

**WHOLESALE PURCHASE AND SALE AGREEMENT
FOR WIND ENERGY**

Between

NORTHERN INDIANA PUBLIC SERVICE COMPANY

And

BARTON WINDPOWER LLC

November 7, 2007

Barton Windpower LLC

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This WHOLESALE PURCHASE AND SALE AGREEMENT FOR WIND ENERGY ("Agreement") is entered into effective as of November 7, 2007 ("Effective Date"), between Barton Windpower LLC, a Delaware limited liability company ("Seller"), and Northern Indiana Public Service Company, an Indiana corporation ("Buyer"). Seller and Buyer are sometimes referred to in this Agreement individually as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, Seller intends to develop, design, construct, own, maintain and operate a wind turbine electric generating facility on a site located in Barton Township, Worth County, Iowa, with an expected total Nameplate Capacity of approximately 80.0 MW, and which is further defined below as the "Facility."

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms set forth in this Agreement, Buyer's Purchase Percentage of the output of energy from the Facility, and all of the Environmental Attributes (defined below) related to the generation of such purchased energy.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

ARTICLE 1 DEFINITIONS AND INTERPRETATION

1.1 **Definitions.** As used in this Agreement, the following terms, when initially capitalized, shall have the meanings specified in this Section 1.1.

"Affiliate" means, with respect to any Person, each Person that directly or indirectly controls, is controlled by or is under common control with such designated Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract, by membership percentage, by authority to appoint a majority of board members or otherwise.

[REDACTED]

"Agreement" means this Wholesale Purchase and Sale Agreement for Wind Energy entered into between Seller and Buyer, including any Annexes and their attachments, as they may be amended by the Parties from time to time.

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"Applicable Law" means all laws, statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decrees, injunctions, awards or determinations of any arbitrator, rules, regulations, governmental approvals, licenses and permits, directives, and requirements of all regulatory and other Governmental Authorities, that apply to any Party or the Facility.

"Business Day" means any Day except a Saturday, Sunday or a Federal Reserve Bank holiday. A Business Day shall open at 08:00 CPT and close at 17:00 CPT.

"Buyer" means Northern Indiana Public Service Company.

[REDACTED]

"Buyer's Designated MW" means the number of MW designated to Buyer under this Agreement. Buyer's Designated MW shall be calculated based on the total number of MW attributable to the Turbines that Seller has declared Completed prior to the PTC Deadline under Section 2.5, or the First Outside Date under Section 3.2, as applicable, *provided* that if Seller elects to continue to build any non-Completed Turbines after the First Outside Date under Section 3.2.1, the MW attributed to such Turbines shall be included upon Completion in the calculation of Buyer's Designated MW, *further provided*, that in no event will Buyer's Designated MW exceed 50 MW. Formulas for and examples of Buyer's Designated MW, Buyer's Metered Output and Buyer's Purchase Percentage under certain stated assumptions are provided in Annex G.

"Buyer's Metered Output" means for each hour in which the Facility is operating, the portion of the instantaneous energy output of the Facility, intermittent and variable within the hour, equal to (i) the total energy output of the Facility for such hour, as measured by the Meter(s) at the Delivery Point, multiplied by (ii) Buyer's Purchase Percentage (rounded to the nearest whole MW) up to a maximum amount equal to Buyer's Designated MW.

"Buyer's Purchase Percentage" means the ratio, calculated and rounded to two (2) decimal places, of (i) Buyer's Designated MW to (ii) the Installed Capacity, expressed as a percentage.

"CAMD" means the Clear Air Markets Division of the U.S. Environmental Protection Agency, or any successor agency that is given jurisdiction over a program involving transferability of Environmental Attributes.

"Capacity Attributes" means any current or future defined characteristic, certificate, tag, credit, ancillary service attribute, or accounting construct associated with Buyer's Purchase Percentage of the electric generation capacity of the Facility and its ability to produce energy during the Term.

"Claiming Party" has the meaning given in Section 6.2 of this Agreement.

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"Commercial Operation Date" means the later of the date on which Seller declares the first Turbine Completed pursuant to Section 3.1 or January 1, 2009.

