly reimburse Buyer for such Taxes. Seller will receive and retain any existing or future tax credits or other tax benefits available to the owner or operator of the Plant, including all federal income tax credits under the Code.

ARTICLE 12 REPRESENTATIONS AND WARRANTIES

12.1 Representations and Warranties of Seller

Seller represents and warrants to Buyer as of the Effective Date as follows:

(a) Seller is a limited liability company duly organized, validly existing and in good standing under the Laws of the state of Delaware and is qualified and in good standing in each other jurisdiction where the failure to so qualify would have a material adverse effect upon the business or financial condition of Seller or the Plant, and Seller has all requisite power and authority to conduct its business, to own its properties and to execute, deliver and perform its obligations under this Agreement.

(b) The execution, delivery, and performance of its obligations under this Agreement by Seller have been duly authorized by all necessary action, and do not and will not:

(i) require any consent or approval of Seller's members or managers which has not been obtained and each such consent and approval that has been obtained is in full force and effect;

(ii) violate any provision of any Law, order, writ, judgment, injunction, decree, determination, or award having applicability to Seller or any provision of the organizational documents of Seller, the violation of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement;

(iii) result in a breach of or constitute a default under any provision of the organizational documents of Seller;

(iv) result in a breach of or constitute a default under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement; or

(v) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this Agreement) upon or with respect to any of the assets or

properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement.

(c) This Agreement constitutes a legal, valid and binding obligation of Seller and is enforceable against Seller in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws relating to or affecting the rights of creditors generally and except as the enforceability of this Agreement is subject to the application of (i) general principles of equity (regardless of whether considered in a proceeding in equity or at law), including, without limitation, the possible unavailability of specific performance, injunctive relief or any other equitable remedy and (ii) concepts of materiality, reasonableness, good faith and fair dealing.

(d) There is no pending or, to the best of Seller's knowledge, threatened action or proceeding affecting Seller before any court, Government Agency or arbitrator that could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations hereunder, or that purports to affect the legality, validity or enforceability of this Agreement.

(e) Seller is a "qualified facility" for purposes of the Public Utility Regulatory Policy Act of 1978.

12.2 Representations and Warranties of Buyer

Buyer represents and warrants to Seller as of the Effective Date as follows:

(a) Buyer is a corporation duly organized and validly existing under the Laws of [_____] and has the full legal right, power and authority to conduct its business, to own its properties and to execute, deliver and perform its obligations under this Agreement.

(b) The execution, delivery and performance of its obligations under this Agreement by Buyer have been duly authorized by all necessary corporate action, and do not and will not:

(i) require any consent or approval of Buyer's board of directors or any Buyer shareholder which has not been obtained and each such consent and approval that has been obtained is in full force and effect;

(ii) violate any provision of any Law, order, writ, judgment, injunction, decree, determination, or award having applicability to Buyer, the violation of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this Agreement;

(iii) result in a breach of or constitute a default under any provision of the articles of incorporation or by-laws of Buyer;

(iv) result in a breach of or constitute a default under any agreement relating to the management or affairs of Buyer or any indenture or loan or credit agreement or any other agreement, lease, or instrument to which Buyer is a party or by which Buyer or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this Agreement; or

(v) result in, or require, the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this Agreement) upon or with respect to any of the assets or properties of Buyer now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this Agreement.

(c) This Agreement constitutes a legal, valid and binding obligation of Buyer and is enforceable against Buyer in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws relating to or affecting the rights of creditors generally and except as the enforceability of this Agreement is subject to the application of (i) general principles of equity (regardless of whether considered in a proceeding in equity or at law), including, without limitation, the possible unavailability of specific performance, injunctive relief or any other equitable remedy and (ii) concepts of materiality, reasonableness, good faith and fair dealing.

(d) There is no pending or, to the best of Buyer's knowledge, threatened action or proceeding affecting Buyer before any court, Government Agency or arbitrator that could reasonably be expected to have a material adverse effect on the financial condition or operations of Buyer or the ability of Buyer to perform its obligations hereunder, or that purports to affect the legality, validity or enforceability of this Agreement.

ARTICLE 13 INSURANCE

13.1 Insurance Required

Subject to Section 13.3(b), Seller will carry and maintain or cause to be carried and maintained no less than the following insurance coverages applicable to all operations undertaken by Seller and Seller's personnel in the minimum amounts (limits) indicated:

(a) A Property All Risk Insurance Policy in an amount equal to the full replacement value of the Plant for "all risks" of physical loss or damage except as hereinafter provided, including coverage for earth movement, flood, boiler and machinery, transit and off-site storage accident exposure, but excluding any equipment owned or leased by Buyer and its subcontractors and their personal property. The policy may contain separate sub-limits and deductibles subject to insurance company underwriting guidelines. The policy will be maintained in accordance with terms generally available in the insurance market for electric generating facilities. Subject to insurance company underwriting and approval, Business Interruption insurance shall be provided and maintained by Seller in an amount covering a period

of indemnity equal to twelve (12) months. Such Business Interruption insurance shall only apply in the event of physical loss or damage to the Plant caused by an insured peril under the policy. In the event a loss is sustained under the policy, such loss will be adjusted by Seller.

(b) Minimum coverage to comply with any statutory obligation imposed by Workers Compensation or Occupational Disease Laws.

(c) A policy of insurance on a standard form with a commercial insurer reasonably acceptable to Buyer providing Commercial General Liability coverage in an amount of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate.

(d) A policy of insurance on a standard form with a commercial insurer reasonably acceptable to Buyer providing automobile liability coverage in an amount of not less than \$1,000,000 per occurrence.

(e) An excess liability insurance policy covering employer's liability, commercial general liability, and business auto liability, with a minimum of \$5,000,000 per occurrence and aggregate for bodily injury and property damage.

Such minimum limits may be satisfied either by primary insurance or by any combination of primary and excess/umbrella insurance. The required insurance coverages will be in effect on or before the commencement of on site construction of the Plant and will be maintained in effect throughout the Term of this Agreement.

13.2 Evidence and Scope of Insurance

(a) Seller will annually cause each insurer or authorized agent to provide Buyer with two original copies of insurance certificates reasonably acceptable to Buyer evidencing the effectiveness of the insurance coverages required to be maintained. A complete copy of each policy will be available at Seller's offices during normal business hours for review by Buyer upon written request.

(b) All such insurance policies will:

(i) name Buyer as an additional insured (except in the case of worker's compensation insurance);

(ii) provide that Buyer will receive from each insurer 30 Days' prior written notice of non-renewal, cancellation of, or significant modification to, any of such policies (except that such notice period will be 10 Days in case of non-payment of premiums); and

(iii) provide a waiver of any rights of subrogation against Buyer, its Affiliates and their officers, directors, agents, subcontractors, and employees.

The insurance certificates will indicate that the insurance policies have been endorsed as described above.

(c) Except as provided in Section 13.2(g), all policies will be written by one or more nationally reputable insurance companies authorized to do business in South Dakota and rated _____ or higher by A.M. Best Company or Lloyds Companies or other insurers reasonably acceptable to Buyer.

(d) Buyer will receive certificates for all insurance policies required by this Article 13 before the start of construction of the Plant except for the Operational All Risk policy, which certificate or certificates Buyer must receive before the Commercial Operation Date.

(e) All policies will be written on an occurrence basis unless procured from AEGIS on a claims made basis. Policies will contain an endorsement that Seller's policy will be primary as respects construction and operations of the Plant regardless of like coverages, if any, carried by Buyer.

(f) Buyer may request Seller to require that any insurance obtained and maintained by a third party operator of the Plant name Buyer as an additional insured, with any cost for such coverage payable by Buyer.

(g) Any insurance required by this Article to be maintained by the Seller may be maintained in the form of self-insurance by an Affiliate of Seller (i) that has a rating that is at least Investment Grade; (ii) the obligations of which are guaranteed by an entity that has a rating that is at least Investment Grade; or (iii) that has other credit support acceptable to Buyer in its sole discretion.

13.3 Term and Modification of Insurance

(a) In the event that the third party liability insurance required pursuant to the Commercial General Liability policy, and/or the Excess/Umbrella Liability policy is on a "claims made" basis and not on an occurrence basis, such insurance will provide for a retroactive date and continuing "tail" coverage not later than the Effective Date and such insurance will be maintained by Seller, with a retroactive date not later than the retroactive date required above, for a minimum of five years after the Term.

(b) If the designated coverage, or relatively comparable coverage, are unavailable on reasonable commercial terms, Seller will obtain the maximum amount of available coverage that it is able to purchase on reasonable commercial terms in Seller's sole discretion.

ARTICLE 14 FORCE MAJEURE EVENT

14.1 Force Majeure Event Defined

(a) As used in this Agreement, "Force Majeure Event" means, causes or events that are beyond the reasonable control of, and without the fault or negligence of, the Party claiming such Force Majeure Event, including, without limitation, natural disasters; fire; lightening strikes that damage the wind turbines; earthquake; cold weather below -20°C that affects the operation of the Plant's wind turbines; acts of God; unusually severe actions of the

elements such as floods, hurricanes, or tornadoes; winds greater than [REDACTED] meters per second or below [REDACTED] meters per second that affect the operation of the Plant's wind turbines; sabotage; terrorism; war; riots or public disorders; strikes or other labor disputes; and actions or failures to act of any Government Agency (including expropriation and requisition), to the extent such cause or event prevents or delays performance of any obligation imposed on the Party claiming such Force Majeure Event (other than an obligation to pay money).

(b) Force Majeure Event does not include: (i) causes or events affecting the performance of third party suppliers of goods or services except to the extent caused by an event that otherwise is a Force Majeure Event under subsection (a) of this Section 14.1; (ii) the unavailability of equipment that would have been avoided by compliance with Prudent Industry Practices by the Party claiming the Force Majeure Event; (iii) changes in market conditions and actions or failures to act of any Government Agency or Transmission Provider that affect the price of energy, capacity or transmission; or (iv) any Delivery Excuse.

14.2 Applicability of Force Majeure Event

Neither Party will be in breach or liable for any delay or failure in its performance under this Agreement to the extent such performance is prevented or delayed due to a Force Majeure Event, provided that:

(a) the non-performing Party will give the other Party written notice within 48 hours of the commencement of the Force Majeure Event or as soon as practically possible after the occurrence of the Force Majeure Event, with details to be supplied within 10 Days thereafter further describing the particulars of the occurrence of the Force Majeure Event;

(b) the delay in performance will be of no greater scope and of no longer duration than is directly caused by the Force Majeure Event;

(c) the Party whose performance is delayed or prevented will proceed with Commercially Reasonable Efforts to overcome the events or circumstances preventing or delaying performance and will provide weekly written progress reports to the other Party during the period that performance is delayed or prevented describing actions taken and to be taken to remedy the consequences of the Force Majeure Event, the schedule for such actions and the expected date by which performance will no longer be affected by the Force Majeure Event; or

(d) when the performance of the Party claiming the Force Majeure event is no longer being delayed or prevented, that Party will give the other Party written notice to that effect.

ARTICLE 15 TERMINATION AND DEFAULT

15.1 Event of Default

(a) The occurrence of any one of the following will constitute an Event of Default with respect to Seller:

(i) Seller fails to make payments for undisputed amounts due under this Agreement to Buyer within 10 Days after written notice from Buyer that such payment is unpaid and due;

(ii) Seller fails to comply with any material provision of this Agreement (other than the obligation to pay money when due), and such failure continues uncured for 30 Days after notice thereof by Buyer, provided that if such failure is not capable of being cured within such period of 30 Days with the exercise of reasonable diligence, then such cure period will be extended so long as Seller is exercising reasonable diligence to cure such failure;

(iii) Seller (a) admits in writing its inability to pay its debts as such debts become due; (b) makes a general assignment or an arrangement or composition with or for the benefit of its creditors; (c) fails to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against such Party under any bankruptcy or similar Law; or (d) takes any action for the purpose of effecting any of the foregoing;

(iv) A proceeding or case is commenced, without the application or consent of Seller, in any court of competent jurisdiction, seeking: (a) its liquidation, reorganization of its debts, dissolution or winding-up, or the composition or readjustment of its debts; (b) the appointment of a receiver, custodian, liquidator or the like of Seller or of all or any substantial part of its assets; or (c) similar relief in respect of Seller under any Law relating to bankruptcy, insolvency, reorganization of its debts, winding-up, composition or adjustment of debt, and such proceeding remains in effect, for a period of 90 Days;

(v) Any representation made by Seller under Section 12.1 is false in any material respect when made and Seller fails to remedy such false representation within 30 Days after notice thereof by Buyer;

(vi) Abandonment of the operation of the Plant for any period in excess of 180 consecutive Days, except in the case of a Force Majeure Event in which case the provisions of Article 14 shall apply; or

(vii) Seller fails to deliver a Guaranty or Letter of Credit in the amounts or on the dates required herein, or any Letter of Credit terminates or is repudiated prior to its stated term and is not replaced within five (5) Business Days thereafter by a Letter of Credit, Guaranty or other credit support reasonably satisfactory to Buyer.

(b) The occurrence of any one of the following will constitute an Event of Default with respect to Buyer:

(i) Buyer fails to make payments for undisputed amounts due under this Agreement to Seller within 10 Days after written notice from Seller that such payment is unpaid and due;

(ii) Buyer fails to comply with any material provision of this Agreement (other than the obligation to pay money when due), and such failure continues uncured for 30 Days after notice thereof by Seller, provided that if such failure is not capable of

being cured within such period of 30 Days with the exercise of reasonable diligence, then such cure period will be extended for an additional reasonable period of time so long as Buyer is exercising reasonable diligence to cure such failure;

(iii) Buyer (a) admits in writing its inability to pay its debts as such debts become due; (b) makes a general assignment or an arrangement or composition with or for the benefit of its creditors; (c) fails to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against such Party under any bankruptcy or similar Law; or (d) takes any action for the purpose of effecting any of the foregoing;

(iv) A proceeding or case is commenced, without the application or consent of Buyer, in any court of competent jurisdiction, seeking: (a) its liquidation, reorganization of its debt, dissolution or winding up, or composition or readjustment of its debt; (b) the appointment of a receiver, custodian, liquidator or the like of Buyer or of all or any substantial part of its assets; or (c) similar relief in respect of Buyer under any Law relating to bankruptcy, insolvency, reorganization of its debts, winding-up, composition or adjustment of debts, and such proceeding remains in effect, for a period of 90 Days; or

(v) Any representation made by Buyer under Section 12.2 is false in any material respect when made and Buyer fails to remedy such false representation within 30 Days after notice thereof by Seller.

15.2 Remedies for Default

Subject to Section 15.3, if an Event of Default occurs with respect to a defaulting Party at any time during the Term, the non-defaulting Party may, for so long as the Event of Default is continuing, (a) deliver a written notice that establishes a date (which date will be no earlier than 30 Days after the Non-Defaulting Party delivers notice) on which this Agreement will be terminated if such Event of Default is still continuing; and (b) pursue any other remedies available at law or in equity, except to the extent such remedies are expressly limited by this Agreement.

15.3 Financing Party Cure Rights

Buyer's right to exercise the option to terminate this Agreement pursuant to Section 15.2 is subject to Buyer's first delivering to the Financing Parties, simultaneously with delivery thereof to Seller, notice of Seller's failure to cure the Seller Event of Default and Buyer's intent to terminate as a result thereof. Each Financing Party shall have the option to cure such Seller Event of Default within ninety (90) Days after receipt of such notice or to cause the Financing Parties' designee to assume this Agreement. If the Financing Parties desire to cause their designee to assume this Agreement, they shall provide notice to that effect within ninety (90) Days after receipt of Buyer's notice to the Financing Parties of the Seller Event of Default. In either such case, Buyer's right to terminate this Agreement shall be of no further force and effect upon the cure by the Financing Parties of such default. Buyer hereby consents to any such assumption by the Financing Parties' designee, agrees to render all performance required of Buyer under this Agreement to such designee and agrees that the Financing Parties and/or its designee shall not have personal liability to Buyer for the obligations of Seller hereunder, and the

sole recourse of Buyer in seeking enforcement of such obligations shall be to such parties' interest in the Plant.

15.4 Additional Financing Party Protections

Buyer may encumber its interest under this Agreement by security, charge or otherwise for the purposes of financing the construction and/or operation of the Plant. Within 10 Days after making such encumbrance, Buyer shall notify Seller in writing of the names, addresses, telephone and facsimile numbers of the Financing Parties to which Buyer's interest under this Agreement has been encumbered. Such notice shall include the names of the account managers or other representatives of the Financing Parties to whom all written and telephonic communications may be addressed. After giving Seller such initial notice, Buyer shall promptly give Seller written notice of any change in the information provided in the initial notice or any revised notice. If Buyer encumbers its interest in this Agreement as permitted by this Section 15.4, the following provisions shall apply:

(a) the Parties, except as provided by the terms of this Agreement, shall not modify or cancel this Agreement without prior written consent of the Financing Parties, which consent shall not be unreasonably withheld, delayed or conditioned;

(b) Buyer shall, upon request by Seller, execute (A) statements certifying (i) that this Agreement is either unmodified or modified, including a description of the nature of any modification, and in full force and effect; and (ii) the absence or existence of defaults hereunder by Buyer and the nature of any such default; and (B) documents of consent to such encumbrance and any assignment to such Financing Parties;

(c) upon the receipt of a written request from any Financing Party, Buyer shall enter into reasonable agreements with such Financing Party, which agreements provide that Buyer recognizes the rights of the Financing Parties hereunder upon foreclosure of the Financing Party's security interest; and

(d) in the event that this Agreement is rejected in any bankruptcy proceeding of Seller, Buyer shall enter into a replacement agreement with such Financing Parties containing the same terms and conditions (including price and term) as this Agreement.

ARTICLE 16 INDEMNIFICATION AND LIABILITY

16.1 Indemnification

(a) Each Party will indemnify, defend and hold the other Party and its officers, directors, members, managers, Affiliates, agents, employees, contractors and subcontractors, harmless from and against any and all Claims, to the extent caused by any act or omission of the indemnifying Party or the indemnifying Party's own officers, directors, members, managers, Affiliates, agents, employees, contractors or subcontractors or to the extent such Claims arise out of or are in any manner connected with the performance of this Agreement by such indemnifying Party.

(b) Notwithstanding anything to the contrary in this Agreement, each Party will indemnify, defend and hold harmless the other Party from any Claims arising from the Electrical Output that occur when risk of loss of the Electrical Output is vested in the indemnifying Party.

(c) Nothing in the foregoing provisions of this Section 16.1 will be construed to require one Party to this Agreement to indemnify the other Party to this Agreement or its officers, directors, members, managers, Affiliates, agents, employees, contractors and subcontractors for any cost or expense that is to be borne by such other Party pursuant to any express provision of this Agreement or for injury or damage caused by the negligence or willful misconduct of the other Party or its officers, directors, members, managers, Affiliates, agents, employees, contractors and subcontractors.

16.2 Limitations of Liability, Remedies and Damages.

(a) Each Party acknowledges and agrees that in no event will any partner, shareholder, member, manager, owner, officer, director, employee or Affiliate of either Party be personally liable to the other Party for any payments, obligations, or performance due under this Agreement or any breach or failure of performance of either Party and the sole recourse for payment or performance of the obligations under this Agreement will be against Seller or Buyer and each of their respective assets and not against any other Person, except for such liability as expressly assumed by an assignee pursuant to an assignment of this Agreement in accordance with the terms hereof.

(b) Each Party acknowledges and agrees that, after the Commercial Operation Date, Seller will be held harmless against, any claims, damages or liabilities of any kind resulting from a Forced Outage or other failure to provide and deliver the Electrical Output to Buyer other than as reflected in the calculation of the payments specified in Section 4.3 or pursuant to Section 16.1. Seller will not be liable for or deemed in breach of this Agreement to the extent the performance of its obligations under this Agreement is delayed or prevented by a Delivery Excuse, Force Majeure or Emergency Condition.

(c) THE EXPRESS REMEDY, PAYMENT OBLIGATIONS, OR MEASURE OF DAMAGES SET FORTH IN THIS AGREEMENT WILL BE THE SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO SUCH SECTIONS IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF SUCH SECTIONS. ACCORDINGLY, EACH PARTY'S LIABILITY WILL BE LIMITED AS SET FORTH IN SUCH SECTIONS AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY FOR THE SAME DAMAGE OR INJURY NOT PERMITTED BY SUCH SECTIONS ARE WAIVED. UNLESS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES SUFFERED BY THAT PARTY OR BY ANY CUSTOMER OR ANY PURCHASER OF THAT PARTY, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE (EXCEPT TO THE EXTENT THAT AN INDEMNIFYING PARTY PURSUANT TO THE PROVISIONS OF SECTION 16.1 HEREOF IS OBLIGATED TO INDEMNIFY AGAINST THIRD PARTY CLAIMS NOT ARISING OUT OF

CONTRACTS WITH THE INDEMNIFIED PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES OR LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES). IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING, WITHOUT LIMITATION, THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

(d) The provisions of this Section 16 will survive the termination of this Agreement.

ARTICLE 17 GENERAL

17.1 Assignment

(a) This Agreement may not be assigned by either Party without the prior written approval of the other Party, which shall not be unreasonably withheld.