"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 Electric Industry Practice, and (iii) takes into consideration the amount of advance notice required to take such action, the duration and type of action and the competitive environment in which such action occurs.

"Commissioned" means with respect to any Turbine, that such Turbine and all other portions of the Facility necessary to put such Turbine into commercial operation at its fully rated capacity, have been constructed, commissioned and tested (in accordance with the Turbine manufacturer's requirements), and such Turbine and other necessary portions of the Facility are fully operational and capable of delivering output to the Transmission System through the Interconnection Facilities, all in accordance with Prudent Electric Industry Practice.

"Completion" means a Commissioned Turbine capable of delivering Buyer's Metered Output to the Transmission System through the Interconnection Facilities, in accordance with Prudent Electric Industry Practice, which Seller has declared Completed pursuant to Article 3. "Complete" and "Completed" shall have a corollary meaning.

"Contest" means, as used in Article 13, with respect to any Person, a contest of (a) any approvals or any act or omission by Governmental Authorities, 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 so long as (i) appropriate notations are included in the Parties' financial statements regarding possible liabilities in accordance with generally accepted accounting principles or international accounting standards, (ii) neither Party could reasonably be expected to incur criminal or civil liability with respect thereto for which adequate indemnification or compensation therefor is not available and (iii) during the period of such contest the enforcement of such claim is effectively stayed.

"Contract Price" means the price to be paid by Buyer to Seller for Buyer's Metered Output and Environmental Attributes as set forth in Annex A to this Agreement.

"Contract Year" means each calendar year during the Term, *provided* that the first Contract Year shall commence on the Commercial Operation Date and end on the next succeeding December 31, and the last Contract Year shall end on the last Day of the Term.

"CPT" means Central Prevailing Time, meaning prevailing standard time or daylight savings time in the Central time zone.

"Current PTC" means the federal production tax credits available to electricity produced from certain renewable resources as defined in Internal Revenue Code Section 45, 26 U.S.C. Section 45(a). As of the Effective Date, the Current PTC is twenty dollars (\$20.00) per MWh,

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expressed in 2007 dollars, and adjusted annually based on the published inflation adjustment factor.

"Day" means a period of twenty-four (24) consecutive hours beginning at 00:00 hours EST on any calendar day and ending at 24:00 hours EST on the same calendar day.



"Defaulting Party" means the Party with respect to which an Event of Default under Article 8 of this Agreement has occurred.

"Delay Damages" has the meaning given in Section 3.2.1 of this Agreement.

"Delivery Point" means the point of interconnection at the high side of the transformer located at the Facility substation as defined in the Interconnection Agreement.

"Early Termination Date" has the meaning given in Section 8.6 of this Agreement.

"Effective Date" has the meaning given in the first paragraph of this Agreement.

"Effective Tax Rate" is the amount specified in Annex E, and is based on the assumption that Seller, Financing Parties or Institutional Investors subject to federal income taxation at the highest applicable statutory rate applicable to corporations for the relevant period or periods, and state and local Taxes at the highest rates applicable to corporations doing business in Iowa with respect to any payments to such Person and shall take into account the deductibility (for federal income tax purposes) of state and local income taxes. Seller shall provide Buyer reasonable notice of changes in the Effective Tax Rate during the Term.

"Environmental Attributes" means any and all current or future credits, benefits, emissions reductions, environmental air quality credits, emissions reduction credits, offsets and allowances, attributable to the Facility during the Term, or otherwise attributable to the generation, purchase, sale or use of Buyer's Metered Output from or by the Facility during the Term, howsoever entitled or named, resulting from the avoidance, reduction, displacement or offset of the emission of any gas, chemical or other substance, including, without limitation, any of the same arising out of legislation or regulation concerned with oxides of nitrogen, sulfur or carbon, with particulate matter, soot or mercury, or implementing the United Nations Framework Convention on Climate Change (the "UNFCCC") or the Kyoto Protocol to the UNFCCC or crediting "early action" emissions reduction, or laws or regulations involving or administered by the CAMD, or any state or federal entity given jurisdiction over a program involving transferability of Environmental Attributes, and any Renewable Energy Certificate Reporting Rights to such Environmental Attributes. Environmental Attributes do not include (i) the PTCs or any state or federal production tax credits, (ii) any investment tax credits and any other tax

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credits associated with the Facility, (iii) any state, federal or private cash payments or grants relating in any way to the Facility, the output thereof or PTCs and (iv) state, federal or private grants or other benefits related to the Facility, the output thereof or PTCs. One (1) MWh of electrical energy from the Facility corresponds to one (1) MWh of Environmental Attributes.

"Equivalent PTC Benefits" has the meaning given in Section 2.5 of this Agreement.

"EST" means Eastern Standard Time used by Midwest ISO operations.

"Event of Default" has the meaning given in Sections 8.1 and 8.2 of this Agreement.

"Expected Installed Capacity" means the expected minimum instantaneous generation (nameplate) capacity of the Facility, which is 80.0 MW.

"Facility" means the Barton Windpower LLC wind turbine electrical generation facilities, which will produce Buyer's Metered Output and associated Environmental Attributes under this Agreement.

"Federal Power Act" means the Federal Power Act, as amended, 16 U.S.C. § 791a, *et seq.*

"FERC" means the Federal Energy Regulatory Commission or any successor in responsibilities and functions.

"Financing Documents" means any document relating to the financing or refinancing of the acquisition, development, construction, ownership, operation, maintenance or leasing of the Facility.

"Financing Parties" means the 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 Facility.

"First Outside Date" means [REDACTED] from the IURC Approval Deadline.

"Force Majeure" and "Force Majeure Event" have the meanings given in Section 6.1.

"Forced Outage" means an outage that requires immediate removal of the Facility, or some part thereof, from service, another outage state, or a reserve shutdown state as those terms are defined in the Generating Availability Data System established by NERC. This type of outage results from immediate mechanical/electrical/hydraulic control system trips and operator-initiated trips in response to unit alarms.

[REDACTED]

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"Governmental Authority" means any national, state, local or municipal government; any political subdivision thereof; or any other governmental, regulatory, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, department, bureau or entity with authority to bind a Party at law; *provided, however*, that "Governmental Authority" shall not in any event include any Party. For the avoidance of doubt, Governmental Authority shall include NERC.

"Governmental Charges" means any Taxes, charges or costs that are assessed or levied by any Governmental Authority or other Person, including any Transmission Provider, that would affect the sale and purchase of Buyer's Metered Output and Environmental Attributes contemplated by this Agreement, either directly or indirectly.

"Indemnified Party" has the meaning given in Section 13.1 of this Agreement.

"Indemnifying Party" has the meaning given in Section 13.1 of this Agreement.

"Installed Capacity" means, as of a given point in time, the aggregate Nameplate Capacity of all Turbines of the Facility, which is determined as the product of (i) the number of Turbines, as defined in Annex E, installed at the Facility as of such time and declared Commissioned by Seller, multiplied by (ii) the stated Nameplate Capacity of each such Turbine.

"Institutional Investor" means, collectively, any Person or Persons who acquire a direct or indirect interest in Seller as a part of a transaction to ensure that the Facility is owned at least in part by a Person able to use the PTCs and Tax depreciation benefits associated with holding an ownership interest in the Facility (including any subsequent transferees of any such Person or Persons).

"Interconnection Agreement" means the interconnection agreement among the Transmission Provider, IOU and Seller pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Seller's Interconnection Facilities and IOU's Interconnection Facilities will be constructed, operated and maintained during the Term.

"Interconnection Facilities" means the interconnection facilities, control and protective devices, and metering facilities required to connect the Facility with the Transmission System.

"Interest Rate" means a per annum rate of interest equal to the lesser of (i) the prime lending rate published from time to time by the Federal Reserve Bank H.15 (519) Statistical Release website on such Day (or if not published on such Day, on the most recent preceding Day

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on which published) plus two hundred (200) basis points or (ii) the maximum rate permitted by Applicable Law.

“IOU” means Interstate Power & Light, a wholly-owned subsidiary of Alliant energy Corporation, or any successor.

“TURC” means the Indiana Utility Regulatory Commission or any successor organization.