(b) Notwithstanding Section 17.1(a), Seller will have the right, without the consent of Buyer, to assign all of its rights, interests and obligations under this Agreement with respect to all or any portion of the Plant to an owner trust or an equity investment vehicle or a special purpose entity or as security to a lender for the purpose of providing financing or refinancing for all or such portion of the Plant (and in connection therewith, Buyer shall execute and deliver to the Financing Parties a consent agreement in a form reasonably requested by the Financing Parties).

(c) The foregoing restrictions shall not prohibit the sale of membership interests in Seller to third parties.

(d) No assignment of this Agreement or of the rights or obligations by Seller will relieve Seller of liability for any breach by the assignee or for any other failure by the assignee to perform its obligations hereunder.

(e) The assigning Party shall give prompt written notice to the other Party of any assignment which does not require the consent of the other Party. Any assignment in violation of this Section 17.1 will be void and of no force or effect.

17.2 Confidentiality

Any information provided by either Party to the other Party pursuant to this Agreement will be utilized by the receiving Party solely in connection with the purposes of this Agreement and will not be disclosed by the receiving Party to any third party, except with the

providing Party's consent, and upon request of the providing Party will be returned thereto, except that the receiving Party will not be obligated to return any such information contained in documents generated by the receiving Party that: (a) reflect or refer to confidential information provided by the receiving Party; and (b) are stored electronically by the receiving Party. With respect to any such retained electronically stored confidential information, the receiving Party will continue to comply with the obligations of this Section 17.2. Neither Party shall disclose the terms and conditions of this Agreement. Notwithstanding the foregoing, the Parties acknowledge and agree that such confidential information may be disclosed to actual and prospective Financing Parties, actual and prospective purchasers and/or investors in Seller, suppliers and potential suppliers of major equipment to the Plant, employees, counsel, accountants or advisors and other third parties as may be necessary for Buyer and Seller to perform their obligations under this Agreement and the Financing Documents. To the extent that such disclosures are necessary, the Parties also agree that they will in disclosing such information seek to preserve the confidentiality of such disclosures. This provision will not prevent either Party from providing any confidential information received from the other Party to any court in accordance with a proper discovery request or in response to the reasonable request of any Government Agency charged with regulating the disclosing Party's affairs, provided that, if feasible, the disclosing Party will give prior notice to the other Party of such disclosure and, if so requested by such other Party, will have used all reasonable efforts to oppose or resist the requested disclosure, as appropriate under the circumstances, or to otherwise make such disclosure pursuant to a protective order or other similar arrangement for confidentiality.

17.3 Several Obligations

Except when specifically stated in this Agreement to be otherwise, the duties, obligations, and liabilities of the Parties are intended to be several and not joint or collective. Nothing in the Agreement shall be construed to create an association, trust, partnership, fiduciary relationship, or joint venture or impose a trust or partnership duty, obligation or liability or agency relationship on or with regard to either Seller or Buyer. Each Party shall be liable for its own obligations under this Agreement. Any undertaking by one Party to the other Party under any provision of this Agreement shall not constitute the dedication of the electrical system or any portion thereof of either Party to the public or to the other Party, its customers, or any other person or entity.

17.4 Notices

Any notice of a routine character in connection with the delivery of electric energy or the operation of the Plant may be given in such manner as may be mutually agreeable between the Parties' Authorized Representatives. Any formal notice, demand, request, or communication required or authorized by this Agreement shall be delivered in writing either by hand, facsimile, overnight courier or mailed by certified mail, return receipt requested, with postage prepaid, to the following addresses:

Buyer: MDU Resources Group Inc.

Attention: _____
Telephone: _____
Facsimile: _____

Seller: Java Wind LLC

Attention: Project Manager
Telephone: _____
Facsimile: _____

17.5 Captions

All titles, subject headings, section titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the meaning of the contents or scope of this Agreement.

17.6 Governing Law

This Agreement shall be interpreted and governed by the Laws of the State of _____ without regard to the conflicts of laws principles thereof.

17.7 Dispute Resolution

(a) In the event a dispute arises between Buyer and Seller regarding the application or interpretation of, or in any way relating to this Agreement, Buyer and Seller shall use reasonable efforts to reach a reasonable and equitable resolution of the matter on an expedited basis. In the event such efforts do not result in the resolution of the dispute, either Party may by written notice request the other Party to designate an officer of its management to meet at the Plant, or at any other mutually agreed location, to resolve the dispute. The designated officers shall meet within five (5) Days following the notice date unless a later date is specified in the notice, to resolve the dispute. In conjunction with any meetings pursuant to this paragraph, upon request of either Party the other Party shall cooperate to select a mutually agreeable independent technical consultant to assist in the resolution of any technical dispute.

(b) If the procedures referenced in the preceding paragraph do not result in resolution of the dispute within five (5) Days after commencement of the referenced officers' meeting (and in any event within the time which legal or equitable proceedings based on such claim, dispute, or controversy would not be barred by the applicable statute of limitations), the Parties shall submit the dispute to binding arbitration. Each Party will have the right to designate an arbitrator of its choice, who need not be from the American Arbitration Association ("AAA") panel of arbitrators but who (i) will be an expert in the independent power electric generation field and (ii) will not have been previously an employee or agent of or consultant or counsel to either Party and will not have a direct or indirect interest in either Party or the subject matter of the arbitration. Such designation will be made by notice to the other Party and to the AAA.

within 10 Days or, in the case of payment disputes, five Days after the date of the giving of notice of the demand for arbitration. The arbitrators designated by the Parties will designate a third arbitrator, who will have a background in legal and judicial matters (and who will act as chairman), within 10 Days or, in the case of payment disputes, five Days after the date of the designation of the last of the arbitrators to be designated by the Parties, and the arbitration will be decided by the three arbitrators. If the two arbitrators cannot or do not select a third independent arbitrator within such period, either Party may apply to the AAA for the purpose of appointing any person listed with the AAA as the third independent arbitrator under the expedited rules of the AAA. Such arbitration will be held in alternating locations of the home offices of the Parties, commencing with Buyer's home office, or in any other mutually agreed upon location. The rules of the AAA will apply to the extent not inconsistent with the rules herein specified. The arbitrators will designate the Party to bear the expenses of the arbitrators or the respective amounts of such expense to be borne by each Party.

(c) Any award of the arbitrators may be enforced by the Party in whose favor such award is made in any court of competent jurisdiction.

(d) Unless otherwise agreed in writing, each Party will diligently continue to perform its obligations under this Agreement during the pendency of any disputes or arbitration proceedings so long as all undisputed amounts payable hereunder have been paid.

17.8 No Residual Value in Power System

This Agreement shall not be construed to provide any residual value to either Party or its successors or any other Party, for rights to, use of, or benefits from the other Party's system following expiration of this Agreement.

17.9 No Third Party Beneficiary

No provisions of this Agreement shall in any way inure to the benefit of any customer, or any other third party so as to constitute any such person as a third party beneficiary under this agreement, or of any one or more of the terms of this Agreement or otherwise give rise to any cause of action in any person not a Party hereto.

17.10 Entire Agreement; Modification and Waiver; Severability; Counterparts

This Agreement and the other agreements referred to herein, constitute the entire agreement between the Parties relating to the transaction described in this Agreement and supersede any and all prior oral or written understandings. No addition to or modification of any provision of this Agreement shall be binding upon either Party, and neither Party shall be deemed to have waived any provision of this Agreement or any remedy available to it unless such addition, modification or waiver is in writing and signed by a duly authorized officer of such Party.

If any term of this Agreement is found to be unenforceable, this Agreement will remain in full force and effect except that the unenforceable term will be replaced, by good faith agreement of the Parties, with an enforceable term as similar as possible to the unenforceable term. If the Parties are unable to agree on such replacement term, then such term shall be

deemed modified to the minimum extent necessary to make such term enforceable, unless such term is incapable of being so modified, in which case such term shall be excised from this Agreement, and the remaining terms hereof shall remain in full force and effect.

This Agreement may be executed by facsimile and in one or more counterparts, each of which shall be deemed to be an original, but all of which shall be one and the same document.

17.11 Legal Fees

In the event of a dispute arising from or relating to this Agreement, the prevailing party shall be entitled to an award of its costs, expenses and legal fees incurred as a result thereof.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the day and year first above written.

JAVA WIND LLC

MDU RESOURCES GROUP INC.

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A

Description of the Plant

EXHIBIT B

Price for Electrical Output

Buyer shall pay Seller for Electrical Output each month in the manner specified in Section 10.2 of the Agreement an amount equal to the following prices per MWh:

Year	Winter Months On Peak Hours	Winter Months Off Peak Hours	Summer Months On Peak Hours	Summer Months Off Peak Hours
2006	\$ _____ /MWh			
2007				
2008				
2009				
2010				
2011				
2012				
2013				
2014				
2015				
2016				
2017				
2018				
2019				
2020				
2021				
2022				
2023				
2024				
2025				

ERO2-269-000

EXECUTION COPY

INFORMATION HAS BEEN REMOVED FROM THIS
DOCUMENT FOR PRIVILEGED TREATMENT

Docket No. *ERO2-269-000*
Company: *Mill Run Wind Power*
Service Agreement No. *1*
Under FERC El. Tariff No. *1*
Filing Date: *11/6/01*
Effective Date: *11/30/01*

FILED
CLERK OF THE SECRETARY
01 NOV -6 AM 11:39
FEDERAL ENERGY
REGULATORY COMMISSION

POWER PURCHASE AGREEMENT
BETWEEN
EXELON GENERATION COMPANY, LLC
AND
MILL RUN WINDPOWER, LLC

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POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT is entered into on this 14th day of February, 2001, by and between Mill Run Windpower, LLC, a Delaware limited liability company ("Seller"), and Exelon Generation Company, LLC, a Pennsylvania limited liability company ("Buyer"). Buyer and Seller are sometimes referred to in this Agreement individually as a "Party" and collectively as the "Parties."

WITNESSETH

WHEREAS, Buyer desires to purchase (a) electric energy and capacity from a renewable source, and (b) the Credits associated with, and to the extent available from, the generation of such electric energy; and

WHEREAS, Seller will construct and own, operate and maintain, or arrange for the operation and maintenance of, a wind-powered electric generating plant (the "Plant") to be located at a site in Fayette County, Pennsylvania to be selected by Seller,

NOW THEREFORE, in consideration of these premises and the mutual promises set forth below, Seller and Buyer agree as follows:

ARTICLE 1 DEFINITIONS

Agreement: means this Power Purchase Agreement entered into between Seller and Buyer, as amended by the Parties from time to time.

Affiliate: means, when used with reference to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the specified Person. For purposes of the foregoing, "control," "controlled" and "under common control" with respect to any Person means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person or entity, whether through the ownership of voting securities, partnership interests or other ownership interests, by contract or otherwise.

Alternate: has the meaning provided in Section 5.6.

Ancillary Services: means spinning reserve, non-spinning reserve, voltage support, and any and all similar or related services capable of being provided by the Plant, to the extent commonly sold or saleable (or used or usable) in the electric power generation or transmission industry from time to time.

APS: means Allegheny Power System.

APS Interface: means the interface busses between the PJM control area and the adjacent APS control area.

Authorized Representative: has the meaning provided in Section 5.6.

Business Day: means any Day that banks are open for business in New York, New York.

Buyer: has the meaning provided in the preamble to this Agreement.

Claims: means any claims, judgments, losses, liabilities, costs, expenses (including reasonable attorneys' fees) and damages of any nature whatsoever (except workers' compensation claims) in relation to personal injury, death or property damage incurred or made by third parties.

Commercial Operation: shall occur for a wind turbine when (i) such wind turbine is able to generate Electrical Output, (ii) such wind turbine has been tested, and (iii) all related facilities and rights have been completed or obtained, including such facilities and rights contemplated by the Interconnection Agreement, to allow regular operation of such wind turbine.

Commercial Operation Date: means the date designated by Seller as the first date that the Plant is able to generate Electrical Output, which date will be no earlier than the Day following the Day on which (i) the Plant has been tested, (ii) all related facilities and rights have been completed or obtained, including such facilities and rights contemplated by the Interconnection Agreement, to allow regular operation for 8760 hours of a year less hours allowed for Planned Outages pursuant to Section 5.3, and (iii) Commercial Operation for at least seven (7) wind turbines has been achieved.

Commercially Reasonable or Commercially Reasonable Efforts: means, with respect to any action required to be made, attempted or taken by a Party under this Agreement, the level of effort in light of the facts known to such Party at the time a decision is made that: (i) can reasonably be expected to accomplish the desired action at a reasonable cost; (ii) is consistent with Prudent Industry Practices; and (iii) takes into consideration the amount of notice of the need to take such action, the duration and type of action and the competitive environment in which such action occurs.

Contest: means, with respect to any Person, a contest of (a) any Governmental Approval or any act or omission by Governmental Agencies, or (b) the amount or validity of any claim pursued by or against such Person in good faith and by appropriate legal, administrative or other proceedings diligently conducted.

Contract Year: means the twenty (20) 12-Month periods during the Term commencing upon the last Day of the Month during which the Commercial Operation Date occurs and ending 20 years from such date, which may be extended in accordance with Section 2.1.

Credit Support: means a guarantee, Letter of Credit, bond or other form of security.

Credits: means any credits, credit certificates or similar items such as those for greenhouse gas reduction, or the generation of green power or renewable energy, created by any Governmental Agency and/or independent certification board or group generally recognized in the electric power generation industry, and generated by or associated with the Plant, but specifically excluding any and all state and federal production tax credits, investment tax credits and any other tax credits which are or will be generated by the Plant.

Day: means the 24-hour period beginning and ending at 12:00 midnight (Eastern Prevailing Time).

Delivery Excuse: means, at any time during the Term any of the following: (i) any Event of Default of Buyer (as defined in Section 15.2(b)) under this Agreement; (ii) any delay or failure by Buyer in giving any approval, or deciding whether to give any approval, within the times required under this Agreement that is not the result of Force Majeure affecting the performance of the Buyer; (iii) any delay or failure by Buyer in performing any obligation under this Agreement that is not the result of Force Majeure affecting the performance of the Buyer; and (iv) any failure of Buyer to have adequate transmission rights to take delivery of the Electric Output at the Point of Metering, in accordance with the Agreement, that is not the result of Force Majeure affecting the performance of the Buyer.

Designated Start Date: has the meaning assigned to such term in Section 2.2.

Effective Date: means the date of execution and delivery of this Agreement by Seller and Buyer.

Electrical Output: means the entire electric energy output of the Plant, net of Station Service Power – Non-Retail, and therefore delivered to the Point of Metering, as measured by the meters installed pursuant to Article 6 of this Agreement.

Emergency Condition: means a condition or situation that presents an imminent physical threat of danger to life, health or property, or could reasonably be expected to cause a significant disruption on the distribution system operated by APS or the transmission system operated by PJM.

Estimated Annual Energy Output: 44,000 MWh, provided, that in the case of a Force Majeure Event, such amount shall be decreased by one-half (.5)MWh per actual hour (or any fraction thereof) during which the Force Majeure Event continues for each wind turbine so affected by the Force Majeure Event.

Event of Default: has the meaning provided in Section 15.1.

Financing Parties: means institutions (including any trustee or agent on behalf of such institutions) providing debt financing or refinancing to Seller for the acquisition, development, construction, ownership, operation, maintenance or leasing of the Plant.

Force Majeure Event: means an event, condition or circumstance described in Section 14.1.

Forced Outage: means an unplanned component failure, transmission system failure, or other condition that requires all or a portion of the Plant or the Interconnection Facilities to be removed from service immediately.

Government Agency: means any federal, state, local, territorial, tribal or municipal government and any department, commission, board, bureau, agency, instrumentality, judicial or administrative body thereof having jurisdiction over the Plant, Buyer or Seller, as the case may be.

Governmental Approval: means any authorization, consent, approval, license, ruling, permit, exemption, variance, order, judgment, decree, declarations of or regulation by any Government Agency relating to the acquisition, development, ownership, leasing, occupation, construction, start-up, testing, operation or maintenance of the Plant or to the execution, delivery or performance of this Agreement.

Interconnection Agreement: means the interconnection agreement into which Seller must enter with APS, as more fully described in Article 7 of this Agreement.

Interconnection Facilities: means all the facilities installed for the purpose of interconnecting the Plant to Point of Metering, including, but not limited to all transformers and associated equipment, relay and switching equipment, and safety equipment.

Investment Grade: has the meaning assigned to such term in Section 17.1(f).

kW: means Kilowatt.

kWh: means Kilowatt hour.

Law: means any statute, law, rule or regulation or any judicial or administrative interpretation thereof having the effect of the foregoing imposed by a Government Agency, whether in effect now or at any time in the future.

Letter of Credit: means an irrevocable standby letter of credit, issued by a financial institution acceptable to Buyer or Seller, as the case may be, on terms reasonably acceptable to Buyer or Seller, as the case may be. For purposes of this definition, an institution shall be deemed acceptable to both Parties if it has (i) a capital surplus of at least Fifty Million Dollars (\$50,000,000), or (ii) a corporate rating from at least one nationally recognized statistical ratings organization that is at least Investment Grade.

Locational Marginal Price: means the hourly integrated market clearing price for energy at the APS Interface, as calculated by PJM.

Meters: has the meaning set forth in Section 8.2.

Month: means a calendar month.

MW: means megawatt.

MWh: Megawatt hour.

Name Plate Capacity Rating: means the sum, expressed in MWs, of the manufacturer's rated electric energy output of each of the generating units comprising the Plant.

Operating Procedures: has the meaning provided in Section 5.6.

Party: has the meaning set forth in the preamble to this Agreement.

PECO Settlement Funding: means the fund established pursuant to Paragraph 41 of the Joint Petition for Settlement approved in the PECO Energy /Unicom merger proceeding (Pennsylvania Public Utility Commission Docket A-110550F0147), administered by the Sustainable Development Fund of Pennsylvania and known as the Pennsylvania Wind Development Program.

Person: means any individual, corporation, partnership, limited liability company, joint venture, trust, unincorporated organization or Government Agency or any business entity whose existence may be authorized by a Government Agency.

PJM: means the PJM Interconnection, L.L.C., or the Office of Interconnection of the PJM Interconnection, L.L.C.

PJM Requirements: means all PJM Agreements, all tariffs, operational manuals, rules and regulations established by PJM, and the normal business practices, as they may be amended and modified from time to time, of PJM.

Planned Outage: means the removal of all or a portion of the Plant, the substation or the Interconnection Facilities from service to perform repairs that are scheduled in advance and have a predetermined duration (e.g., overhauls, inspections and testing).

Plant: means the Seller's wind turbines, supervisory control and data acquisition system, and other facilities and equipment located in Fayette County, Pennsylvania.

Point of Metering: means the interconnection point with APS, which is more fully described in the Interconnection Agreement.

PPUC: means the Pennsylvania Public Utility Commission or any successor organization.

Prime Rate: Has the meaning provided in Section 10.2(b).

Prudent Industry Practice: means any of the practices, methods, standards and acts (including, but not limited to, the practices, methods and acts engaged in or approved by a significant portion of the electric power generation industry in the United States) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, could have been expected to accomplish the desired result consistent with good business practices, reliability, economy, safety and expedition, and applicable Governmental Approvals and Law.

Reliability Assurance Agreement: means the Reliability Assurance Agreement Among Load Serving Entities in the PJM control area, dated as of June 2, 1997, as amended and hereafter amended.

Seller: has the meaning provided in the preamble to this Agreement.

Station Service Power – Retail: means electric energy used to operate the Plant other than such electric energy generated by the Plant, whether the Plant is generating electric energy or not.

Station Service Power – Non-Retail: means electric energy used to operate the Plant that is generated by the Plant.

Taxes: has the meaning provided in Article 11.

Transmission Services: means services that allow a transmission service customer to use the transmission facilities of other electric utilities to efficiently and economically utilize generation resources to reliably serve its loads and to deliver energy to another transmission customer.

Unforced Capacity: has the meaning set forth in the Reliability Assurance Agreement.

**ARTICLE 2-
TERM, FINANCIAL CLOSING, COMMENCEMENT
OF OPERATION, AND CREDIT SUPPORT**

2.1 Term

This Agreement will become effective as of the Effective Date and will continue in effect for a period ending on the date that is 20 years from the last Day of the Month during which the Commercial Operation Date occurs (the "Term"), unless otherwise extended or terminated in accordance with the provisions of this Agreement. To the extent that, after the Commercial Operation Date of the Plant, Seller is prevented or delayed in delivering Electrical Output associated with the Name Plate Capacity Rating by a Force Majeure Event in accordance with Section 14.1, then the Term will be extended by the period of

such Force Majeure Event, on a Day-for-Day basis for each Day on which a Force Majeure Event continues for more than eight hours.

2.2 Designated Start Date

The "Designated Start Date" will be December 20, 2001, as such date may be extended on a Day-for-Day basis for any delay in achieving the Commercial Operation Date that results from (a) a Force Majeure Event, (b) a Delivery Excuse or (c) an Emergency Condition.

2.3 Commencement of Operation

The respective rights and obligations of Buyer and Seller relating to the commercial operation of the Plant will commence on the Commercial Operation of the first wind turbine.

2.5 Seller's Credit Support

Seller will provide Buyer with the following and for the following periods:

(1)

EXECUTION COPY

**ARTICLE 3
EARLY TERMINATION RIGHTS**

3.1 Seller's Early Termination Rights

(a) Seller may terminate this Agreement if it has complied with the requirements of Section 7.4 and is nevertheless

(b) Seller may terminate this Agreement if it is unable to successfully
Seller will use Commercially Reasonable
Efforts to obtain

3.2 Early Termination Rights before Commercial Operation Date

Buyer may terminate this Agreement without further obligation to Seller if the

~~In~~ order to exercise the termination right pursuant to this Section 3.2, the Buyer must provide written notice of termination to the Seller 30 Days before the date specified for termination and the Agreement will terminate on the effective date of such termination set forth therein (so long as the Commercial Operation Date has not been achieved on or before such date of termination).

3.3 Other Early Termination Rights

(a) If any Force Majeure Event claimed by a Party continues for an uninterrupted period of more than 24 Months from the date of notice provided by such Party in accordance with Section 14.2(a), then the other Party may, at any time following the end of such period, terminate this Agreement immediately upon written notice to the affected Party, without further obligation by the terminating Party, except as to payment of any costs and liabilities incurred before the effective date of such termination; provided, such notice of termination must be given during the period that performance continues to be delayed or prevented by the Force Majeure Event.

(b) Pursuant to Section 4.3(b),

(c) A Party may terminate this Agreement in accordance with Article 15.

**ARTICLE 4
SALE AND PURCHASE
COMMITMENTS; PAYMENT**

4.1 Sale and Purchase of Energy, Unforced Capacity, Ancillary Services, and Credits

During the term of this Agreement, Seller shall deliver and sell to Buyer and Buyer shall accept and purchase from Seller (a) the Electrical Output of the Plant; (b) all Credits associated with, and to the extent available from, such Electrical Output purchased by Buyer; (c) all Unforced Capacity, if any, associated with the Plant as determined by PJM; and (d) all Ancillary Services, if any.

4.2 No Sale to Third Parties

So long as no Event of Default has occurred and is continuing with respect to Buyer, Seller will not have the right to sell to third parties any of the Electrical Output of the Plant, any of the Credits associated with the Plant, any Unforced Capacity associated with the Plant, and any Ancillary Services from the Plant.

4.3 Payment/Availability

<u>Contract Year</u>
Prior to the Commercial Operation Date
From the Commercial Operation Date through the end of the First Contract Year
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(b) Seller will pay to Buyer, and Buyer will pay to Seller, amounts determined as follows in accordance with the following output requirements:

The actual output of the project calculated as a percentage of the Estimated Annual Energy Output for the purpose of determining the One-Year Payment, if any, and Five-year Payment, if any, shall be rounded to the nearest whole percentage as follows: (1) 0.5 or less will be rounded down; (2) greater than 0.5 will be rounded up.

Notwithstanding anything to the contrary which may be contained in this Agreement, in the event that actual output is less than Estimated Annual Energy Output, Buyer's sole remedies are as set forth in this Section 4.3(b) and in Section 3.3(b).

4.4 Measurement and Quality of Electricity

All Electrical Output will be measured at the Point of Metering and will meet the specifications established by the Interconnection Agreement, as the same may be amended from time to time. For purposes of monthly billing in accordance with Article 10, Seller will ensure that the Meters are read at the end of each Month.

**ARTICLE 5
OPERATION AND MAINTENANCE OF THE FACILITY**

5.1 Seller's Core Obligation

Seller will operate and maintain, or cause the operation and maintenance of, the Plant in accordance with Prudent Industry Practices and otherwise in accordance with this Agreement.

5.2 Seller's Choice of Operator

Seller will, during the Term, only employ or contract with appropriately qualified (as determined in Seller's reasonable opinion) personnel for the purposes of operating and maintaining the Plant.

5.3 Planned Outages

Seller will make commercially reasonable efforts not to schedule or conduct any Planned Outage during any portion of the Months of May, June, July, August, or September, unless such Planned Outage can be scheduled during low-wind periods and the plant capacity factor is projected to be below 10%. Seller must notify Buyer by September 15 of each calendar year of the schedule for all Planned Outages for the following calendar year.

5.4 Access and Information

(a) Each Party will keep complete and accurate records and all other data that the Parties mutually agree, and memorialize in the Operating Procedures, that will be required by either Party for the purpose of proper administration of this Agreement, including without limitation metering records, billing records kept in accordance with Section 10.2, and such records regarding ownership, management, control, operation and maintenance of the Plant as may be required by any applicable Law. Each Party will maintain such records for a minimum of six (6) years and for any additional length of time required by any applicable Law. Subject to the confidentiality requirements of Section 17.2, each Party will, upon reasonable request of the other Party, provide the other Party with prompt reasonable access to records and data that relate to this Agreement or either Party's performance of its obligations hereunder. In addition, Seller will provide to Buyer from time to time the following information with respect to the Plant:

- (i) The manufacturers' guidelines and recommendations for maintenance of the Plant equipment;
- (ii) A report summarizing the results of maintenance performed during each Planned Outage and any Forced Outage, and upon request of Buyer any of the technical data obtained in connection with such maintenance;
- (iii) Before the Commercial Operation Date, on or before the 10th Day of each Month, a monthly progress report stating the percentage completion of the Plant and a brief summary of construction activity during the prior Month; and
- (iv) Before the Commercial Operation Date, on or before the 10th Day of each Month, a monthly report containing a brief summary of construction activity contemplated for the next Month.

(b) Upon reasonable prior notice (in light of the circumstances) and subject to the safety rules and regulations of Seller, Seller will provide Buyer and its authorized agents, employees and inspectors with reasonable access to the Plant Site and the Plant: (i) for the purpose of reading or testing metering equipment in accordance with Section 8.2, (ii) as necessary to witness any required capacity tests in accordance with PJM Requirements necessary to determine the amount of Unforced Capacity associated with the Plant, (iii) in connection with the operation and maintenance of the Interconnection Facilities, (iv) to provide tours of the Plant to customers and other guests of Buyer, and (v) for other reasonable purposes at the reasonable request of Buyer.

5.5 Permits; Compliance with Laws

(a) Subject to the right of Contest, Seller will, at its expense, acquire and maintain in effect, from any and all Governmental Agencies with jurisdiction over Seller and/or the Plant, all Governmental Approvals, in each case necessary (i) for the construction, operation and maintenance of the Plant in accordance with this Agreement and to permit the Plant to operate at Name Plate Capacity Rating _____ of a year less hours allowed for Planned Outages pursuant to Section 5.3, and (ii) for Seller to perform its obligations under this Agreement.

(b) Subject to the right of Contest, Seller will, at all times, comply in all material respects with all Laws and Governmental Approvals applicable to it and/or to the Plant, including all environmental laws in effect at any time during the Term. During the term of this Agreement, Seller shall submit to Buyer's Authorized Representative any formal written notice of Seller's violation of (i) any operating permit issued in connection with the Plant or (ii) any federal or state law or regulation applicable to the Plant, which violation would materially adversely affect Seller's ability to perform its obligations under this Agreement.

(c) Subject to the right of Contest, Buyer will, at all times, comply with all Laws necessary for Buyer to perform its obligations under this Agreement.

(d) Subject to the right to contest their applicability, both Parties will comply with all applicable PJM Requirements.

5.6 Operating Procedures

Buyer and Seller will endeavor to develop written operating procedures ("Operating Procedures") before synchronization with the APS and PJM Systems, which Operating Procedures will only be effective if made by mutual written agreement of the Parties. The Parties agree that the Operating Procedures they will endeavor to establish will cover the protocol under which the Parties will perform their respective obligations under this Agreement and will include, but will not be limited to, procedures concerning the following: (1) the method of Day-to-Day communications; (2) key personnel lists for Seller and Buyer; (3) Forced Outage and Planned Outage reporting; (4) capacity tests

conducted by and/or for PJM performed in connection with the determination of the amount of Unforced Capacity associated with the Plant; and (6) daily capacity level and Electrical Output reporting.

As a means of securing effective cooperation and interchanges of information and of providing consultation on a prompt and orderly basis between the Parties in connection with various administrative, commercial and technical issues which may arise during the performance of this Agreement, the Operating Procedures will also provide that the Parties will both appoint an authorized representative (with respect to each Party, the "Authorized Representative") and may appoint an alternate (with respect to each Party, the "Alternate") to act in its Authorized Representative's absence. The Authorized Representatives and Alternates shall be managers well experienced with regard to matters relating to the implementation of the Parties' rights and obligations under this Agreement with full authority to act for and on behalf of the Parties appointing them. Each Party will notify the other in writing of its Authorized Representative and Alternate and these appointments will remain in full force and effect until written notice of substitution is delivered to the other Party.

ARTICLE 6 SCHEDULING AND DELIVERY

6.1 Seller's Delivery-Related Notice Obligations

Seller will inform Buyer when appropriate of any major limitations, restrictions, deratings or outages affecting the Plant for the following Day and will promptly update Seller's notice to the extent of any material changes in this information, with "major" defined as affecting more than 20% of the Name Plate Capacity Rating of the Plant.

6.2 Scheduling/Responsibility for Generation Imbalance Charges

6.3 Green-E and Other Environmental Quality Certification Requirements

Seller agrees to use Commercially Reasonable Efforts to conform its operation of the Plant to: (i) fall within the parameters contained within the Green-E Certification Requirements of the Center for Resource Solutions, San Francisco, to enable

qualification of the Electrical Output as renewable energy, as defined in those requirements, and (ii) qualify as renewable energy under any other certification requirements by a Governmental Agency or independent certification board that may become commonly used to assess the environmental quality of electric energy during the Term.

6.4 Electronic Communications

(a) Seller will provide telemetering equipment and facilities capable of transmitting the following information with respect to the Plant to Buyer and to the control center of Buyer and will operate such equipment when requested by Buyer:

- (i) Actual wind speed at the Project site.;
- (ii) Instantaneous MW output at the Point of Metering; and
- (iii) Electrical Output

(b) Seller will install a dedicated direct communication circuit (which may be by common carrier telephone) to Buyer and to the control center in the Plant's control room or such other communication equipment as the Parties may agree.

**ARTICLE 7
INTERCONNECTION**

7.1 Interconnection Facilities

Seller will operate, maintain and control (or cause the operation, maintenance and control by APS and/or PJM) during the Term at Seller's sole cost and expense all Interconnection Facilities located at the Plant site up to, and including, the Point of Metering, and Seller will be solely responsible for all of the costs and expenses associated with interconnection of the Plant at its Name Plate Capacity Rating up to and including the Point of Metering including the costs of any system upgrades beyond the Point of Metering necessary to interconnect with APS and/or PJM for delivery of the Electrical Output to the Point of Metering.

7.2 Point of Metering

7.3 Risk of Loss: Exclusive Control

7.4 Interconnection Agreement

Seller must use Commercially Reasonable Efforts to conclude the Interconnection Agreement. The Interconnection Agreement must include provisions with respect to (i) the interconnection of the Plant in a timely manner with the APS and/or PJM systems at the Point of Metering; (ii) communications control interfaces between the Plant and Buyer's control center; and (iii) providing the Plant with the capability to transmit at least the Name Plate Capacity Rating of the Plant in accordance with the terms of this Agreement. Seller will provide Buyer with the interim drafts of the Interconnection Agreement for Buyer's review. The final form of the Interconnection Agreement will be subject to approval by Buyer, which approval will not be unreasonably withheld or delayed and which will be deemed given if Buyer will not have given Seller written notice of the Buyer's disapproval and the reasons therefor within 10 Days of receipt of such final form by Buyer. Buyer will cooperate with Seller and provide information as reasonably requested by Seller in connection with the negotiation and performance of the Interconnection Agreement.

7.5 Station Service Power – Retail

Seller will be solely responsible for obtaining and paying for all Station Service Power – Retail.

**ARTICLE 8
METERING**

8.1 Meter Requirements

(a) The meters and metering equipment (collectively, the "Meters") at the Point of Metering will be installed, maintained and repaired in accordance with the Interconnection Agreement and will be owned and operated by APS in accordance with the Interconnection Agreement. Seller must cause the Interconnection Agreement to provide that the Meters will be installed such that they will measure the Electrical Output on the high side of the Plant's step-up transformers at the Point of Metering. Buyer will have no responsibility for the ownership, operation, maintenance and control of the Meters.

(b) The Interconnection Agreement must also provide that the Meters will have telemetering equipment that will be capable of telemetering data to Buyer.

8.2 Inspection and Testing of the Meters

(a) Seller will ensure that the Interconnection Agreement provides that APS/PJM must inspect, test and adjust the Meters at least once every calendar year and at a time mutually convenient to Buyer and Seller. Seller will provide Buyer with reasonable advance notice of, and permit a representative of Buyer to witness and verify, such inspections, tests and adjustments, and will cause APS and/or PJM to test any adjustments to be made thereto in accordance with Section 8.2(c).

(b) In addition to the other inspections and tests required under Section 8.2(a), Seller will cause the Interconnection Agreement to enable the following inspections and tests. Upon two weeks' prior written notice by Buyer, Seller will perform additional inspections or tests of the Meters. Seller and Buyer will agree on a mutually convenient time for such inspections or tests, and Seller will permit a qualified representative of Buyer to inspect or witness such testing of the Meters. The actual expense of any such requested additional inspection or testing will be borne by Buyer unless, upon such inspection or testing, the Meters are found to register inaccurately by more than $\pm 0.5\%$, in which event the expense of the requested additional inspection or testing will be borne by Seller.

(c) If, as a result of any test performed in accordance with this Section 8.2 and/or by APS and/or PJM, any of the Meters is found to be registering outside the applicable ANSI accuracy standard in effect at the time of the test, such Meter shall be restored to the ANSI accuracy standard or an accurate meter substituted and payments pursuant to this Agreement shall be corrected in accordance with this Section 8.2(c). If the payments by Buyer to Seller must be corrected, as required in this Section 8.2(c), the account between Seller and Buyer shall be corrected for a period equal to one-half of the elapsed time since the most recent test, up to a maximum correction period of six months, by applying the percentage of inaccuracy so found. If, however, the meter became defective or inaccurate at a reasonably ascertainable time since the most recent test, the correction shall extend back to such time. Should metering equipment at any time fail to register, the energy delivered shall be determined from the best available data. Seller will cause the Interconnection Agreement to provide that the Meters shall be kept under seal, and that such seals may only be broken when the meters are to be tested, adjusted, modified, or relocated in accordance with this Agreement and/or the Interconnection Agreement. When there is to be any break to a seal, Seller must notify Buyer as soon as possible

**ARTICLE 9
COMMISSIONING AND TESTING****9.1 Seller's Notice and Testing Obligation**

8.2 Inspection and Testing of the Meters

(a) Seller will ensure that the Interconnection Agreement provides that APS/PJM must inspect, test and adjust the Meters at least once every calendar year and at a time mutually convenient to Buyer and Seller. Seller will provide Buyer with reasonable advance notice of, and permit a representative of Buyer to witness and verify, such inspections, tests and adjustments, and will cause APS and/or PJM to test any adjustments to be made thereto in accordance with Section 8.2(c).

(b) In addition to the other inspections and tests required under Section 8.2(a), Seller will cause the Interconnection Agreement to enable the following inspections and tests. Upon two weeks' prior written notice by Buyer, Seller will perform additional inspections or tests of the Meters. Seller and Buyer will agree on a mutually convenient time for such inspections or tests, and Seller will permit a qualified representative of Buyer to inspect or witness such testing of the Meters. The actual expense of any such requested additional inspection or testing will be borne by Buyer unless, upon such inspection or testing, the Meters are found to register inaccurately by more than $\pm 0.5\%$, in which event the expense of the requested additional inspection or testing will be borne by Seller.

(c) If, as a result of any test performed in accordance with this Section 8.2 and/or by APS and/or PJM, any of the Meters is found to be registering outside the applicable ANSI accuracy standard in effect at the time of the test, such Meter shall be restored to the ANSI accuracy standard or an accurate meter substituted and payments pursuant to this Agreement shall be corrected in accordance with this Section 8.2(c). If the payments by Buyer to Seller must be corrected, as required in this Section 8.2(c), the account between Seller and Buyer shall be corrected for a period equal to one-half of the elapsed time since the most recent test, up to a maximum correction period of six months, by applying the percentage of inaccuracy so found. If, however, the meter became defective or inaccurate at a reasonably ascertainable time since the most recent test, the correction shall extend back to such time. Should metering equipment at any time fail to register, the energy delivered shall be determined from the best available data. Seller will cause the Interconnection Agreement to provide that the Meters shall be kept under seal, and that such seals may only be broken when the meters are to be tested, adjusted, modified, or relocated in accordance with this Agreement and/or the Interconnection Agreement. When there is to be any break to a seal, Seller must notify Buyer as soon as possible

**ARTICLE 9
COMMISSIONING AND TESTING****9.1 Seller's Notice and Testing Obligation**

Seller will notify Buyer of the commissioning and initial testing of the Plant and of each capacity test thereafter, which tests must be conducted in accordance with the requirements of the Interconnection Agreement.

9.2 Test Energy

Seller will deliver, and Buyer will accept, all Electrical Output generated during the commissioning and initial testing of the Plant. Buyer will pay the Locational Marginal Price at the APS Interface as calculated by PJM.

**ARTICLE 10
BILLING AND PAYMENT**

10.1 Billing

Seller shall be responsible for billing between the Parties and shall bill Buyer for the Electrical Output, Unforced Capacity, Ancillary Services, and Credits at the price per MWH specified in Section 4.3 based on the amount of Electrical Output delivered to Buyer at the Point of Metering in accordance with Seller's readings of the Meters as provided in Section 4.4.

10.2 Payment

(a) Seller shall bill Buyer by the tenth (10th) Day of each Month for all Electrical Output, Unforced Capacity, Ancillary Services, and Credits sold and purchased under this Agreement during the previous Month. Seller shall promptly provide a copy of the invoice for each month to Buyer by facsimile and US first class mail. If Buyer, in good faith, disputes the amount of any such invoice or any part thereof, Buyer will pay to Seller such amount as it acknowledges is correct. If Buyer disputes the amount due, Buyer shall provide supporting documentation to verify the amount paid. Upon the Parties' resolution of any accounting discrepancy or disagreement, Buyer and Seller agree to settle the outstanding balance which is due within five Business Days following such resolution. If it is ultimately determined that Buyer owes the disputed amount, Buyer shall pay Seller the amount with interest, as determined below.

(b) Buyer's payment under this Agreement will be due on the first Business Day that is at least 15 Days following the date of the invoice and must be made by electronic fund transfer to Seller's account. Payments received after the due date shall be considered late and shall bear interest on the payment due at a rate equal to the prime rate (the "Prime Rate") plus two percent (2%) as published in the *Wall Street Journal* from time to time, times the number of Days elapsed from and including the Day after the due date, to and including the payment date. Alternatively, any overpayment to Seller made by Buyer arising solely out of an error made by Seller shall be reimbursed to Buyer with

interest at a rate equal to the Prime Rate plus two percent (2%) times the number of Days elapsed from and including the Day after the Day overpayment was made by Buyer to and including the date of reimbursement by Seller to Buyer.

(c) Each Party shall have the right from time to time, upon written request and at its own expense, to audit the other Party's books and records to verify the information provided by that Party under this Article 10.

(d) Any claim based upon error in any statement must be made within two (2) years of the date of the invoice in which the error first occurred. Following such two (2) year period, the invoice and payments related thereto shall be final.

ARTICLE 11 TAXES, FEES, AND TAX CREDITS

Seller will pay or cause to be paid all taxes, fees, levies, assessments, penalties, licenses, or charges imposed by any Governmental Agency (collectively, "Taxes") on or with respect to Electrical Output before or at the Point of Metering. Buyer will pay or cause to be paid all Taxes on or with respect to the Electrical Output imposed after the Point of Metering. In the event Seller is required to remit or pay Taxes that are Buyer's responsibility under this Agreement, Buyer shall promptly reimburse Seller for such Taxes. If Buyer is required to remit or pay Taxes that are Seller's responsibility under this Agreement, then Seller shall promptly reimburse Buyer for such Taxes. Seller will receive and retain any existing or future tax credits or other tax benefits available to the owner or operator of the Plant, including all federal income tax credits under the Internal Revenue Code of 1986, as amended.

ARTICLE 12 REPRESENTATIONS AND WARRANTIES

12.1 Representations and Warranties of Seller

Seller represents and warrants to Buyer as of the Effective Date as follows:

(a) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the state of Delaware and is qualified and in good standing in each other jurisdiction where the failure so to qualify would have a material adverse effect upon the business or financial condition of Seller or the Plant, and Seller has all requisite power and authority to conduct its business, to own its properties and to execute, deliver and perform its obligations under this Agreement.

(b) The execution, delivery, and performance of its obligations under this Agreement by Seller have been duly authorized by all necessary action, and do not and will not:

(i) require any consent or approval of Seller's members or managers which has not been obtained and each such consent and approval that has been obtained is in full force and effect,

(ii) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award having applicability to Seller or any provision of the organizational documents of Seller, the violation of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement,

(iii) result in a breach of or constitute a default under any provision of the organizational documents of Seller,

(iv) result in a breach of or constitute a default under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement, or

(v) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this Agreement) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement.

(c) This Agreement constitutes a legal, valid and binding obligation of Seller and is enforceable against Seller in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights of creditors generally and except as the enforceability of this Agreement is subject to the application of (i) general principles of equity (regardless of whether considered in a proceeding in equity or at law), including, without limitation, the possible unavailability of specific performance, injunctive relief or any other equitable remedy and (ii) concepts of materiality, reasonableness, good faith and fair dealing.