“TURC Approval” has the meaning given in Section 2.4 of this Agreement.

“TURC Approval Deadline” has the meaning given in Section 2.4 of this Agreement.

“TURC Termination Right” has the meaning given in Section 2.4 of this Agreement.

“Losses”, as used in Article 13, has the meaning given in Section 13.1 of this Agreement.

“Market Participant” has the meaning given in the Tariff.

“Meter(s)” means an instrument or instruments used in accordance with Prudent Electric Industry Practice to measure and record the volume of Buyer’s Metered Output, as further defined in Section 4.1 of this Agreement.

“Meter Data and Management Agent” means an entity designated by Seller that provides Meter data, representing the injections or withdrawals at each Commercial Node for which it is designated, to the Transmission Provider on Seller’s behalf.

“Midwest ISO” means the Midwest Independent Transmission System Operator, Inc.

“Month” means a calendar month commencing at 00:00 EST on the first Day of such month and ending at 24:00 EST on the last Day of such month.

“M-RETS” means the Midwest Renewable Energy Tracking System or its equivalent as mutually agreed by the Parties, or any successor renewable energy tracking program.

“MW” means megawatt.

“MWh” means megawatt hour.

“Nameplate Capacity” means the designed maximum electrical output, expressed in MW, of a Turbine, as defined in Annex E.

“NERC” means the North American Electric Reliability Council or its designee regional reliability organization.

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"Non-Defaulting Party" means, with respect to an Event of Default under Article 8 this Agreement, the Party that is not the Defaulting Party.

"Party" and "Parties" have the meanings given in the preamble and include any permitted assignee of a Party.


"Permanent Meteorological Tower" means the permanent tower on the Facility capable of measuring and recording representative wind data twenty-four (24) hours per Day, currently proposed to be located at a place to be determined at the Facility, which location Seller, at Seller's sole discretion and consistent with Prudent Electric Industry Practices, may change at any time prior to the Commercial Operation Date.

"Person" means an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority, limited liability company or other form of entity.

"Prudent Electric Industry Practice" means those practices, methods, standards and acts engaged in or approved of by a significant portion of the independent electric power generation industry for wind facilities of similar size and characteristics as the Facility in the relevant region that, at the relevant time period, 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, would have been expected to accomplish the desired result in a manner consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts reflect due regard for operation and maintenance standards recommended by applicable equipment suppliers and manufacturers, operational limits, and all Applicable Law and regulations. Prudent Electric Industry Practice is not intended to be limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods and acts generally acceptable or approved by a significant portion of the independent electric power generation industry for wind facilities in the relevant region, during the relevant period, as described in the immediately preceding sentence.

"PTCs" means production tax credits under Section 45 of the Internal Revenue Code as in effect from time to time during the Term or any successor or other provision providing for a federal tax credit determined by reference to renewable electric energy produced from wind resources and any correlative state tax credit determined by reference to renewable electric energy produced from wind resources for which the Facility is eligible.

"PTC Benefits Period" has the meaning given in Section 2.5 of this Agreement.



"PTC Deadline" has the meaning given in Section 2.5 of this Agreement.

"Regulatory Event" has the meaning given in Section 19.4 of this Agreement.

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"Renewable Energy Certificate Reporting Rights" means the right of the purchaser of Environmental Attributes to report the exclusive ownership of the accumulated Renewable Energy Certificate ("REC") to any agency, authority or other party, in compliance with Applicable Law, including rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program, renewable portfolio standard or emissions trading program (including, if applicable, pursuant to M-RETS).

"Representative", as used in Article 17, has the meaning given in Section 17.3.1 of this Agreement.

"Scheduled Maintenance" means Seller's planned partial or complete interruption or reduction of the Facility's generating capability for inspection or preventive or corrective maintenance purposes.

"Seller" means Barton Windpower LLC.

"Seller's Conditions Precedent" means the conditions listed in Section 2.3.