(d) There is no pending or, to the best of Seller's knowledge, threatened action or proceeding affecting Seller before any court, Governmental Agency or arbitrator that could reasonably be expected to have a material adverse effect on the ability of Seller to

perform its obligations hereunder, or that purports to affect the legality, validity or enforceability of this Agreement.

12.2 Representations and Warranties of Buyer

Buyer represents and warrants to Seller as of the Effective Date as follows:

(a) Buyer is a limited liability company duly organized and validly existing under the laws of the Commonwealth of Pennsylvania and has the full legal right, power and authority to conduct its business, to own its properties and to execute, deliver and perform its obligations under this Agreement.

(b) The execution, delivery, and performance of its obligations under this Agreement by Buyer have been duly authorized by all necessary corporate action, and do not and will not:

(i) require any consent or approval of Buyer's board of directors or any Buyer member or shareholder which has not been obtained and each such consent and approval that has been obtained is in full force and effect,

(ii) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award having applicability to Buyer, the violation of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this Agreement,

(iii) result in a breach of or constitute a default under any provision of the articles of incorporation or by-laws of Buyer,

(iv) result in a breach of or constitute a default under any agreement relating to the management or affairs of Buyer or any indenture or loan or credit agreement or any other agreement, lease, or instrument to which Buyer is a party or by which Buyer or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this Agreement, or

(v) result in, or require, the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this Agreement) upon or with respect to any of the assets or properties of Buyer now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this Agreement.

(c) This Agreement constitutes a legal, valid and binding obligation of Buyer and is enforceable against Buyer in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights of creditors generally and except as the enforceability of this Agreement is subject to the application of (i) general principles of equity (regardless of whether considered in a proceeding in equity or at law), including, without limitation, the possible unavailability of specific performance, injunctive relief or any other equitable remedy and (ii) concepts of materiality, reasonableness, good faith and fair dealing.

(d) There is no pending or, to the best of Buyer's knowledge, threatened action or proceeding affecting Buyer before any court, Governmental Agency or arbitrator that could reasonably be expected to have a material adverse effect on the financial condition or operations of Buyer or the ability of Buyer to perform its obligations hereunder, or that purports to affect the legality, validity or enforceability of this Agreement.

ARTICLE 13 INSURANCE

13.1 Insurance Required

Seller will carry and maintain or cause to be carried and maintained no less than the following insurance coverages applicable to all operations undertaken by Seller and Seller's personnel in the minimum amounts (limits) indicated:

a. A Property All Risk Insurance Policy in an amount equal to the full replacement value of the Plant for "all risks" of physical loss or damage except as hereinafter provided, including coverage for earth movement, flood, boiler and machinery, transit and off-site storage accident exposure, but excluding any equipment owned or leased by Buyer and its subcontractors and their personal property. The policy may contain separate sublimits and deductibles subject to insurance company underwriting guidelines. The policy will be maintained in accordance with terms generally available in the insurance market for electric generating facilities. Subject to insurance company underwriting and approval, Business Interruption shall be provided and maintained by Seller in an amount covering a period of indemnity equal to twelve (12) months. Such Business Interruption insurance shall only apply in the event of physical loss or damage to the Plant caused by an insured peril under the policy. In the event a loss is sustained under the policy, such loss will be adjusted by Seller.

b. Minimum coverage to comply with any statutory obligation imposed by Workers Compensation or Occupational Disease Laws, including where applicable, the United States Longshoremen's and Harbor Workers' Act, the Federal Employers' Liability Act and the Jones Act.

- c. A policy of insurance on a standard form with a commercial insurer reasonably acceptable to Buyer providing Commercial General Liability coverage in an amount of not less
- d. A policy of insurance on a standard form with a commercial insurer reasonably acceptable to Buyer providing automobile liability coverage in an amount of not less than \$1,000,000 per occurrence.
- e. An excess liability insurance policy covering employer's liability, commercial general liability, and business auto liability, with a minimum occurrence and aggregate for bodily injury and property damage.

Such minimum limits may be satisfied either by primary insurance or by any combination of primary and excess/umbrella insurance. The required insurance coverages will be in effect on or before the commencement of on site construction of the Plant and will be maintained in effect throughout the Term of this Agreement.

13.2 Evidence and Scope of Insurance

(a) Seller will annually cause each insurer or authorized agent to provide Buyer with two original copies of insurance certificates reasonably acceptable to Buyer evidencing the effectiveness of the insurance coverages required to be maintained. A complete copy of each policy will be provided to Buyer upon request.

(b) All such insurance policies will:

(i) name Buyer as an additional insured (except in the case of worker's compensation insurance);

(ii) provide that Buyer will receive from each insurer 30 Days' prior written notice of non-renewal, cancellation of, or significant modification to, any of such policies (except that such notice period will be 10 Days in case of non-payment of premiums); and

(iii) provide a waiver of any rights of subrogation against Buyer, its Affiliates and their officers, directors, agents, subcontractors, and employees.

The insurance certificates will indicate that the insurance policies have been endorsed as described above.

(c) All policies will be written by one or more nationally reputable insurance companies authorized to do business in Pennsylvania and be rated B+VII or higher by A.M. Best Company or Lloyds Companies or other insurers reasonably acceptable to Buyer.

(d) Buyer will receive certificates for all insurance policies required by this Article 13 before the start of construction of the Plant except for the Operational All Risk policy, which certificate or certificates Buyer must receive before to the Commercial Operation Date.

(e) All policies will be written on an occurrence basis unless procured from AEGIS on a claims made basis. Policies will contain an endorsement that Seller's policy will be primary as respects construction and operations of the Plant regardless of like coverages, if any, carried by Buyer.

(f) Buyer may request Seller to require that any insurance obtained and maintained by a third party operator of the Plant name Buyer as an additional insured, with any cost for such coverage payable by Buyer.

(g) Seller will notify Buyer of the insurance company (and any replacement thereof) from which Seller obtains its Commercial or Comprehensive General Liability insurance and, if Buyer desires to obtain Commercial or Comprehensive General Liability insurance from the same insurance company (or any replacement thereof), Seller will comply with Buyer's reasonable requests for information concerning such coverages which assist Buyer in obtaining insurance from the same such insurance company.

13.3 Term and Modification of Insurance

(a) In the event that the third party liability insurance required pursuant to the Commercial General Liability policy, and/or the Excess/Umbrella Liability policy is on a "claims made" basis and not on an occurrence basis, such insurance will provide for a retroactive date and continuing "tail" coverage not later than the Effective Date and such insurance will be maintained by Seller, with a retroactive date not later than the retroactive date required above, for a minimum of five years after the Term.

(b) If the designated coverage, or relatively comparable coverage, are unavailable on reasonable commercial terms, Seller will provide to Buyer detailed information as to the maximum amount of available coverage that it is able to purchase and will be required to obtain Buyer's consent as to the adequacy of said coverage under the circumstances at the time, which consent Buyer will not unreasonably withhold or delay.

13.4 Application of Proceeds

During the Term of this Agreement, and subject to the requirements of the Financing Documents and the rights or remedies of the Financing Parties thereunder, Seller will apply the proceeds of any such property insurance policies received for damages to the Plant to the repair of the Plant; provided that during the last five Contract Years of the Term, (A) Seller will apply such proceeds to the repair of the Plant if (i) such proceeds are sufficient (less applicable deductibles) to fully repair the Plant, (ii) the repair can be completed within one (1) year, and (iii) the value of the damage to the Plant is less than

fifty percent (50%) of the value of the Plant, or (B) Seller will reimburse Buyer for the unavoidable liquidated damages owed by Buyer under its forward contracts for the energy output from the Plant provided that Seller receives complete documentation supporting such liquidated damages and provided further that Seller's liability under this Section 13.4(B) shall not exceed

ARTICLE 14 FORCE MAJEURE EVENT

14.1 Force Majeure Event Defined

(a) As used in this Agreement, "Force Majeure Event" means, causes or events that are beyond the reasonable control of, and without the fault or negligence of, the Party claiming such Force Majeure Event, including, without limitation, natural disasters; fire; lightning strikes that damage the wind turbines; earthquake; cold weather below -20°C; acts of God; unusually severe actions of the elements such as floods, hurricanes, or tornadoes; sabotage; terrorism; war; riots or public disorders; strikes or other labor disputes; and actions or failures to act of any Governmental Agency (including expropriation and requisition), to the extent such cause or event prevents or delays performance of any obligation imposed on the Party claiming such Force Majeure Event (other than an obligation to pay money).

(b) Force Majeure Event does not include: (i) causes or events affecting the performance of third-party suppliers of goods or services except to the extent caused by an event that otherwise is a Force Majeure Event under subsection (a) of this Section 14.1, (ii) the unavailability of equipment that would have been avoided by compliance with Prudent Industry Practices by the Party claiming the Force Majeure Event, (iii) changes in market conditions and actions or failures to act of any Governmental Agency that affect the price of energy, capacity or transmission, (iv) the failure to timely apply for or to obtain Governmental Approvals that Seller knows or should know on the Effective Date are required for the construction or operation of the Plant, or (v) any Delivery Excuse.

14.2 Applicability of Force Majeure Event

Neither Party will be in breach or liable for any delay or failure in its performance under this Agreement to the extent such performance is prevented or delayed due to a Force Majeure Event, provided that:

(a) the non-performing Party will give the other Party written notice within 48 hours of the commencement of the Force Majeure Event, with details to be supplied

within 10 Days after the commencement of the Force Majeure Event further describing the particulars of the occurrence of the Force Majeure Event;

(b) the delay in performance will be of no greater scope and of no longer duration than is directly caused by the Force Majeure Event;

(c) the Party whose performance is delayed or prevented will proceed with Commercially Reasonable Efforts to overcome the events or circumstances preventing or delaying performance and will provide weekly written progress reports to the other Party during the period that performance is delayed or prevented describing actions taken and to be taken to remedy the consequences of the Force Majeure Event, the schedule for such actions and the expected date by which performance will no longer be affected by the Force Majeure Event; and

(d) when the performance of the Party claiming the Force Majeure event is no longer being delayed or prevented, that Party will give the other Party written notice to that effect.

(e) Under no event shall the Force Majeure provisions of the Agreement give Seller any right to payment beyond that which is earned by Seller due to Seller's actual provision to Buyer of the Electrical Output, Unforced Capacity, Ancillary Services, and Credits associated with, the Plant at the prices and under the terms and conditions set forth in this Agreement.

ARTICLE 15 TERMINATION AND DEFAULT

15.1 Event of Default

(a) The occurrence of any one of the following will constitute an Event of Default with respect to Seller:

(i) Seller fails to make payments for undisputed amounts due under this Agreement to Buyer within 10 Days after notice from Buyer that such payment is unpaid and due;

(ii) Seller fails to comply with any material provision of this Agreement (other than the obligation to pay money when due), and such failure continues uncured for 30 Days after notice thereof by Buyer, provided that if such failure is not capable of being cured within such period of 30 Days with the exercise of reasonable diligence, then such cure period will be extended for an additional reasonable period of time (not to exceed 180 Days) so long as Seller is exercising reasonable diligence to cure such failure;

(iii) Seller (a) admits in writing its inability to pay its debts as such debts become due; (b) makes a general assignment or an arrangement or composition with or for the benefit of its creditors; (c) fails to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against such Party under any bankruptcy or similar law; or (d) takes any action for the purpose of effecting any of the foregoing;

(iv) A proceeding or case is commenced, without the application or consent of Seller, in any court of competent jurisdiction, seeking: (a) its liquidation, reorganization of its debts, dissolution or winding-up, or the composition or readjustment of its debts; (b) the appointment of a receiver, custodian, liquidator or the like of Seller or of all or any substantial part of its assets; or (c) similar relief in respect of Seller under any law relating to bankruptcy, insolvency, reorganization of its debts, winding-up, composition or adjustment of debt, and such proceeding remains in effect, for a period of 90 Days;

(v) Any representation made by Seller under Section 12.1 is false in any material respect when made and Seller fails to remedy such false representation within 30 Days after notice thereof by Buyer;

(vi) The unenforceability, termination prior to its stated term or repudiation of any Letter of Credit provided pursuant to Section 2.6 or Credit Support for Seller's performance under this Agreement unless such Credit Support is replaced in form and substance reasonably satisfactory to Buyer within five (5) Business Days after such unenforceability, termination or repudiation;

(vii) The bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar proceeding with respect to any entity providing any Letter of Credit or Credit Support for Seller's performance under this Agreement (whether under any present or future statute, law, or regulation), including the appointment of any trustee, receiver, custodian or the like of such entity or all or any substantial part of its assets unless such Letter of Credit or Credit Support is replaced in form and substance and by an entity reasonably satisfactory to Buyer within five (5) Business Days after such proceeding;

(viii) Seller fails to deliver Credit Support or a Letter of Credit in the amounts and on the dates required by Section 2.6;

(ix) Abandonment of the construction of the Plant for any period in excess of 30 consecutive Days, except in the case of a Force Majeure Event in which case the provisions of Section 14 shall apply; or

(x) Abandonment of the operation of the Plant for any period in excess of 30 consecutive Days, except in the case of (i) a Force Majeure Event in which case the provisions of Section 14 shall apply, or (ii) the last five Contract Years of the Term in which case the provisions of Section 13.4 shall apply.

(b) The occurrence of any one of the following will constitute an Event of Default with respect to Buyer:

(i) Buyer fails to make payments for undisputed amounts due under this Agreement to Seller within 10 Days after notice from Seller that such payment is unpaid and due;

(ii) Buyer fails to comply with any material provision of this Agreement (other than the obligation to pay money when due), and such failure continues uncured for 30 Days after notice thereof by Seller, provided that if such failure is not capable of being cured within such period of 30 Days with the exercise of reasonable diligence, then such cure period will be extended for an additional reasonable period of time (not to exceed 180 Days) so long as Buyer is exercising reasonable diligence to cure such failure;

(iii) Buyer (a) admits in writing its inability to pay its debts as such debts become due; (b) makes a general assignment or an arrangement or composition with or for the benefit of its creditors; (c) fails to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against such Party under any bankruptcy or similar law; or (d) takes any action for the purpose of effecting any of the foregoing;

(iv) A proceeding or case is commenced, without the application or consent of Buyer, in any court of competent jurisdiction, seeking: (a) its liquidation, reorganization of its debt, dissolution or winding up, or composition or readjustment of its debt; (b) the appointment of a receiver, custodian, liquidator or the like of Buyer or of all or any substantial part of its assets; or (c) similar relief in respect of Buyer under any law relating to bankruptcy, insolvency, reorganization of its debts, winding-up, composition or adjustment of debts, and such proceeding remains in effect, for a period of 90 Days;

(v) The unenforceability, expiration, termination or repudiation of any Credit Support for Buyer's performance under this Agreement unless such Credit Support is replaced in form and substance satisfactory to Seller and the Financing Parties within five (5) Business Days (or such shorter period as required by the Financing Parties under the Financing Documents) after such unenforceability, expiration, termination or repudiation;

(vi) The bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar proceeding with

respect to any entity providing any Credit Support for Buyer's performance under this Agreement (whether under any present or future statute, law, or regulation), including the appointment of any trustee, receiver, custodian or the like of such entity or all or any substantial part of its assets unless such Credit Support is replaced in form and substance and by an entity satisfactory to Seller and the Financing Parties within five (5) Business Days (or such shorter period as required by the Financing Parties under the Financing Documents) after such proceeding; or

(vii) Any representation made by Buyer under Section 12.2 is false in any material respect when made and Buyer fails to remedy such false representation within 30 Days after notice thereof by Seller.

15.2 Remedies for Default

If an Event of Default occurs with respect to a defaulting Party at any time during the Term, the non-defaulting Party may, for so long as the Event of Default is continuing, (i) deliver a written notice that establishes a date (which date will be no earlier than 30 Days after the Non-Defaulting Party delivers notice) on which this Agreement will be terminated if such Event of Default is still continuing, (ii) withhold any payments due in respect of this Agreement and (iii) pursue any other remedies available at law or in equity, except to the extent such remedies are expressly limited by this Agreement.

15.3 Financing Party Cure Rights

Buyer's right to exercise the option to terminate this Agreement pursuant to Section 15.2 is subject to Buyer's first delivering to the Financing Parties, simultaneously with delivery thereof to Seller, notice of Seller's failure to cure the Seller Event of Default and Buyer's intent to terminate as a result thereof. Each Financing Party shall have the option to cure such Seller Event of Default within ninety (90) Days after receipt of such notice or to cause the Financing Parties' designee to assume this Agreement. If the Financing Parties desire to cause their designee to assume this Agreement, they shall provide notice to that effect within ninety (90) days after receipt of Buyer's notice to the Financing Parties of the Seller Event of Default. In either such case, Buyer's right to terminate this Agreement shall be of no further force and effect upon the cure by the Financing Parties of such default.

ARTICLE 16 INDEMNIFICATION AND LIABILITY

16.1 Indemnification

(a) Each Party will indemnify, defend and hold the other Party and its officers, directors, Affiliates, agents, employees, contractors and subcontractors, harmless from and against any and all Claims, to the extent caused by any act or omission of the

indemnifying Party or the indemnifying Party's own officers, directors, Affiliates, agents, employees, contractors or subcontractors or to the extent such Claims arise out of or are in any manner connected with the performance of this Agreement by such indemnifying Party.

(b) Notwithstanding anything to the contrary in this Agreement, each Party will indemnify, defend and hold harmless the other Party from any Claims arising from the Electrical Output that occur when risk of loss of the Electrical Output is vested in the indemnifying Party.

(c) Nothing in the foregoing provisions of this Section 16.1 will be construed to require one Party to this Agreement to indemnify the other Party to this Agreement or its officers, directors, Affiliates, agents, employees, contractors and subcontractors for any cost or expense that is to be borne by such other Party pursuant to any express provision of this Agreement or for injury or damage caused by the negligence or willful misconduct of the other Party or its officers, directors, Affiliates, agents, employees, contractors and subcontractors.

16.2 Fines

(a) Any fines, penalties or other costs incurred by either Party or such Party's agents, employees or subcontractors for non-compliance by such Party, its agents, employees or subcontractors with the requirements of any Laws or Governmental Approvals will not be reimbursed by the other Party but will be the sole responsibility of such non-complying Party.

(b) If such fines, penalties or other costs are assessed against Buyer by any Governmental Agency or court of competent jurisdiction due to the non-compliance by Seller with any Laws or Governmental Approvals, Seller will indemnify and hold harmless Buyer against any and all losses, liabilities, damages and claims suffered or incurred because of the failure of Seller to comply therewith, subject to refund in the event that Seller or Buyer prevails in any Contest described below. Seller will also reimburse Buyer for any and all legal or other expenses (including attorneys' fees) reasonably incurred by Buyer in connection with such losses, liabilities, damages and claims.

(c) If such fines, penalties or other costs are assessed against Seller by any Governmental Agency or court of competent jurisdiction due to the non-compliance by Buyer with any Laws or Governmental Approvals, Buyer will indemnify and hold harmless Seller against any and all losses, liabilities, damages and claims suffered or incurred because of the failure of Buyer to comply therewith, subject to refund in the event that Buyer or Seller prevails in any Contest described below. Buyer will also reimburse Seller for any and all legal or other expenses (including attorneys' fees) reasonably incurred by Seller in connection with such losses, liabilities, damages and claims.

(d) In the case of Section 16(b) and (c), either Party will, upon written notice to the other Party, have the right to reasonably Contest in the name of either or both Parties, as required, or to require the other Party to reasonably Contest, the assessment of such fines, penalties or costs and the Party requesting such Contest will be responsible for any costs and expenses (including the costs and expenses of the other Party) relating to such Contest.

16.3 Limitations of Liability, Remedies and Damages.

(a) Each Party acknowledges and agrees that in no event will any partner, shareholder, member, manager, owner, officer, director, employee or affiliate of either Party be personally liable to the other Party for any payments, obligations, or performance due under this Agreement or any breach or failure of performance of either Party and the sole recourse for payment or performance of the obligations under this Agreement will be against Seller or Buyer and each of their respective assets and not against any other Person, except for such liability as expressly assumed by an assignee pursuant to an assignment of this Agreement in accordance with the terms hereof.

(b) Each Party acknowledges and agrees that, after the Commercial Operation Date, Seller will be held harmless against, any claims, damages or liabilities of any kind resulting from a Forced Outage or other failure to provide and deliver the Electrical Output to Buyer other than (i) as reflected in the calculation of the payments specified in Section 4.3 or pursuant to Section 16.1. Seller will not be liable for or deemed in breach of this Agreement to the extent the performance of its obligations under this Agreement is delayed or prevented by a Delivery Excuse or Emergency Condition.

(c) THE EXPRESS REMEDY, PAYMENT OBLIGATIONS, OR MEASURE OF DAMAGES SET FORTH IN THIS AGREEMENT WILL BE THE SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO SUCH SECTIONS IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF SUCH SECTIONS. ACCORDINGLY, EACH PARTY'S LIABILITY WILL BE LIMITED AS SET FORTH IN SUCH SECTIONS AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY FOR THE SAME DAMAGE OR INJURY NOT PERMITTED BY SUCH SECTIONS ARE WAIVED. UNLESS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES SUFFERED BY THAT PARTY OR BY ANY CUSTOMER OR ANY PURCHASER OF THAT PARTY, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE (EXCEPT TO THE EXTENT THAT AN INDEMNIFYING PARTY PURSUANT TO THE PROVISIONS OF SECTION 16.1 HEREOF IS OBLIGATED TO INDEMNIFY AGAINST THIRD PARTY CLAIMS NOT ARISING OUT OF CONTRACTS WITH THE INDEMNIFIED PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR

INDIRECT DAMAGES OR LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES). IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING, WITHOUT LIMITATION, THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

(d) The provisions of this Section 16 will survive the termination of this Agreement.

ARTICLE 17 GENERAL

17.1 Assignment

(a) This Agreement may not be assigned by either Party without the prior written approval of the other Party, which shall not be unreasonably withheld.

(b) Notwithstanding Section 17.1(a), Seller will have the right, without the consent of Buyer, to assign all of its rights, interests and obligations under this Agreement with respect to all or any portion of the Plant to an owner trust or an equity investment vehicle or as security to a lender for the purpose of providing financing or refinancing for all or such portion of the Plant (and in connection therewith, Buyer shall execute and deliver to the Financing Parties a consent agreement in a form reasonably requested by the Financing Parties).

(c) The foregoing restrictions shall not prohibit the sale of membership interests in Seller to third parties.

(d) No assignment of this Agreement or of the rights or obligations by Seller will relieve Seller of liability for any breach by the assignee or for any other failure by the assignee to perform its obligations hereunder.

(e) Notwithstanding Section 17.1(a), Buyer will have the right, without consent of Seller, to sell all or part of the Electrical Output, Unforced Capacity, Ancillary Services, and/or Credits to be purchased pursuant to this Agreement to utilities or other third parties in any lawful fashion. Regardless of any such sale, Buyer shall at all times remain liable for all obligations undertaken to Seller under the terms of this Agreement,

including, without limitation, the purchase of the Electrical Output and associated Credits.

(f) Notwithstanding Section 17.1(a), Buyer will have the right, without the consent of Seller, to assign all of its rights and obligations to an Affiliate, as long as such Affiliate has a corporate rating from at least one nationally recognized statistical ratings organization that is at least "Investment Grade." "Investment Grade" means a rating of at least BBB by Standard & Poor's Rating Group or Baa3 by Moody's Investors Service. Buyer will also have the right, without the consent of Seller, to assign all of its rights and obligations to an Affiliate that does not have an Investment Grade corporate rating from one nationally recognized statistical ratings organization, as long as the Affiliate provides to Seller either: (1) a parent guarantee as long as such parent has a corporate rating from at least one nationally recognized statistical ratings organization that is at least Investment Grade (which parent guarantee shall provide that any rights of subrogation shall not be exercised before the payment under the guarantee is made) or letter of credit in the amount of _____ commencing as of the effective date of the assignment and assumption and effective through the earlier of, (i) the 45th Day following the end of the Term of this Agreement, and (ii) the date that the Affiliate-assignee obtains an Investment Grade corporate rating from a nationally recognized statistical ratings agency, or (2) other Credit Support acceptable to Seller.

(g) The assigning Party shall give prompt written notice to the other Party of any assignment which does not require the consent of the other Party. Any assignment in violation of this Section 17.1 will be void and of no force or effect.

17.2 Confidentiality

Any information provided by either Party to the other Party pursuant to this Agreement and labeled "CONFIDENTIAL" will be utilized by the receiving Party solely in connection with the purposes of this Agreement and will not be disclosed by the receiving Party to any third party, except with the providing Party's consent, and upon request of the providing Party will be returned thereto, except that the receiving Party will not be obligated to return any such information contained in documents generated by the receiving Party that: (1) reflect or refer to confidential information provided by the disclosing Party; and (2) are stored electronically by the receiving Party. With respect to any such retained electronically stored confidential information, the receiving Party will continue to comply with the obligations of this Section 17.2. Notwithstanding, the Parties acknowledge and agree that such confidential information may be disclosed to actual and prospective Financing Parties, suppliers and potential suppliers of major equipment to the Plant and other third parties as may be necessary for Buyer and Seller to perform their obligations under this Agreement and the Financing Documents. To the extent that such disclosures are necessary, the Parties also agree that they will in disclosing such information seek to preserve the confidentiality of such disclosures. This provision will not prevent either Party from providing any confidential information

received from the other Party to any court in accordance with a proper discovery request or in response to the reasonable request of any Governmental Agency charged with regulating the disclosing Party's affairs, provided that, if feasible, the disclosing Party will give prior notice to the other Party of such disclosure and, if so requested by such other Party, will have used all reasonable efforts to oppose or resist the requested disclosure, as appropriate under the circumstances, or to otherwise make such disclosure pursuant to a protective order or other similar arrangement for confidentiality.

17.3 Several Obligations

Except when specifically stated in this Agreement to be otherwise, the duties, obligations, and liabilities of the Parties are intended to be several and not joint or collective. Nothing in the Agreement shall be construed to create an association, trust, partnership, fiduciary relationship, or joint venture or impose a trust or partnership duty, obligation or liability or agency relationship on or with regard to either Seller or Buyer. Each Party shall be liable for its own obligations under this Agreement. Any undertaking by one Party to the other Party under any provision of this Agreement shall not constitute the dedication of the electrical system or any portion thereof of either Party to the public or to the other Party, its customers, or any other person or entity.

17.4 Notices

Any notice of a routine character in connection with the delivery of electric energy or the operation of the Plant may be given in such manner as may be mutually agreeable between the Parties' Authorized Representatives. Any formal notice, demand, request, or communication required or authorized by this Agreement shall be delivered in writing either by hand, facsimile, overnight courier or mailed by certified mail, return receipt requested, with postage prepaid, to the following addresses:

Exelon Power Team
300 Exelon Way
Kennett Square Pa. 19348
Attn.: Noel H. Trask
Phone: 610-765-6649
Facsimile: 610-765-7649

Mill Run Windpower, LLC
3100 Monticello Avenue, Suite 105,
Dallas, Texas 75205
Attn: Project Manager
Phone: 214-520-9280
Facsimile: 214-520-9281

17.5 Captions

All titles, subject headings, section titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the meaning of the contents or scope of this Agreement.

17.6 Governing Law/Venue

(a) This Agreement shall be interpreted and governed by the laws of the State of New York without regard to conflicts of laws.

(b) SUBJECT TO SECTION 17.7, THE PARTIES HEREBY SUBMIT TO THE NONEXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK FOR THE PURPOSES OF ALL LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. EACH PARTY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF THE VENUE OF ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH PARTY HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT.

17.7 Dispute Resolution

(a) In the event a dispute arises between Buyer and Seller regarding the application or interpretation of, or in any way relating to this Agreement, Buyer and Seller shall use reasonable efforts to reach a reasonable and equitable resolution of the matter on an expedited basis. In the event such efforts do not result in the resolution of the dispute, either Party may by written notice request the other Party to designate an officer of its management to meet at the Plant, or at any other mutually agreed location, to resolve the dispute. The designated officers shall meet within five (5) Days following the notice date unless a later date is specified in the notice, to resolve the dispute. In conjunction with any meetings pursuant to this paragraph, upon request of either Party the other Party shall cooperate to select a mutually agreeable independent technical consultant to assist in the resolution of any technical dispute.

(b) If the procedures referenced in the preceding paragraph do not result in resolution of the dispute within five (5) Days after commencement of the referenced officers' meeting (and in any event within the time which legal or equitable proceedings based on such claim, dispute, or controversy would not be barred by the applicable statute

of limitations), the Parties may agree, but neither Party will have any obligation to agree, to submit the dispute to binding arbitration. Any agreement to arbitrate a dispute must be evidenced by a writing signed by both Parties. Each Party will have the right to designate an arbitrator of its choice, who need not be from the American Arbitration Association ("AAA") panel of arbitrators but who (a) will be an expert in the independent power electric generation field and (b) will not have been previously an employee or agent of or consultant or counsel to either Party and will not have a direct or indirect interest in either Party or the subject matter of the arbitration. Such designation will be made by notice to the other Party and to the AAA within 10 Days or, in the case of payment disputes, five Days after the date of the giving of notice of the demand for arbitration. The arbitrators designated by the Parties will designate a third arbitrator, who will have a background in legal and judicial matters (and who will act as chairman), within 10 Days or, in the case of payment disputes, five Days after the date of the designation of the last of the arbitrators to be designated by the Parties, and the arbitration will be decided by the three arbitrators. If the two arbitrators cannot or do not select a third independent arbitrator within such period, either Party may apply to the AAA for the purpose of appointing any person listed with the AAA as the third independent arbitrator under the expedited rules of the AAA. Such arbitration will be held in alternating locations of the home offices of the Parties, commencing with Buyer's home office, or in any other mutually agreed upon location. The rules of the AAA will apply to the extent not inconsistent with the rules herein specified. Each Party will bear its own expenses (including attorneys' fees) with respect to the arbitration, unless the arbitrator decides on a different allocation of expenses. The arbitrators will designate the Party to bear the expenses of the arbitrators or the respective amounts of such expense to be borne by each Party.

(c) Each Party understands that this Agreement contains an agreement to arbitrate with respect to specified disputes that the Parties mutually agree to arbitrate. Any award of the arbitrators may be enforced by the Party in whose favor such award is made in any court of competent jurisdiction.

(d) Unless otherwise agreed in writing, each Party will diligently continue to perform its obligations under this Agreement during the pendency of any disputes or arbitration proceedings so long as all undisputed amounts payable hereunder have been paid.

17.8 No Residual Value in Power System

This Agreement shall not be construed to provide any residual value to either Party or its successors or any other Party, for rights to, use of, or benefits from the other Party's system following expiration of this Agreement.

17.9 No Third Party Beneficiary

No provisions of this Agreement shall in any way inure to the benefit of any customer, or any other third party so as to constitute any such person as a third-party beneficiary under

this agreement, or of any one or more of the terms of this Agreement or otherwise give rise to any cause of action in any person not a Party hereto.

17.10 Entire Agreement; Modification and Waiver; Severability

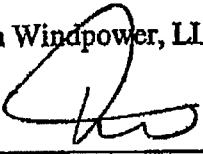
This Agreement and the other agreements referred to herein, constitute the entire agreement between the Parties relating to the transaction described in this Agreement and supersede any and all prior oral or written understandings. No addition to or modification of any provision of this Agreement shall be binding upon either Party, and neither Party shall be deemed to have waived any provision of this Agreement or any remedy available to it unless such addition, modification or waiver is in writing and signed by a duly authorized officer of such Party.

If any term of this Agreement is found to be unenforceable, this Agreement will remain in full force and effect except that the unenforceable term will be replaced, by good faith agreement of the Parties, with an enforceable term as similar as possible to the unenforceable term.

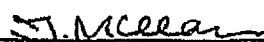
[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the day and year first above written.

Mill Run Windpower, LLC

By: 
Name: Peter J. De Wolf
Title: MANAGING DIRECTOR

Exelon Generation Company, LLC

By: 
Name: Jim McLean
Title: SVP, Exelon Generation,
President & Power Team *hkt*

Amendment to that certain Power Purchase Agreement between
Mill Run Windpower, LLC, and
Exelon Generation Company, LLC, dated February 14, 2001

The February 14, 2001, Power Purchase Agreement between Mill Run Windpower, LLC, and Exelon Generation Company, LLC, (the "Agreement"), is hereby amended as follows:

1. The definition of "Credits" will be replaced in its entirety by the following:

Credits: Means any credits, credit certificates or similar items such as those for greenhouse gas reduction, or the generation of green power or renewable energy, created by any Governmental Agency and/or independent certification board or group or created pursuant to private bilateral contracts, in each case generally recognized in the electric power generation industry, and generated by or associated with the Plant, but specifically excluding any and all production tax credits, investment tax credits, property tax credits, and any other tax credits, as granted by local, state, or federal government agencies, which are or will be generated by or associated with the Plant.

2. The following definition of "Press Release" will be added to Article 1

Press Release: Means a press release, announcement, or other publication in any media.

3. The following new paragraph will be added to Article 17:

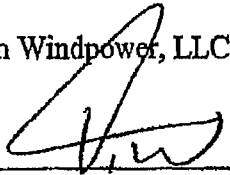
17.11 Naming Rights

Buyer shall have the right to name the Plant subject to the consent of Seller, such consent not to be unreasonably withheld. Each Press Release, community benefit or public relations activity, program or event of any kind whatsoever, which makes any reference to the Plant shall include a prominent statement that the Plant is being "developed by Mill Run Windpower, LLC."

As hereinabove amended, the February 14, 2001, Agreement will remain in full force and effect.

Mill Run Windpower, LLC

Exelon Generation Company, LLC

By: 
Name: Theo J. de Wolff
Title: Managing Director

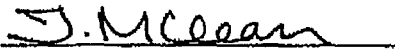
By:  *whf*
Name: Ian P. McLean
Title: Senior Vice President,
Exelon Generation Company, LLC,
President, Power Team

Exhibit 5
To The
Testimony of Jeff Ferguson

Public

ORIGINAL

YOUNG, SOMMER ... LLC

YOUNG, SOMMER, WARD, RITZENBERG, WOOLEY, BAKER & MOORE, LLC

COUNSELORS AT LAW

ALL WRITTEN CORRESPONDENCE TO:

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SARATOGA OFFICE:

P.O. BOX 763, 468 BROADWAY, SARATOGA SPRINGS, NY 12866
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DWARD@YOUNGSOMMER.COM

May 29, 2002

Via Federal Express

David P. Boergers
Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Room 11G-1
Washington, DC 20426

Re: Amended and Restated Power Purchase Agreement Between Somerset
Windpower LLC and Exelon
Generation Company, LLC
Docket No. ER02-000

1927

Dear Secretary Boergers:

Pursuant to Section 205 of the Federal Power Act, 16 U.S.C. §824d, and Parts 35 and 388 of the Federal Energy Regulatory Commission's ("Commission") regulations, 18 C.F.R. pts. 35 and 388 (2000), Somerset Windpower LLC ("Somerset"), submits for filing fourteen (14) redacted, non-confidential copies of the Amended and Restated Power Purchase Agreement, by and between Somerset and Exelon Generation Company, LLC ("Exelon") dated as of March 30, 2002 (ARPPA). The ARPPA amends and restates a Power Purchase Agreement between Somerset and Exelon dated April 4, 2001. The redacted non-confidential copies of the ARPPA contain statements that information has been removed for privileged treatment. In addition, Somerset submits one original

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REGULATORY COMMISSION

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unredacted, confidential copy of the ARPPA, which is boldly labeled, "Contains Privileged Information - Do Not Release" and identifies the information for which privileged treatment is sought. In addition, Somerset submits one "unredacted", "redlined" ARPPA which is boldly labeled "Contains Privileged Information - Do Not Release".

The ARPPA is entered into pursuant to Somerset's authority to sell power at market-based rates under its Market-Based Rate Tariff, Second Revised Sheet No. 1, Original Volume No. 1 (Docket No. ER01-2139-002), approved by the Commission on July 20, 2001, in Docket No. ER01-2139-001. In accordance with the requirements of Order No. 614, FERC Stats. & Regs. §31,096 (2000), Somerset hereby designates the ARPPA as Service Agreement No. 2 under FERC Electrical Tariff, Original Volume No. 1.

The ARPPA provides the general terms and conditions for electrical capacity and energy sales from Somerset to Exelon. Under the ARPPA, Somerset has agreed to sell to Exelon 1) all the electric output, 2) associated credits; 3) all unforced capacity and 4) all ancillary services, from its wind energy generating facility located in Somerset County, Pennsylvania (the "Facility").

Somerset requests that the Commission waive its sixty (60) day prior notice requirement and permit the ARPPA to become effective as of June 30, 2002.

A complete copy of this filing has been sent to:

Noel H. Trask
Exelon Powerteam
300 Exelon Way
Kenneth Square, PA 19348

Request for Privileged Treatment of the ARPPA

Pursuant to Section 388.112 of the Commission's regulations, 18 C.F.R. §388.112 (2000), Somerset requests that the Commission grant privileged treatment to certain information contained in the ARPPA. The information for which Somerset seeks privileged treatment is commercial and/or financial information, such as price terms, type of power, and allocations of risk. These contract terms contain proprietary and commercially sensitive information that would cause Somerset substantial competitive harm if disclosed. Therefore, the information for which Somerset seeks privileged treatment is exempt from the mandatory public disclosure requirements of the Freedom of Information Act pursuant to exemption number 4. See 5 U.S.C. § 552(b)(4).

Somerset would note that in Docket No. ER00-2998-000, *et al.*, Southern Company Services, Inc. ("Southern") filed redacted, confidential copies of four power purchase agreements and requested privileged treatment for certain financial and commercial information contained in those agreements. Although the Commission initially rejected Southern's request, the Commission extended the time for Southern to file non-confidential, unredacted copies of the agreements pending

the outcome of Southern's rehearing request in that proceeding.¹ The Commission has followed this same course for numerous other PPA filings requesting confidential treatment.²

Somerset requests that, in accordance with the discussion above, and consistent with the Commission's August 14, 2000 Notice of Extension of Time in Docket No. ER00-2998-000, *et al.*, the Commission permit Somerset to file redacted, non-confidential copies of the ARPPA for the public and one unredacted copy for Commission review pending the outcome of Southern's rehearing request. If the Commission denies Southern's request for rehearing regarding the privileged treatment of its agreements, and subsequently does not rule favorably on Somerset's request, Somerset will file non-confidential, unredacted copies of the ARPPA within five (5) days of the Commission's final order in this docket.

The following persons may be contacted regarding Somerset's request for privileged treatment:

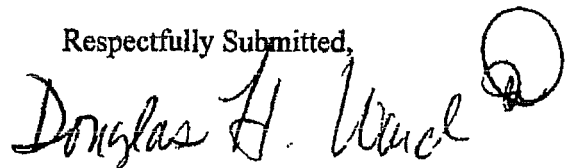
Rick Winsor
Somerset Windpower LLC
1001 McKinney
Suite 1740
Houston, Texas 77002
Phone: (713) 571-6640
Fax: (713) 571-6659

Douglas H. Ward, Esq.
Young, Sommer ..., LLC
Executive Woods
5 Palisades Drive
Albany, NY 12205
Phone: (518) 438-9907
Fax: (518) 438-9914

Enclosed with this filing is a form of notice suitable for publication in the *Federal Register* and diskette copy of such notice.

Please do not hesitate to contact the undersigned if there are any questions regarding this filing.

Respectfully Submitted,



Douglas H. Ward, Esq.
Counsel for Somerset Windpower LLC

Enclosures

¹ See Letter Order, Docket No. ER00-2998-000, *et al.* (Jul. 28, 2000); Notice of Extension of Time, Docket No. ER00-2998-000, *et al.* (Aug. 14, 2000).

² See e.g., *Tenaska Frontier Partners, Ltd.*, 93 FERC ¶61,249 (2000); *Newark Bay Cogeneration Partnership, L.P.*, 93 FERC ¶61,433 (2001).

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

Somerset Windpower LLC)

Docket No. ER02-____-000

NOTICE OF FILING

(May 29, 2002)

Take notice that on May 29, 2002, Somerset Windpower LLC ("Somerset"), 1001 McKinney, Suite 1740, Houston Texas 77002, filed with the Federal Energy Regulatory Commission the Amended and Restated Power Purchase Agreement by and between Somerset and Exelon Generation Company, LLC ("Exelon"), dated as of March 30, 2002 ("ARPPA"). This ARPPA amends and restates a Power Purchase Agreement between Somerset and Exelon dated April 4, 2001. The filing is made pursuant to Somerset's authority to sell power at market-based rates under its Market-Based Rate Tarriff, Second Revised Sheet No. 1, Original Volume No. 1 (Docket No. ER01-2139-002), approved by the Commission on July 20, 2001 in Docket No. ER01-2139-001.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with §§385.211 and 385.214 of the Commission's Rules of Practice and Procedure. All such motions and protests should be filed on or before June ____, 2002, and must be served on the Applicant. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at <http://www.ferc.fed.us/online/rims/htm> (call 202-208-2222 for assistance).

David P. Boergers
Secretary

INFORMATION HAS BEEN REMOVED FROM THIS
DOCUMENT FOR PRIVILEGED TREATMENT

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REGULATORY COMMISSION

AMENDED AND RESTATED POWER PURCHASE AGREEMENT

BETWEEN

EXELON GENERATION COMPANY, LLC

AND

SOMERSET WINDPOWER LLC

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AMENDED AND RESTATED POWER PURCHASE AGREEMENT

THIS AMENDED AND RESTATED POWER PURCHASE AGREEMENT is entered into on this 30 day of March, 2002, by and between Somerset Windpower LLC, a Delaware limited liability company ("Seller"), and Exelon Generation Company, LLC, a Pennsylvania limited liability company ("Buyer"). Buyer and Seller are sometimes referred to in this Agreement individually as a "Party" and collectively as the "Parties."

WITNESSETH

WHEREAS, Buyer desires to purchase (a) electric energy and capacity from a renewable source, and (b) the Credits associated with, and to the extent available from, the generation of such electric energy; and

WHEREAS, Seller will construct and own, operate and maintain, or arrange for the operation and maintenance of, a wind-powered electric generating plant (the "Plant") to be located at a site in Somerset County, Pennsylvania to be selected by Seller; and

WHEREAS, Seller and Buyer entered into that certain Power Purchase Agreement, dated as of April 4, 2001 and the Parties desire to amend and restate such agreement pursuant to the terms and provisions contained herein.