[REDACTED]

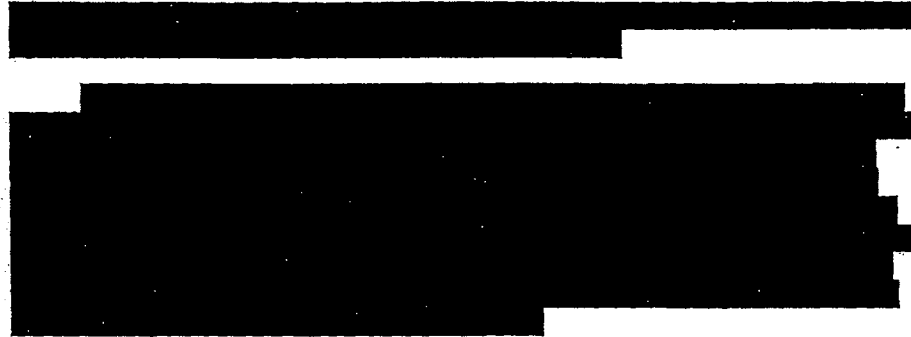
"System Emergency" means (i) a condition or situation that presents imminent physical threat of danger to life, health or property; (ii) any abnormal system condition, as declared by the Transmission Provider or IOU, that requires automatic or immediate manual action to maintain system frequency, or to prevent loss of firm load, equipment damage or tripping of system elements that could adversely affect the reliability of any electric system or the safety of persons or property; or (iii) a condition that requires implementation of Emergency procedures as defined in the Tariff.

"Tariff" means the Transmission Provider's Open Access Transmission and Energy Markets Tariff, FERC Electric Tariff, Third Revised Volume No. 1, or its successor tariff.

"Taxes" means all taxes, rates, levies, adders, assessments, surcharges, duties and other fees and charges of any nature, whether currently in effect or adopted during the Term, including, but not limited to, ad valorem, consumption, excise, franchise, gross receipts, import, export, license, property, sales, stamp, storage, transfer, turnover, use or value-added taxes, and any and all items of withholding, deficiency, penalty, addition to tax, interest or assessment related thereto.

[REDACTED]

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"Term" has the meaning given in Section 2.1 of this Agreement.

"Terminated Turbine" has the meaning given in Section 3.2.1 of this Agreement.

"Termination Payment" has the meaning given in Section 8.6 of this Agreement.

"Test Energy" means the energy generated by a Turbine prior to Seller's declaration that the Turbine has been Completed pursuant to Section 3.1, and associated Environmental Attributes, *provided* that all energy generated by a Turbine prior to the Commercial Operation Date is Test Energy and associated Environmental Attributes.

"Transmission Provider" means the Midwest ISO or its successor.

"Transmission System" means the transmission facilities providing transmission service from the Delivery Point, now or hereafter in existence, operated by the Transmission Provider.

"Turbine" means a single wind turbine generating system included as part of the Facility.

"Turbine Termination Fee" has the meaning given in Section 3.2.1 of this Agreement.

1.2 Rules of Interpretation.

1.2.1 General. Unless otherwise required by the context in which any term appears: (a) references to the plural shall include the singular, and references to the singular shall include the plural; (b) references to the masculine shall include the feminine and neuter; (c) references to "Articles," "Sections," "Schedules," "Annexes," "Appendices" or "Exhibits" (if any) shall be to articles, sections, schedules, annexes, appendices or exhibits hereof; (d) all references to a particular entity shall include a reference to such entity's successors and (if applicable) permitted assigns; (e) the words "herein," "hereof," "hereto" and "hereunder" shall refer to this Agreement as a whole and not to any particular Article, Section or Subsection of this Agreement; (f) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied; (g) a reference to a document or agreement, including this Agreement, includes a reference to that document, agreement or this Agreement, as applicable, as modified,

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amended, supplemented, restated or replaced from time to time; and (h) "including" shall be construed in its broadest sense to mean "without limitation" or "including, but not limited to."

1.2.2 **Time for Performance.** If any payment, act, matter or thing hereunder would occur on a Day that is not a Business Day, then such payment, act, matter or thing shall, unless otherwise expressly provided for herein, occur on the next Business Day. Unless otherwise expressly provided in this Agreement, a reference to a specific time for the performance of an obligation is a reference to the time in the place where that obligation is to be performed.