NOW THEREFORE, in consideration of these premises and the mutual promises set forth below, Seller and Buyer agree as follows:

ARTICLE 1 DEFINITIONS

Agreement: means this Amended and Restated Power Purchase Agreement entered into between Seller and Buyer, as amended by the Parties from time to time.

Affiliate: means, when used with reference to a specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the specified Person. For purposes of the foregoing, "control," "controlled" and "under common control" with respect to any Person means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person or entity, whether through the ownership of voting securities, partnership interests or other ownership interests, by contract or otherwise.

Alternate: has the meaning provided in Section 5.6.

Ancillary Services: means spinning reserve, non-spinning reserve, voltage support, and any and all similar or related services capable of being provided by the Plant, to the extent commonly sold or saleable (or used or usable) in the electric power generation or transmission industry from time to time.

Authorized Representative: has the meaning provided in Section 5.6.

Business Day: means any Day that banks are open for business in New York, New York.

Buyer: has the meaning provided in the preamble to this Agreement.

Claims: means any claims, judgments, losses, liabilities, costs, expenses (including reasonable attorneys' fees) and damages of any nature whatsoever (except workers' compensation claims) in relation to personal injury, death or property damage incurred or made by third parties.

Commercial Operation: shall occur for a wind turbine when (i) such wind turbine is able to generate Electrical Output, (ii) such wind turbine has been tested, and (iii) all related facilities and rights have been completed or obtained, including such facilities and rights contemplated by the Interconnection Agreement, to allow regular operation of such wind turbine.

Commercial Operation Date: means the date designated by Seller as the first date that the Plant is able to generate Electrical Output, which date will be no earlier than the Day following the Day on which (i) the Plant has been tested, (ii) all related facilities and rights have been completed or obtained, including such facilities and rights contemplated by the Interconnection Agreement, to allow regular operation for 8760 hours of a year less hours allowed for Planned Outages pursuant to Section 5.3, and (iii) Commercial Operation for at least four (4) wind turbines has been achieved.

Commercially Reasonable or Commercially Reasonable Efforts: means, with respect to any action required to be made, attempted or taken by a Party under this Agreement, the level of effort in light of the facts known to such Party at the time a decision is made that: (i) can reasonably be expected to accomplish the desired action at a reasonable cost; (ii) is consistent with Prudent Industry Practices; and (iii) takes into consideration the amount of notice of the need to take such action, the duration and type of action and the competitive environment in which such action occurs.

Contest: means, with respect to any Person, a contest of (a) any Governmental Approval or any act or omission by Governmental Agencies, or (b) the amount or validity of any claim pursued by or against such Person in good faith and by appropriate legal, administrative or other proceedings diligently conducted.

Contract Year: means the twenty (20) 12-Month periods during the Term commencing upon the last Day of the Month during which the Commercial Operation Date occurs and ending 20 years from such date, which may be extended in accordance with Section 2.1.

Credit Support: means a guarantee, Letter of Credit, bond or other form of security.

Credits: means any credits, credit certificates or similar items such as those for greenhouse gas reduction, or the generation of green power or renewable energy, created by any Governmental Agency and/or independent certification board or group or created pursuant to private bilateral contracts, in each case generally recognized in the electric power generation industry, and generated by or associated with the Plant, but specifically excluding any and all

state and federal production tax credits, investment tax credits and any other tax credits which are or will be generated by the Plant.

Day: means the 24-hour period beginning and ending at 12:00 midnight (Eastern Prevailing Time).

Delivery Excuse: means, at any time during the Term any of the following: (i) any Event of Default of Buyer (as defined in Section 15.2(b)) under this Agreement; (ii) any delay or failure by Buyer in giving any approval, or deciding whether to give any approval, within the times required under this Agreement that is not the result of Force Majeure affecting the performance of the Buyer; (iii) any delay or failure by Buyer in performing any obligation under this Agreement that is not the result of Force Majeure affecting the performance of the Buyer; and (iv) any failure of Buyer to have adequate transmission rights to take delivery of the Electric Output at the Point of Metering, in accordance with the Agreement, that is not the result of Force Majeure affecting the performance of the Buyer.

Designated Start Date: has the meaning assigned to such term in Section 2.2.

Effective Date: means April 4, 2001.

Electrical Output: means the entire electric energy output of the Plant, net of Station Service Power – Non-Retail, and therefore delivered to the Point of Metering, as measured by the meters installed pursuant to Article 6 of this Agreement.

Emergency Condition: means a condition or situation that presents an imminent physical threat of danger to life, health or property, or could reasonably be expected to cause a significant disruption on the distribution system operated by GPU or the transmission system operated by PJM.

Estimated Annual Energy Output: 24,000 MWh, provided, that in the case of a Force Majeure Event, such amount shall be decreased by one-half (.5) MWh per actual hour (or any fraction thereof) during which the Force Majeure Event continues for each wind turbine so affected by the Force Majeure Event.

Event of Default: has the meaning provided in Section 15.1.

Financing Parties: means institutions (including any trustee or agent on behalf of such institutions) providing debt financing or refinancing to Seller for the acquisition, development, construction, ownership, operation, maintenance or leasing of the Plant.

Force Majeure Event: means an event, condition or circumstance described in Section 14.1.

Forced Outage: means an unplanned component failure, transmission system failure, or other condition that requires all or a portion of the Plant or the Interconnection Facilities to be removed from service immediately.

Government Agency: means any federal, state, local, territorial, tribal or municipal government and any department, commission, board, bureau, agency, instrumentality, judicial or administrative body thereof having jurisdiction over the Plant, Buyer or Seller, as the case may be.

Governmental Approval: means any authorization, consent, approval, license, ruling, permit, exemption, variance, order, judgment, decree, declarations of or regulation by any Government Agency relating to the acquisition, development, ownership, leasing, occupation, construction, start-up, testing, operation or maintenance of the Plant or to the execution, delivery or performance of this Agreement.

GPU: means GPU Energy – Pennsylvania Electric Company.

Interconnection Agreement: means the interconnection agreement into which Seller must enter with GPU, as more fully described in Article 7 of this Agreement.

Interconnection Facilities: means all the facilities installed for the purpose of interconnecting the Plant to Point of Metering, including, but not limited to all transformers and associated equipment, relay and switching equipment, and safety equipment.

Investment Grade: has the meaning assigned to such term in Section 17.1(f).

kW: means Kilowatt.

kWh: means Kilowatt hour.

Law: means any statute, law, rule or regulation or any judicial or administrative interpretation thereof having the effect of the foregoing imposed by a Government Agency, whether in effect now or at any time in the future.

Letter of Credit: means an irrevocable standby letter of credit, issued by a financial institution acceptable to Buyer or Seller, as the case may be, on terms reasonably acceptable to Buyer or Seller, as the case may be. For purposes of this definition, an institution shall be deemed acceptable to both Parties if it has (i) a capital surplus of at least Fifty Million Dollars (\$50,000,000), or (ii) a corporate rating from at least one nationally recognized statistical ratings organization that is at least Investment Grade.

Locational Marginal Price: means the hourly integrated market clearing price for energy at the Penelec Transmission Zone, as calculated by PJM.

Meters: has the meaning set forth in Section 8.2.

Month: means a calendar month.

MW: means megawatt.

MWh: Megawatt hour.

Name Plate Capacity Rating: means the sum, expressed in MWs, of the manufacturer's rated electric energy output of each of the generating units comprising the Plant.

Operating Procedures: has the meaning provided in Section 5.6.

Party: has the meaning set forth in the preamble to this Agreement.

PECO Settlement Funding: means the fund established pursuant to Paragraph 41 of the Joint Petition for Settlement approved in the PECO Energy /Unicom merger proceeding (Pennsylvania Public Utility Commission Docket A-110550F0147), administered by the Sustainable Development Fund of Pennsylvania and known as the Pennsylvania Wind Development Program.

Person: means any individual, corporation, partnership, limited liability company, joint venture, trust, unincorporated organization or Government Agency or any business entity whose existence may be authorized by a Government Agency.

PJM: means the PJM Interconnection, L.L.C., or the Office of Interconnection of the PJM Interconnection, L.L.C.

PJM Requirements: means all PJM Agreements, all tariffs, operational manuals, rules and regulations established by PJM, and the normal business practices, as they may be amended and modified from time to time, of PJM.

Planned Outage: means the removal of all or a portion of the Plant, the substation or the Interconnection Facilities from service to perform repairs that are scheduled in advance and have a predetermined duration (e.g., overhauls, inspections and testing).

Plant: means the Seller's wind turbines, supervisory control and data acquisition system, and other facilities and equipment located in Somerset County, Pennsylvania.

Point of Metering: means the interconnection point with GPU, which is more fully described in the Interconnection Agreement.

PPUC: means the Pennsylvania Public Utility Commission or any successor organization.

Press Release: Means a press release, announcement, or other publication in any media.

Prime Rate: Has the meaning provided in Section 10.2(b).

Prudent Industry Practice: means any of the practices, methods, standards and acts (including, but not limited to, the practices, methods and acts engaged in or approved by a significant portion of the electric power generation industry in the United States) that, at a particular time, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, could have been expected to accomplish the desired result consistent with good business practices, reliability, economy, safety and expedition, and applicable Governmental Approvals and Law.

Reliability Assurance Agreement: means the Reliability Assurance Agreement Among Load Serving Entities in the PJM control area, dated as of June 2, 1997, as amended and hereafter amended.

Seller: has the meaning provided in the preamble to this Agreement.

Station Service Power – Retail: means electric energy used to operate the Plant other than such electric energy generated by the Plant, whether the Plant is generating electric energy or not.

Station Service Power – Non-Retail: means electric energy used to operate the Plant that is generated by the Plant.

Taxes: has the meaning provided in Article 11.

Transmission Services: means services that allow a transmission service customer to use the transmission facilities of other electric utilities to efficiently and economically utilize generation resources to reliably serve its loads and to deliver energy to another transmission customer.

Unforced Capacity: has the meaning set forth in the Reliability Assurance Agreement.

ARTICLE 2 TERM, FINANCIAL CLOSING, COMMENCEMENT OF OPERATION, AND CREDIT SUPPORT

2.1 Term

This Agreement will become effective as of the Effective Date and will continue in effect for a period ending on the date that is 20 years from the last Day of the Month during which the Commercial Operation Date occurs (the "Term"), unless otherwise extended or terminated in accordance with the provisions of this Agreement. To the extent that, after the Commercial Operation Date of the Plant, Seller is prevented or delayed in delivering Electrical Output associated with the Name Plate Capacity Rating by a Force Majeure Event in accordance with Section 14.1, then the Term will be extended by the period of such Force Majeure Event, on a Day-for-Day basis for each Day on which a Force Majeure Event continues for more than eight hours.

2.2 Designated Start Date

The "Designated Start Date" will be December 20, 2001, as such date may be extended on a Day-for-Day basis for any delay in achieving the Commercial Operation Date that results from (a) a Force Majeure Event, (b) a Delivery Excuse or (c) an Emergency Condition.

2.3 Commencement of Operation

The respective rights and obligations of Buyer and Seller relating to the commercial operation of the Plant will commence on the Commercial Operation of the first wind turbine.

2.4 Payments for Delayed Commercial Operation

2.5 Seller's Credit Support

Seller will provide Buyer with the following and for the following periods:

ARTICLE 3
EARLY TERMINATION RIGHTS

3.1 Seller's Early Termination Rights

Seller may terminate this Agreement if it has complied with the requirements of Section

3.2 Early Termination Rights before Commercial Operation Date

Buyer may terminate this Agreement without further obligation to Seller if the

In order to exercise the termination right pursuant to this Section 3.2, the Buyer must provide written notice of termination to the Seller 30 Days before the date specified for termination and the Agreement will terminate on the effective date of such termination set forth therein (so long as the Commercial Operation Date has not been achieved on or before such date of termination).

3.3 Other Early Termination Rights

(a) If any Force Majeure Event claimed by a Party continues for an uninterrupted period of more than 24 Months from the date of notice provided by such Party in accordance with Section 14.2(a), then the other Party may, at any time following the end of such period, terminate this Agreement immediately upon written notice to the affected Party, without further obligation by the terminating Party, except as to payment of any costs and liabilities incurred before the effective date of such termination; provided, such notice of termination must be given during the period that performance continues to be delayed or prevented by the Force Majeure Event.

(b) Pursuant to Section 4.3(c), -

(c) A Party may terminate this Agreement in accordance with Article 15.

**ARTICLE 4
SALE AND PURCHASE
COMMITMENTS; PAYMENT**

4.1 Sale and Purchase of Energy, Unforced Capacity, Ancillary Services, and Credits

During the Term of this Agreement, Seller shall deliver and sell to Buyer and Buyer shall accept and purchase from Seller (a) the Electrical Output of the Plant; (b) all Credits associated with, and to the extent available from, such Electrical Output purchased by Buyer; (c) all Unforced Capacity, if any, associated with the Plant as determined by PJM; and (d) all Ancillary Services, if any.

4.2 No Sale to Third Parties

So long as no Event of Default has occurred and is continuing with respect to Buyer, Seller will not have the right to sell to third parties any of the Electrical Output of the Plant, any of the Credits associated with the Plant, any Unforced Capacity associated with the Plant, and any Ancillary Services from the Plant.

4.3 Payment/Availability

<u>Contract Year</u>	<u>Dollars per MWH</u>
Prior to the Commercial Operation Date	Locational Marginal Price
From the Commercial Operation Date through the end of the First Contract Year	

<u>Contract Year</u>
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20+

<u>Contract Year</u>
Prior to the Commercial Operation Date
From the Commercial Operation Date through the end of the First Contract Year
2
3

<u>Contract Year</u>
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20+

(c) Seller will pay to Buyer, and Buyer will pay to Seller, amounts determined as follows in accordance with the following output requirements:

The actual output of the project calculated as a percentage of the Estimated Annual Energy Output for the purpose of determining the One-Year Payment, if any, and Five-Year Payment, if any, shall be rounded to the nearest whole percentage as follows: (1) .5 or less will be rounded down; (2) greater than .5 will be rounded up.

Notwithstanding anything to the contrary which may be contained in this Agreement, in the event that actual output is less than Estimated Annual Energy Output, Buyer's sole remedies are as set forth in this Section 4.3(c) and in Section 3.3(b).

4.4 Measurement and Quality of Electricity

All Electrical Output will be measured at the Point of Metering and will meet the specifications established by the Interconnection Agreement, as the same may be amended from time to time. For purposes of monthly billing in accordance with Article 10, Seller will ensure that the Meters are read at the end of each Month.

ARTICLE 5 OPERATION AND MAINTENANCE OF THE FACILITY

5.1 Seller's Core Obligation

Seller will operate and maintain, or cause the operation and maintenance of, the Plant in accordance with Prudent Industry Practices and otherwise in accordance with this Agreement.

5.2 Seller's Choice of Operator

Seller will, during the Term, only employ or contract with appropriately qualified (as determined in Seller's reasonable opinion) personnel for the purposes of operating and maintaining the Plant.

5.3 Planned Outages

Seller will make commercially reasonable efforts not to schedule or conduct any Planned Outage during any portion of the Months of May, June, July, August, or September, unless such Planned Outage can be scheduled during low-wind periods and the plant capacity factor is projected to be below 10%. Seller must notify Buyer by September 15 of each calendar year of the schedule for all Planned Outages for the following calendar year.

5.4 Access and Information

(a) Each Party will keep complete and accurate records and all other data that the Parties mutually agree, and memorialize in the Operating Procedures, that will be required by either Party for the purpose of proper administration of this Agreement, including without limitation metering records, billing records kept in accordance with Section 10.2, and such records regarding ownership, management, control, operation and maintenance of the Plant as may be required by any applicable Law. Each Party will maintain such records for a minimum of six (6) years and for any additional length of time required by any applicable Law. Subject to the confidentiality requirements of Section 17.2, each Party will, upon reasonable request of the other Party, provide the other Party with prompt reasonable access to records and data that relate to this Agreement or either Party's performance of its obligations hereunder. In addition, Seller will provide to Buyer from time to time the following information with respect to the Plant:

(i) The manufacturers' guidelines and recommendations for maintenance of the Plant equipment;

(ii) A report summarizing the results of maintenance performed during each Planned Outage and any Forced Outage, and upon request of Buyer any of the technical data obtained in connection with such maintenance;

(iii) Before the Commercial Operation Date, on or before the 10th Day of each Month, a monthly progress report stating the percentage completion of the Plant and a brief summary of construction activity during the prior Month; and

(iv) Before the Commercial Operation Date, on or before the 10th Day of each Month, a monthly report containing a brief summary of construction activity contemplated for the next Month.

(b) Upon reasonable prior notice (in light of the circumstances) and subject to the safety rules and regulations of Seller, Seller will provide Buyer and its authorized agents, employees and inspectors with reasonable access to the Plant Site and the Plant: (i) for the purpose of reading or testing metering equipment in accordance with Section 8.2, (ii) as necessary to witness any required capacity tests in accordance with PJM Requirements necessary to determine the amount of Unforced Capacity associated with the Plant, (iii) in connection with the operation and maintenance of the Interconnection Facilities, (iv) to provide tours of the Plant to customers and other guests of Buyer, and (v) for other reasonable purposes at the reasonable request of Buyer.

5.5 Permits; Compliance with Laws

(a) Subject to the right of Contest, Seller will, at its expense, acquire and maintain in effect, from any and all Governmental Agencies with jurisdiction over Seller and/or the Plant, all Governmental Approvals, in each case necessary (i) for the construction, operation and maintenance of the Plant in accordance with this Agreement and to permit the Plant to operate at Name Plate Capacity Rating of a year less hours allowed for Planned Outages pursuant to Section 5.3, and (ii) for Seller to perform its obligations under this Agreement.

(b) Subject to the right of Contest, Seller will, at all times, comply in all material respects with all Laws and Governmental Approvals applicable to it and/or to the Plant, including all environmental laws in effect at any time during the Term. During the Term of this Agreement, Seller shall submit to Buyer's Authorized Representative any formal written notice of Seller's violation of (i) any operating permit issued in connection with the Plant or (ii) any federal or state law or regulation applicable to the Plant, which violation would materially adversely affect Seller's ability to perform its obligations under this Agreement.

(c) Subject to the right of Contest, Buyer will, at all times, comply with all Laws necessary for Buyer to perform its obligations under this Agreement.

(d) Subject to the right to contest their applicability, both Parties will comply with all applicable PJM Requirements.

5.6 Operating Procedures

Buyer and Seller will endeavor to develop written operating procedures ("Operating Procedures") within two (2) months after synchronization with the GPU and PJM systems, which Operating Procedures will only be effective if made by mutual written agreement between the Parties. The Parties agree that the Operating Procedures they will endeavor to establish will cover the protocol under which the Parties will perform their respective obligations under this Agreement and will include, but will not be limited to, procedures concerning the following: (1) the method of Day-to-Day communications; (2) key personnel lists for Seller and Buyer; (3) Forced Outage and Planned Outage reporting; (4) capacity tests conducted by and/or for PJM performed in connection with the determination of the amount of Unforced Capacity associated with the Plant; and (6) daily capacity level and Electrical Output reporting.

As a means of securing effective cooperation and interchanges of information and of providing consultation on a prompt and orderly basis between the Parties in connection with various administrative, commercial and technical issues which may arise during the performance of this Agreement, the Operating Procedures will also provide that the Parties will both appoint an authorized representative (with respect to each Party, the "Authorized Representative") and may appoint an alternate (with respect to each Party, the "Alternate") to act in its Authorized Representative's absence. The Authorized Representatives and Alternates shall be managers well experienced with regard to matters relating to the implementation of the Parties' rights and obligations under this Agreement with full authority to act for and on behalf of the Parties appointing them. Each Party will notify the other in writing of its Authorized Representative and

Alternate and these appointments will remain in full force and effect until written notice of substitution is delivered to the other Party.

ARTICLE 6 SCHEDULING AND DELIVERY

6.1 Seller's Delivery-Related Notice Obligations

Seller will inform Buyer when appropriate of any major limitations, restrictions, deratings or outages affecting the Plant for the following Day and will promptly update Seller's notice to the extent of any material changes in this information, with "major" defined as affecting more than 20% of the Name Plate Capacity Rating of the Plant.

6.2 Scheduling/Responsibility for Generation Imbalance Charges

6.3 Green-E and Other Environmental Quality Certification Requirements

Seller agrees to use Commercially Reasonable Efforts to conform its operation of the Plant to: (i) fall within the parameters contained within the Green-E Certification Requirements of the Center for Resource Solutions, San Francisco, to enable qualification of the Electrical Output as renewable energy, as defined in those requirements, and (ii) qualify as renewable energy under any other certification requirements by a Governmental Agency or independent certification board that may become commonly used to assess the environmental quality of electric energy during the Term.

6.4 Communications

Within three (3) months following the end of each Contract Year, Seller will provide Buyer with a detailed report of the actual wind speeds at the Plant site for the preceding Contract Year.

ARTICLE 7 INTERCONNECTION

7.1 Interconnection Facilities

Seller will operate, maintain and control (or cause the operation, maintenance and control by GPU and/or PJM) during the Term at Seller's sole cost and expense all Interconnection Facilities located at the Plant site up to, and including, the Point of Metering, and Seller will be

solely responsible for all of the costs and expenses associated with interconnection of the Plant at its Name Plate Capacity Rating up to and including the Point of Metering including the costs of any system upgrades beyond the Point of Metering necessary to interconnect with GPU and/or PJM for delivery of the Electrical Output to the Point of Metering.

7.2 Point of Metering

7.3 Risk of Loss: Exclusive Control

7.4 Interconnection Agreement

Seller must use Commercially Reasonable Efforts to conclude the Interconnection Agreement. The Interconnection Agreement must include provisions with respect to (i) the interconnection of the Plant in a timely manner with the GPU and/or PJM systems at the Point of Metering; (ii) communications control interfaces between the Plant and Buyer's control center; and (iii) providing the Plant with the capability to transmit at least the Name Plate Capacity Rating of the Plant in accordance with the terms of this Agreement. Seller will provide Buyer with the interim drafts of the Interconnection Agreement for Buyer's review. The final form of the Interconnection Agreement will be subject to approval by Buyer, which approval will not be unreasonably withheld or delayed and which will be deemed given if Buyer will not have given Seller written notice of the Buyer's disapproval and the reasons therefor within 10 Days of receipt of such final form by Buyer. Buyer will cooperate with Seller and provide information as reasonably requested by Seller in connection with the negotiation and performance of the Interconnection Agreement.

7.5 Station Service Power – Retail

Seller will be solely responsible for obtaining and paying for all Station Service Power – Retail.

**ARTICLE 8
METERING**

8.1 Meter Requirements

(a) The meters and metering equipment (collectively, the "Meters") at the Point of Metering will be installed, maintained and repaired in accordance with the

Interconnection Agreement and will be owned and operated by GPU in accordance with the Interconnection Agreement. Seller must cause the Interconnection Agreement to provide that the Meters will be installed such that they will measure the Electrical Output on the high side of the Plant's step-up transformers at the Point of Metering. Buyer will have no responsibility for the ownership, operation, maintenance and control of the Meters.

(b) The Interconnection Agreement must also provide that the Meters will have telemetering equipment that will be capable of telemetering data to Buyer.

8.2 Inspection and Testing of the Meters

(a) Seller will ensure that the Interconnection Agreement provides that GPU/PJM must inspect, test and adjust the Meters at least once every calendar year and at a time mutually convenient to Buyer and Seller. Seller will provide Buyer with reasonable advance notice of, and permit a representative of Buyer to witness and verify, such inspections, tests and adjustments, and will cause GPU and/or PJM to test any adjustments to be made thereto in accordance with Section 8.2(c).

(b) In addition to the other inspections and tests required under Section 8.2(a), Seller will cause the Interconnection Agreement to enable the following inspections and tests. Upon two weeks' prior written notice by Buyer, Seller will perform additional inspections or tests of the Meters. Seller and Buyer will agree on a mutually convenient time for such inspections or tests, and Seller will permit a qualified representative of Buyer to inspect or witness such testing of the Meters. The actual expense of any such requested additional inspection or testing will be borne by Buyer unless, upon such inspection or testing, the Meters are found to register inaccurately by more than $\pm 0.5\%$, in which event the expense of the requested additional inspection or testing will be borne by Seller.

(c) If, as a result of any test performed in accordance with this Section 8.2 and/or by GPU and/or PJM, any of the Meters is found to be registering outside the applicable ANSI accuracy standard in effect at the time of the test, such Meter shall be restored to the ANSI accuracy standard or an accurate meter substituted and payments pursuant to this Agreement shall be corrected in accordance with this Section 8.2(c). If the payments by Buyer to Seller must be corrected, as required in this Section 8.2(c), the account between Seller and Buyer shall be corrected for a period equal to one-half of the elapsed time since the most recent test, up to a maximum correction period of six months, by applying the percentage of inaccuracy so found. If, however, the meter became defective or inaccurate at a reasonably ascertainable time since the most recent test, the correction shall extend back to such time. Should metering equipment at any time fail to register, the energy delivered shall be determined from the best available data. Seller will cause the Interconnection Agreement to provide that the Meters shall be kept under seal, and that such seals may only be broken when the meters are to be tested, adjusted, modified, or relocated in accordance with this Agreement and/or the Interconnection Agreement. When there is to be any break to a seal, Seller must notify Buyer as soon as possible.

**ARTICLE 9
COMMISSIONING AND TESTING**

9.1 Seller's Notice and Testing Obligation

Seller will notify Buyer of the commissioning and initial testing of the Plant and of each capacity test thereafter, which tests must be conducted in accordance with the requirements of the Interconnection Agreement.

9.2 Test Energy

Seller will deliver, and Buyer will accept, all Electrical Output generated during the commissioning and initial testing of the Plant. Buyer will pay the Locational Marginal Price.

**ARTICLE 10
BILLING AND PAYMENT**

10.1 Billing

Seller shall be responsible for billing between the Parties and shall bill Buyer for the Electrical Output, Unforced Capacity, Ancillary Services, and Credits at the applicable price per MWH specified in Section 4.3(a) or Section 4.3(b), as the case may be, based on the amount of Electrical Output delivered to Buyer at the Point of Metering in accordance with Seller's readings of the Meters as provided in Section 4.4.

10.2 Payment

(a) Seller shall bill Buyer by the tenth (10th) Day of each Month for all Electrical Output, Unforced Capacity, Ancillary Services, and Credits sold and purchased under this Agreement during the previous Month. Seller shall promptly provide a copy of the invoice for each month to Buyer by facsimile and US first class mail. If Buyer, in good faith, disputes the amount of any such invoice or any part thereof, Buyer will pay to Seller such amount as it acknowledges is correct. If Buyer disputes the amount due, Buyer shall provide supporting documentation to verify the amount paid. Upon the Parties' resolution of any accounting discrepancy or disagreement, Buyer and Seller agree to settle the outstanding balance which is due within five Business Days following such resolution. If it is ultimately determined that Buyer owes the disputed amount, Buyer shall pay Seller the amount with interest, as determined below.

(b) Buyer's payment under this Agreement will be due on the first Business Day that is at least 15 Days following the date of the invoice and must be made by electronic fund transfer to Seller's account. Payments received after the due date shall be considered late and shall bear interest on the payment due at a rate equal to the prime rate (the "Prime Rate") plus two percent (2%) as published in the Wall Street Journal from time to time, times the number of Days elapsed from and including the Day after the due date, to and including the payment date. Alternatively, any overpayment to Seller made by Buyer arising solely out of an error made by Seller shall be reimbursed to Buyer with interest at a rate equal to the Prime Rate plus two percent (2%) times the number of Days elapsed from and including the Day after the

Day overpayment was made by Buyer to and including the date of reimbursement by Seller to Buyer.

(c) Each Party shall have the right from time to time, upon written request and at its own expense, to audit the other Party's books and records to verify the information provided by that Party under this Article 10.

(d) Any claim based upon error in any statement must be made within two (2) years of the date of the invoice in which the error first occurred. Following such two (2) year period, the invoice and payments related thereto shall be final.

ARTICLE 11 TAXES, FEES, AND TAX CREDITS

Seller will pay or cause to be paid all taxes, fees, levies, assessments, penalties, licenses, or charges imposed by any Governmental Agency (collectively, "Taxes") on or with respect to Electrical Output before or at the Point of Metering. Buyer will pay or cause to be paid all Taxes on or with respect to the Electrical Output imposed after the Point of Metering. In the event Seller is required to remit or pay Taxes that are Buyer's responsibility under this Agreement, Buyer shall promptly reimburse Seller for such Taxes. If Buyer is required to remit or pay Taxes that are Seller's responsibility under this Agreement, then Seller shall promptly reimburse Buyer for such Taxes. Seller will receive and retain any existing or future tax credits or other tax benefits available to the owner or operator of the Plant, including all federal income tax credits under the Internal Revenue Code of 1986, as amended.

ARTICLE 12 REPRESENTATIONS AND WARRANTIES

12.1 Representations and Warranties of Seller

Seller represents and warrants to Buyer as of the Effective Date as follows:

(a) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the state of Delaware and is qualified and in good standing in each other jurisdiction where the failure so to qualify would have a material adverse effect upon the business or financial condition of Seller or the Plant, and Seller has all requisite power and authority to conduct its business, to own its properties and to execute, deliver and perform its obligations under this Agreement.

(b) The execution, delivery, and performance of its obligations under this Agreement by Seller have been duly authorized by all necessary action, and do not and will not:

(i) require any consent or approval of Seller's members or managers which has not been obtained and each such consent and approval that has been obtained is in full force and effect,

(ii) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award having applicability to Seller or any

provision of the organizational documents of Seller, the violation of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement,

(iii) result in a breach of or constitute a default under any provision of the organizational documents of Seller,

(iv) result in a breach of or constitute a default under any agreement relating to the management or affairs of Seller or any indenture or loan or credit agreement or any other agreement, lease, or instrument to which Seller is a party or by which Seller or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement, or

(v) result in, or require the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this Agreement) upon or with respect to any of the assets or properties of Seller now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations under this Agreement.

(c) This Agreement constitutes a legal, valid and binding obligation of Seller and is enforceable against Seller in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights of creditors generally and except as the enforceability of this Agreement is subject to the application of (i) general principles of equity (regardless of whether considered in a proceeding in equity or at law), including, without limitation, the possible unavailability of specific performance, injunctive relief or any other equitable remedy and (ii) concepts of materiality, reasonableness, good faith and fair dealing.

(d) There is no pending or, to the best of Seller's knowledge, threatened action or proceeding affecting Seller before any court, Governmental Agency or arbitrator that could reasonably be expected to have a material adverse effect on the ability of Seller to perform its obligations hereunder, or that purports to affect the legality, validity or enforceability of this Agreement.

12.2 Representations and Warranties of Buyer

Buyer represents and warrants to Seller as of the Effective Date as follows:

(a) Buyer is a limited liability company duly organized and validly existing under the laws of the Commonwealth of Pennsylvania and has the full legal right, power and authority to conduct its business, to own its properties and to execute, deliver and perform its obligations under this Agreement.

(b) The execution, delivery, and performance of its obligations under this Agreement by Buyer have been duly authorized by all necessary corporate action, and do not and will not:

- (i) require any consent or approval of Buyer's board of directors or any Buyer member or shareholder which has not been obtained and each such consent and approval that has been obtained is in full force and effect,
- (ii) violate any provision of any law, rule, regulation, order, writ, judgment, injunction, decree, determination, or award having applicability to Buyer, the violation of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this Agreement,
- (iii) result in a breach of or constitute a default under any provision of the organizational documents of Buyer,
- (iv) result in a breach of or constitute a default under any agreement relating to the management or affairs of Buyer or any indenture or loan or credit agreement or any other agreement, lease, or instrument to which Buyer is a party or by which Buyer or its properties or assets may be bound or affected, the breach or default of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this Agreement, or
- (v) result in, or require, the creation or imposition of any mortgage, deed of trust, pledge, lien, security interest, or other charge or encumbrance of any nature (other than as may be contemplated by this Agreement) upon or with respect to any of the assets or properties of Buyer now owned or hereafter acquired, the creation or imposition of which could reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this Agreement.

(c) This Agreement constitutes a legal, valid and binding obligation of Buyer and is enforceable against Buyer in accordance with its terms, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or affecting the rights of creditors generally and except as the enforceability of this Agreement is subject to the application of (i) general principles of equity (regardless of whether considered in a proceeding in equity or at law), including, without limitation, the possible unavailability of specific performance, injunctive relief or any other equitable remedy and (ii) concepts of materiality, reasonableness, good faith and fair dealing.

(d) There is no pending or, to the best of Buyer's knowledge, threatened action or proceeding affecting Buyer before any court, Governmental Agency or arbitrator that could reasonably be expected to have a material adverse effect on the financial condition or operations of Buyer or the ability of Buyer to perform its obligations hereunder, or that purports to affect the legality, validity or enforceability of this Agreement.

ARTICLE 13 INSURANCE

13.1 Insurance Required

Seller will carry and maintain or cause to be carried and maintained no less than the following insurance coverages applicable to all operations undertaken by Seller and Seller's personnel in the minimum amounts (limits) indicated:

a. A Property All Risk Insurance Policy in an amount equal to the full replacement value of the Plant for "all risks" of physical loss or damage except as hereinafter provided, including coverage for earth movement, flood, boiler and machinery, transit and off-site storage accident exposure, but excluding any equipment owned or leased by Buyer and its subcontractors and their personal property. The policy may contain separate sublimits and deductibles subject to insurance company underwriting guidelines. The policy will be maintained in accordance with terms generally available in the insurance market for electric generating facilities. Subject to insurance company underwriting and approval, Business Interruption shall be provided and maintained by Seller in an amount covering a period of indemnity equal to twelve (12) months. Such Business Interruption insurance shall only apply in the event of physical loss or damage to the Plant caused by an insured peril under the policy. In the event a loss is sustained under the policy, such loss will be adjusted by Seller.

b. Minimum coverage to comply with any statutory obligation imposed by Workers Compensation or Occupational Disease Laws, including where applicable, the United States Longshoremen's and Harbor Workers' Act, the Federal Employers' Liability Act and the Jones Act.

c. A policy of insurance on a standard form with a commercial insurer reasonably acceptable to Buyer providing Commercial General Liability coverage in an amount of not less

d. A policy of insurance on a standard form with a commercial insurer reasonably acceptable to Buyer providing automobile liability coverage in an amount of not less than \$1,000,000 per occurrence.

e. An excess liability insurance policy covering employer's liability, commercial general liability, and business auto liability, aggregate for bodily injury and property damage.

Such minimum limits may be satisfied either by primary insurance or by any combination of primary and excess/umbrella insurance. The required insurance coverages will be in effect on or before the commencement of on site construction of the Plant and will be maintained in effect throughout the Term of this Agreement.

13.2 Evidence and Scope of Insurance

(a) Seller will annually cause each insurer or authorized agent to provide Buyer with two original copies of insurance certificates reasonably acceptable to Buyer

evidencing the effectiveness of the insurance coverages required to be maintained. A complete copy of each policy will be provided to Buyer upon request.

(b) All such insurance policies will:

(i) name Buyer as an additional insured (except in the case of worker's compensation insurance);

(ii) provide that Buyer will receive from each insurer 30 Days' prior written notice of non-renewal, cancellation of, or significant modification to, any of such policies (except that such notice period will be 10 Days in case of non-payment of premiums); and

(iii) provide a waiver of any rights of subrogation against Buyer, its Affiliates and their officers, directors, agents, subcontractors, and employees.

The insurance certificates will indicate that the insurance policies have been endorsed as described above.

(c) All policies will be written by one or more nationally reputable insurance companies authorized to do business in Pennsylvania and be rated B+VII or higher by A.M. Best Company or Lloyds Companies or other insurers reasonably acceptable to Buyer.

(d) Buyer will receive certificates for all insurance policies required by this Article 13 before the start of construction of the Plant except for the Operational All Risk policy, which certificate or certificates Buyer must receive before to the Commercial Operation Date.

(e) All policies will be written on an occurrence basis unless procured from AEGIS on a claims made basis. Policies will contain an endorsement that Seller's policy will be primary as respects construction and operations of the Plant regardless of like coverages, if any, carried by Buyer.

(f) Buyer may request Seller to require that any insurance obtained and maintained by a third party operator of the Plant name Buyer as an additional insured, with any cost for such coverage payable by Buyer.

(g) Seller will notify Buyer of the insurance company (and any replacement thereof) from which Seller obtains its Commercial or Comprehensive General Liability insurance and, if Buyer desires to obtain Commercial or Comprehensive General Liability insurance from the same insurance company (or any replacement thereof), Seller will comply with Buyer's reasonable requests for information concerning such coverages which assist Buyer in obtaining insurance from the same such insurance company.

13.3 Term and Modification of Insurance

(a) In the event that the third party liability insurance required pursuant to the Commercial General Liability policy, and/or the Excess/Umbrella Liability policy is on a "claims made" basis and not on an occurrence basis, such insurance will provide for a retroactive date and continuing "tail" coverage not later than the Effective Date and such insurance will be

maintained by Seller, with a retroactive date not later than the retroactive date required above, for a minimum of five years after the Term.

(b) If the designated coverage, or relatively comparable coverage, are unavailable on reasonable commercial terms, Seller will provide to Buyer detailed information as to the maximum amount of available coverage that it is able to purchase and will be required to obtain Buyer's consent as to the adequacy of said coverage under the circumstances at the time, which consent Buyer will not unreasonably withhold or delay.

13.4 Application of Proceeds

During the Term of this Agreement, and subject to the requirements of the Financing Documents and the rights or remedies of the Financing Parties thereunder, Seller will apply the proceeds of any such property insurance policies received for damages to the Plant to the repair of the Plant; provided that during the last five Contract Years of the Term, (A) Seller will apply such proceeds to the repair of the Plant if (i) such proceeds are sufficient (less applicable deductibles) to fully repair the Plant, (ii) the repair can be completed within one (1) year, and (iii) the value of the damage to the Plant is less than fifty percent (50%) of the value of the Plant, or (B) Seller will reimburse Buyer for the unavoidable liquidated damages owed by Buyer under its forward contracts for the energy output from the Plant provided that Seller receives complete documentation supporting such liquidated damages and provided further that Seller's liability under this Section 13.4(B) shall not exceed

ARTICLE 14 FORCE MAJEURE EVENT

14.1 Force Majeure Event Defined

(a) As used in this Agreement, "Force Majeure Event" means, causes or events that are beyond the reasonable control of, and without the fault or negligence of, the Party claiming such Force Majeure Event, including, without limitation, natural disasters; fire; lightning strikes that damage the wind turbines; earthquake; cold weather below -20°C; acts of God; unusually severe actions of the elements such as floods, hurricanes, or tornadoes; sabotage; terrorism; war; riots or public disorders; strikes or other labor disputes; and actions or failures to act of any Governmental Agency (including expropriation and requisition), to the extent such cause or event prevents or delays performance of any obligation imposed on the Party claiming such Force Majeure Event (other than an obligation to pay money).

(b) Force Majeure Event does not include: (i) causes or events affecting the performance of third-party suppliers of goods or services except to the extent caused by an event that otherwise is a Force Majeure Event under subsection (a) of this Section 14.1, (ii) the unavailability of equipment that would have been avoided by compliance with Prudent Industry Practices by the Party claiming the Force Majeure Event, (iii) changes in market conditions and actions or failures to act of any Governmental Agency that affect the price of energy, capacity or transmission, (iv) the failure to timely apply for or to obtain Governmental Approvals that Seller

knows or should know on the Effective Date are required for the construction or operation of the Plant, or (v) any Delivery Excuse.

14.2 Applicability of Force Majeure Event

Neither Party will be in breach or liable for any delay or failure in its performance under this Agreement to the extent such performance is prevented or delayed due to a Force Majeure Event, provided that:

(a) the non-performing Party will give the other Party written notice within 48 hours of the commencement of the Force Majeure Event, with details to be supplied within 10 Days after the commencement of the Force Majeure Event further describing the particulars of the occurrence of the Force Majeure Event;

(b) the delay in performance will be of no greater scope and of no longer duration than is directly caused by the Force Majeure Event;

(c) the Party whose performance is delayed or prevented will proceed with Commercially Reasonable Efforts to overcome the events or circumstances preventing or delaying performance and will provide weekly written progress reports to the other Party during the period that performance is delayed or prevented describing actions taken and to be taken to remedy the consequences of the Force Majeure Event, the schedule for such actions and the expected date by which performance will no longer be affected by the Force Majeure Event; and

(d) when the performance of the Party claiming the Force Majeure event is no longer being delayed or prevented, that Party will give the other Party written notice to that effect.

(e) Under no event shall the Force Majeure provisions of the Agreement give Seller any right to payment beyond that which is earned by Seller due to Seller's actual provision to Buyer of the Electrical Output, Unforced Capacity, Ancillary Services, and Credits associated with, the Plant at the prices and under the terms and conditions set forth in this Agreement.

ARTICLE 15 TERMINATION AND DEFAULT

15.1 Event of Default

(a) The occurrence of any one of the following will constitute an Event of Default with respect to Seller:

(i) Seller fails to make payments for undisputed amounts due under this Agreement to Buyer within 10 Days after notice from Buyer that such payment is unpaid and due;

(ii) Seller fails to comply with any material provision of this Agreement (other than the obligation to pay money when due), and such failure continues uncured for 30 Days after notice thereof by Buyer, provided that if such failure is not capable of

being cured within such period of 30 Days with the exercise of reasonable diligence, then such cure period will be extended for an additional reasonable period of time (not to exceed 180 Days) so long as Seller is exercising reasonable diligence to cure such failure;

(iii) Seller (a) admits in writing its inability to pay its debts as such debts become due; (b) makes a general assignment or an arrangement or composition with or for the benefit of its creditors; (c) fails to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against such Party under any bankruptcy or similar law; or (d) takes any action for the purpose of effecting any of the foregoing;

(iv) A proceeding or case is commenced, without the application or consent of Seller, in any court of competent jurisdiction, seeking: (a) its liquidation, reorganization of its debts, dissolution or winding-up, or the composition or readjustment of its debts; (b) the appointment of a receiver, custodian, liquidator or the like of Seller or of all or any substantial part of its assets; or (c) similar relief in respect of Seller under any law relating to bankruptcy, insolvency, reorganization of its debts, winding-up, composition or adjustment of debt, and such proceeding remains in effect, for a period of 90 Days;

(v) Any representation made by Seller under Section 12.1 is false in any material respect when made and Seller fails to remedy such false representation within 30 Days after notice thereof by Buyer;

(vi) The unenforceability, termination prior to its stated term or repudiation of any Letter of Credit provided pursuant to Section 2.6 or Credit Support for Seller's performance under this Agreement unless such Credit Support is replaced in form and substance reasonably satisfactory to Buyer within five (5) Business Days after such unenforceability, termination or repudiation;

(vii) The bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar proceeding with respect to any entity providing any Letter of Credit or Credit Support for Seller's performance under this Agreement (whether under any present or future statute, law, or regulation), including the appointment of any trustee, receiver, custodian or the like of such entity or all or any substantial part of its assets unless such Letter of Credit or Credit Support is replaced in form and substance and by an entity reasonably satisfactory to Buyer within five (5) Business Days after such proceeding;

(viii) Seller fails to deliver Credit Support or a Letter of Credit in the amounts and on the dates required by Section 2.6;

(ix) Abandonment of the construction of the Plant for any period in excess of 30 consecutive Days, except in the case of a Force Majeure Event in which case the provisions of Section 14 shall apply; or

(x) Abandonment of the operation of the Plant for any period in excess of 30 consecutive Days, except in the case of (i) a Force Majeure Event in which case the provisions of Section 14 shall apply, or (ii) the last five Contract Years of the Term in which case the provisions of Section 13.4 shall apply.

(b) The occurrence of any one of the following will constitute an Event of Default with respect to Buyer:

(i) Buyer fails to make payments for undisputed amounts due under this Agreement to Seller within 10 Days after notice from Seller that such payment is unpaid and due;

(ii) Buyer fails to comply with any material provision of this Agreement (other than the obligation to pay money when due), and such failure continues uncured for 30 Days after notice thereof by Seller, provided that if such failure is not capable of being cured within such period of 30 Days with the exercise of reasonable diligence, then such cure period will be extended for an additional reasonable period of time (not to exceed 180 Days) so long as Buyer is exercising reasonable diligence to cure such failure;

(iii) Buyer (a) admits in writing its inability to pay its debts as such debts become due; (b) makes a general assignment or an arrangement or composition with or for the benefit of its creditors; (c) fails to controvert in a timely and appropriate manner, or acquiesce in writing to, any petition filed against such Party under any bankruptcy or similar law; or (d) takes any action for the purpose of effecting any of the foregoing;

(iv) A proceeding or case is commenced, without the application or consent of Buyer, in any court of competent jurisdiction, seeking: (a) its liquidation, reorganization of its debt, dissolution or winding up, or composition or readjustment of its debt; (b) the appointment of a receiver, custodian, liquidator or the like of Buyer or of all or any substantial part of its assets; or (c) similar relief in respect of Buyer under any law relating to bankruptcy, insolvency, reorganization of its debts, winding-up, composition or adjustment of debts, and such proceeding remains in effect, for a period of 90 Days;

(v) The unenforceability, expiration, termination or repudiation of any Credit Support for Buyer's performance under this Agreement unless such Credit Support is replaced in form and substance satisfactory to Seller and the Financing Parties within five (5) Business Days (or such shorter period as required by the Financing Parties under the Financing Documents) after such unenforceability, expiration, termination or repudiation;

(vi) The bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar proceeding with respect to any entity providing any Credit Support for Buyer's performance under this Agreement (whether under any present or future statute, law, or regulation), including the appointment of any trustee, receiver, custodian or the like of such entity or all or any substantial part of its assets unless such Credit Support is replaced in form and substance and by an entity satisfactory to Seller and the Financing Parties within five (5) Business Days (or such shorter period as required by the Financing Parties under the Financing Documents) after such proceeding; or

(vii) Any representation made by Buyer under Section 12.2 is false in any material respect when made and Buyer fails to remedy such false representation within 30 Days after notice thereof by Seller.

15.2 Remedies for Default

If an Event of Default occurs with respect to a defaulting Party at any time during the Term, the non-defaulting Party may, for so long as the Event of Default is continuing, (i) deliver a written notice that establishes a date (which date will be no earlier than 30 Days after the Non-Defaulting Party delivers notice) on which this Agreement will be terminated if such Event of Default is still continuing, (ii) withhold any payments due in respect of this Agreement and (iii) pursue any other remedies available at law or in equity, except to the extent such remedies are expressly limited by this Agreement.

15.3 Financing Party Cure Rights

Buyer's right to exercise the option to terminate this Agreement pursuant to Section 15.2 is subject to Buyer's first delivering to the Financing Parties, simultaneously with delivery thereof to Seller, notice of Seller's failure to cure the Seller Event of Default and Buyer's intent to terminate as a result thereof. Each Financing Party shall have the option to cure such Seller Event of Default within ninety (90) Days after receipt of such notice or to cause the Financing Parties' designee to assume this Agreement. If the Financing Parties desire to cause their designee to assume this Agreement, they shall provide notice to that effect within ninety (90) days after receipt of Buyer's notice to the Financing Parties of the Seller Event of Default. In either such case, Buyer's right to terminate this Agreement shall be of no further force and effect upon the cure by the Financing Parties of such default.

ARTICLE 16 INDEMNIFICATION AND LIABILITY

16.1 Indemnification

(a) Each Party will indemnify, defend and hold the other Party and its officers, directors, Affiliates, agents, employees, contractors and subcontractors, harmless from and against any and all Claims, to the extent caused by any act or omission of the indemnifying Party or the indemnifying Party's own officers, directors, Affiliates, agents, employees, contractors or subcontractors or to the extent such Claims arise out of or are in any manner connected with the performance of this Agreement by such indemnifying Party.

(b) Notwithstanding anything to the contrary in this Agreement, each Party will indemnify, defend and hold harmless the other Party from any Claims arising from the Electrical Output that occur when risk of loss of the Electrical Output is vested in the indemnifying Party.

(c) Nothing in the foregoing provisions of this Section 16.1 will be construed to require one Party to this Agreement to indemnify the other Party to this Agreement or its officers, directors, Affiliates, agents, employees, contractors and subcontractors for any cost or expense that is to be borne by such other Party pursuant to any express provision of this Agreement or for injury or damage caused by the negligence or willful misconduct of the other Party or its officers, directors, Affiliates, agents, employees, contractors and subcontractors.

16.2 Fines

(a) Any fines, penalties or other costs incurred by either Party or such Party's agents, employees or subcontractors for non-compliance by such Party, its agents, employees or subcontractors with the requirements of any Laws or Governmental Approvals will not be reimbursed by the other Party but will be the sole responsibility of such non-complying Party.

(b) If such fines, penalties or other costs are assessed against Buyer by any Governmental Agency or court of competent jurisdiction due to the non-compliance by Seller with any Laws or Governmental Approvals, Seller will indemnify and hold harmless Buyer against any and all losses, liabilities, damages and claims suffered or incurred because of the failure of Seller to comply therewith, subject to refund in the event that Seller or Buyer prevails in any Contest described below. Seller will also reimburse Buyer for any and all legal or other expenses (including attorneys' fees) reasonably incurred by Buyer in connection with such losses, liabilities, damages and claims.

(c) If such fines, penalties or other costs are assessed against Seller by any Governmental Agency or court of competent jurisdiction due to the non-compliance by Buyer with any Laws or Governmental Approvals, Buyer will indemnify and hold harmless Seller against any and all losses, liabilities, damages and claims suffered or incurred because of the failure of Buyer to comply therewith, subject to refund in the event that Buyer or Seller prevails in any Contest described below. Buyer will also reimburse Seller for any and all legal or other expenses (including attorneys' fees) reasonably incurred by Seller in connection with such losses, liabilities, damages and claims.

(d) In the case of Section 16(b) and (c), either Party will, upon written notice to the other Party, have the right to reasonably Contest in the name of either or both Parties, as required, or to require the other Party to reasonably Contest, the assessment of such fines, penalties or costs and the Party requesting such Contest will be responsible for any costs and expenses (including the costs and expenses of the other Party) relating to such Contest.

16.3 Limitations of Liability, Remedies and Damages.

(a) Each Party acknowledges and agrees that in no event will any partner, shareholder, member, manager, owner, officer, director, employee or affiliate of either Party be personally liable to the other Party for any payments, obligations, or performance due under this Agreement or any breach or failure of performance of either Party and the sole recourse for payment or performance of the obligations under this Agreement will be against Seller or Buyer and each of their respective assets and not against any other Person, except for such liability as expressly assumed by an assignee pursuant to an assignment of this Agreement in accordance with the terms hereof.

(b) Each Party acknowledges and agrees that, after the Commercial Operation Date, Seller will be held harmless against, any claims, damages or liabilities of any kind resulting from a Forced Outage or other failure to provide and deliver the Electrical Output to Buyer other than (i) as reflected in the calculation of the payments specified in Section 4.3 or pursuant to Section 16.1. Seller will not be liable for or deemed in breach of this Agreement to the extent

the performance of its obligations under this Agreement is delayed or prevented by a Delivery Excuse or Emergency Condition.

(c) THE EXPRESS REMEDY, PAYMENT OBLIGATIONS, OR MEASURE OF DAMAGES SET FORTH IN THIS AGREEMENT WILL BE THE SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO SUCH SECTIONS IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF SUCH SECTIONS. ACCORDINGLY, EACH PARTY'S LIABILITY WILL BE LIMITED AS SET FORTH IN SUCH SECTIONS AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY FOR THE SAME DAMAGE OR INJURY NOT PERMITTED BY SUCH SECTIONS ARE WAIVED. UNLESS EXPRESSLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES SUFFERED BY THAT PARTY OR BY ANY CUSTOMER OR ANY PURCHASER OF THAT PARTY, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE (EXCEPT TO THE EXTENT THAT AN INDEMNIFYING PARTY PURSUANT TO THE PROVISIONS OF SECTION 16.1 HEREOF IS OBLIGATED TO INDEMNIFY AGAINST THIRD PARTY CLAIMS NOT ARISING OUT OF CONTRACTS WITH THE INDEMNIFIED PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES OR LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES). IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING, WITHOUT LIMITATION, THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

(d) The provisions of this Section 16 will survive the termination of this Agreement.

ARTICLE 17 GENERAL

17.1 Assignment

(a) This Agreement may not be assigned by either Party without the prior written approval of the other Party, which shall not be unreasonably withheld.

(b) Notwithstanding Section 17.1(a), Seller will have the right, without the consent of Buyer, to assign all of its rights, interests and obligations under this Agreement with respect to all or any portion of the Plant to an owner trust or an equity investment vehicle or as security to a lender for the purpose of providing financing or refinancing for all or such portion

of the Plant (and in connection therewith, Buyer shall execute and deliver to the Financing Parties a consent agreement in a form reasonably requested by the Financing Parties).

(c) The foregoing restrictions shall not prohibit the sale of membership interests in Seller to third parties.

(d) No assignment of this Agreement or of the rights or obligations by Seller will relieve Seller of liability for any breach by the assignee or for any other failure by the assignee to perform its obligations hereunder.

(e) Notwithstanding Section 17.1(a), Buyer will have the right, without consent of Seller, to sell all or part of the Electrical Output, Unforced Capacity, Ancillary Services, and/or Credits to be purchased pursuant to this Agreement to utilities or other third parties in any lawful fashion. Regardless of any such sale, Buyer shall at all times remain liable for all obligations undertaken to Seller under the terms of this Agreement, including, without limitation, the purchase of the Electrical Output and associated Credits.

(f) Notwithstanding Section 17.1(a), Buyer will have the right, without the consent of Seller, to assign all of its rights and obligations to an Affiliate, as long as such Affiliate has a corporate rating from at least one nationally recognized statistical ratings organization that is at least "Investment Grade." "Investment Grade" means a rating of at least BBB by Standard & Poor's Rating Group or Baa3 by Moody's Investors Service. Buyer will also have the right, without the consent of Seller, to assign all of its rights and obligations to an Affiliate that does not have an Investment Grade corporate rating from one nationally recognized statistical ratings organization, as long as the Affiliate provides to Seller either: (1) a parent guarantee as long as such parent has a corporate rating from at least one nationally recognized statistical ratings organization that is at least Investment Grade (which parent guarantee shall provide that any rights of subrogation shall not be exercised before the payment under the guarantee is made) or letter of credit in the amount of Six Million Dollars (\$6,000,000) commencing as of the effective date of the assignment and assumption and effective through the earlier of, (i) the 45th Day following the end of the Term of this Agreement, and (ii) the date that the Affiliate-assignee obtains an Investment Grade corporate rating from a nationally recognized statistical ratings agency, or (2) other Credit Support acceptable to Seller.

(g) The assigning Party shall give prompt written notice to the other Party of any assignment which does not require the consent of the other Party. Any assignment in violation of this Section 17.1 will be void and of no force or effect.

17.2 Confidentiality

Any information provided by either Party to the other Party pursuant to this Agreement and labeled "CONFIDENTIAL" will be utilized by the receiving Party solely in connection with the purposes of this Agreement and will not be disclosed by the receiving Party to any third party, except with the providing Party's consent, and upon request of the providing Party will be returned thereto, except that the receiving Party will not be obligated to return any such information contained in documents generated by the receiving Party that: (1) reflect or refer to confidential information provided by the disclosing Party; and (2) are stored electronically by the

receiving Party. With respect to any such retained electronically stored confidential information, the receiving Party will continue to comply with the obligations of this Section 17.2. Notwithstanding, the Parties acknowledge and agree that such confidential information may be disclosed to actual and prospective Financing Parties, suppliers and potential suppliers of major equipment to the Plant and other third parties as may be necessary for Buyer and Seller to perform their obligations under this Agreement and the Financing Documents. To the extent that such disclosures are necessary, the Parties also agree that they will in disclosing such information seek to preserve the confidentiality of such disclosures. This provision will not prevent either Party from providing any confidential information received from the other Party to any court in accordance with a proper discovery request or in response to the reasonable request of any Governmental Agency charged with regulating the disclosing Party's affairs, provided that, if feasible, the disclosing Party will give prior notice to the other Party of such disclosure and, if so requested by such other Party, will have used all reasonable efforts to oppose or resist the requested disclosure, as appropriate under the circumstances, or to otherwise make such disclosure pursuant to a protective order or other similar arrangement for confidentiality.

17.3 Several Obligations

Except when specifically stated in this Agreement to be otherwise, the duties, obligations, and liabilities of the Parties are intended to be several and not joint or collective. Nothing in the Agreement shall be construed to create an association, trust, partnership, fiduciary relationship, or joint venture or impose a trust or partnership duty, obligation or liability or agency relationship on or with regard to either Seller or Buyer. Each Party shall be liable for its own obligations under this Agreement. Any undertaking by one Party to the other Party under any provision of this Agreement shall not constitute the dedication of the electrical system or any portion thereof of either Party to the public or to the other Party, its customers, or any other person or entity.

17.4 Notices

Any notice of a routine character in connection with the delivery of electric energy or the operation of the Plant may be given in such manner as may be mutually agreeable between the Parties' Authorized Representatives. Any formal notice, demand, request, or communication required or authorized by this Agreement shall be delivered in writing either by hand, facsimile, overnight courier or mailed by certified mail, return receipt requested, with postage prepaid, to the following addresses:

Exelon Power Team
300 Exelon Way
Kennett Square Pa. 19348
Attn.: Noel H. Trask
Phone: 610-765-6649
Facsimile: 610-765-7649

Somerset Windpower LLC
1001 McKinney, Suite 1740
Houston, TX 77002

claim, dispute, or controversy would not be barred by the applicable statute of limitations), the Parties may agree, but neither Party will have any obligation to agree, to submit the dispute to binding arbitration. Any agreement to arbitrate a dispute must be evidenced by a writing signed by both Parties. Each Party will have the right to designate an arbitrator of its choice, who need not be from the American Arbitration Association ("AAA") panel of arbitrators but who (a) will be an expert in the independent power electric generation field and (b) will not have been previously an employee or agent of or consultant or counsel to either Party and will not have a direct or indirect interest in either Party or the subject matter of the arbitration. Such designation will be made by notice to the other Party and to the AAA within 10 Days or, in the case of payment disputes, five Days after the date of the giving of notice of the demand for arbitration. The arbitrators designated by the Parties will designate a third arbitrator, who will have a background in legal and judicial matters (and who will act as chairman), within 10 Days or, in the case of payment disputes, five Days after the date of the designation of the last of the arbitrators to be designated by the Parties, and the arbitration will be decided by the three arbitrators. If the two arbitrators cannot or do not select a third independent arbitrator within such period, either Party may apply to the AAA for the purpose of appointing any person listed with the AAA as the third independent arbitrator under the expedited rules of the AAA. Such arbitration will be held in alternating locations of the home offices of the Parties, commencing with Buyer's home office, or in any other mutually agreed upon location. The rules of the AAA will apply to the extent not inconsistent with the rules herein specified. Each Party will bear its own expenses (including attorneys' fees) with respect to the arbitration, unless the arbitrator decides on a different allocation of expenses. The arbitrators will designate the Party to bear the expenses of the arbitrators or the respective amounts of such expense to be borne by each Party.

(c) Each Party understands that this Agreement contains an agreement to arbitrate with respect to specified disputes that the Parties mutually agree to arbitrate. Any award of the arbitrators may be enforced by the Party in whose favor such award is made in any court of competent jurisdiction.

(d) Unless otherwise agreed in writing, each Party will diligently continue to perform its obligations under this Agreement during the pendency of any disputes or arbitration proceedings so long as all undisputed amounts payable hereunder have been paid.

17.8 No Residual Value in Power System

This Agreement shall not be construed to provide any residual value to either Party or its successors or any other Party, for rights to, use of, or benefits from the other Party's system following expiration of this Agreement.

17.9 No Third Party Beneficiary

No provisions of this Agreement shall in any way inure to the benefit of any customer, or any other third party so as to constitute any such person as a third-party beneficiary under this agreement, or of any one or more of the terms of this Agreement or otherwise give rise to any cause of action in any person not a Party hereto.

17.10 Entire Agreement; Modification and Waiver; Severability

This Agreement and the other agreements referred to herein, constitute the entire agreement between the Parties relating to the transaction described in this Agreement and supersede any and all prior oral or written understandings. No addition to or modification of any provision of this Agreement shall be binding upon either Party, and neither Party shall be deemed to have waived any provision of this Agreement or any remedy available to it unless such addition, modification or waiver is in writing and signed by a duly authorized officer of such Party.

If any term of this Agreement is found to be unenforceable, this Agreement will remain in full force and effect except that the unenforceable term will be replaced, by good faith agreement of the Parties, with an enforceable term as similar as possible to the unenforceable term.

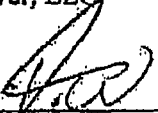
17.11 Naming Rights

Buyer shall have the right to name the Plant subject to the consent of Seller, such consent not to be unreasonably withheld. Each Press Release, community benefit or public relations activity, program or event of any kind whatsoever, which makes any reference to the Plant shall include a prominent statement that the Plant is being "developed by Somerset Windpower LLC."

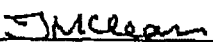

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the day and year first above written.

Somerset Windpower, LLC

By: 
Name: THOMAS J. DE WOLFF
Title: MANAGING MEMBER

Exelon Generation Company, LLC

By: 
Name: IAN McLEAN 
Title: SVP, Energy Generation
PROSIDENT POWERWAYS

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA

RECEIVED

MAR 15 2005

SOUTH DAKOTA PUBLIC
UTILITIES COMMISSION

_____)
IN THE MATTER OF THE COMPLAINT FILED)
BY SUPERIOR RENEWABLE ENERGY LLC)
ET AL. AGAINST MONTANA DAKOTA) Docket No. EL04-016
UTILITIES CO. REGARDING THE JAVA)
WIND PROJECT)
_____)

CERTIFICATE OF SERVICE

This is to certify that on March 11, 2005, a copy Superior Renewable Energy LLC's
Rebuttal Testimony of Jeff Ferguson was forwarded to the following electronically and United
States mail, in accordance with South Dakota Codified Law:

Mr. David Gerdes
Attorney at Law
PO Box 160
Pierre, SD 57501
dag@magt.com

Attorney for Montana Dakota Utilities

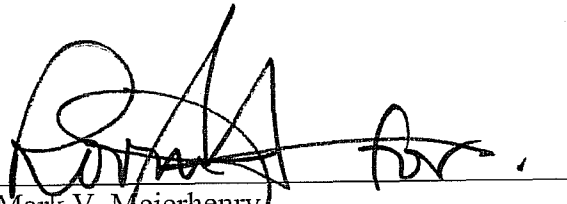
Mr. Alan D. Dietrich
Vice President-Legal Administration
Northwestern Corporation
125 S. Dakota Ave. Suite 1100
Sioux Falls, SD 57104
alan.dietrich@northwestern.com

Mr. Christopher Clark
Assistant General Counsel
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Energy
800 Nicollet Mall, Suite 3000
Minneapolis, MN 55402
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Rapid, SD 57701
shelmers@gh-corp.com

Donald Ball
Assistant Vice President-Regulatory Affairs
Montana Dakota Utilities Co.
400 N. 4th Street
Bismarck, ND 58501
don.ball@mdu.com

A handwritten signature in black ink, appearing to read 'Mark V. Meierhenry', is written over a horizontal line.

Mark V. Meierhenry
Danforth & Meierhenry, L.L.P.
315 S. Phillips Ave.
Sioux Falls, SD 57104
605-336-3075