1.2.3 **Technical Meanings.** Words not otherwise defined herein that (i) have well known and generally accepted meanings in Prudent Electric Industry Practice shall have the meaning so given, and (ii) do not have well known and generally accepted meanings in Prudent Electric Industry Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings.

ARTICLE 2 TERM AND TERMINATION

2.1 **Term.** This Agreement shall become effective on the Effective Date and, unless terminated earlier as provided in this Agreement and subject to the provisions of this Article 2, shall remain in full force and effect until midnight CPT on the earlier of (i) the twentieth (20th) anniversary of the First Outside Date or (ii) June 30, 2029, such date to be extended on a daily basis equal to the duration of Seller's extension of the IURC Approval Deadline, if any, under Section 2.4 (the "Term").

2.2 **Termination.** This Agreement may be terminated prior to the expiration of the Term in the following circumstances:

2.2.1 By Buyer or Seller pursuant to Section 6.3 (Force Majeure) or Section 8.4 (Event of Default).

2.2.2 By Seller if a third party (i) obtains an injunction, order or other legal or equitable decree adversely affecting the Facility or (ii) files for or otherwise threatens in writing to seek an injunction, order or other legal or equitable decree adversely affecting the Facility, and Seller determines that such injunction or threatened injunction may prevent all or part of the Facility from achieving or maintaining Commercial Operation, such termination to be in Seller's sole discretion and applicable to all or any portion of the Facility that Seller reasonably anticipates will be adversely affected by the actual or threatened injunction, order or other legal or equitable decree.

2.2.3 By Buyer or Seller if Buyer fails to obtain all approvals and authorizations required by the IURC in accordance with Section 2.4.

2.2.4 By Seller if any of the conditions precedent set forth in Section 2.3 have not been satisfied by the applicable dates set forth in Section 2.3.

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2.2.5 By Buyer or Seller under Section 2.5.

2.2.6 By Seller pursuant to the provisions of Section 3(d) of Annex C.

2.3 Seller Conditions Precedent

2.3.1

2.3.2

2.3.3

2.3.4

2.3.5

2.4 **Regulatory Approval and Early Termination Rights**. The Parties' obligations under this Agreement are expressly conditioned on Buyer's receipt of a final, non-appealable order from the IURC that authorizes Buyer to recover payments to be made under this Agreement from Buyer's retail customers ("IURC Approval") in accordance with this Section 2.4. As soon as practicable, but in any event no later than forty-five (45) Days after the Effective Date, Buyer shall submit, in accordance with applicable regulations and tariffs, a petition to the IURC seeking IURC Approval. Buyer shall thereafter exercise diligence and expeditiously proceed with the petition process to obtain IURC Approval. If Buyer has not obtained IURC Approval on or before the date occurring one hundred twenty (120) Days after the Effective Date ("IURC Approval Deadline"), either Party may terminate this Agreement without liability to the other Party by providing written notice to the other Party within five (5) Business Days of the IURC Approval Deadline ("IURC Termination Right"), *provided* that Seller may, in its sole and exclusive discretion, grant Buyer an extension of the IURC Approval Deadline of up to an additional one hundred and twenty (120) Days by providing written notice to Buyer before the IURC Approval Deadline. Seller's extension of the IURC Approval Deadline shall prevent Buyer's ability to exercise its IURC Termination Right, *provided* that if Seller grants such extension but IURC Approval has not been obtained on or before the extended

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IURC Approval Deadline, then the IURC Termination Right shall revive and either Party may terminate this Agreement without liability to the other Party by providing written notice within five (5) Business Days of the extended IURC Approval Deadline. If a Party elects not to exercise the IURC Termination Right by failing to provide written notice of termination within the time frame specified under this Section 2.4, such failure shall constitute a waiver of the IURC Termination Right and any subsequent appeal or denial of IURC Approval shall not relieve Buyer of its obligations to perform under this Agreement.

2.5 PTC Expiration.

For purposes of this Section 2.5, "PTC Benefits Period" shall mean (i) the ten (10) year period during which PTCs can be claimed for energy with respect to the Current PTCs or (ii) the period that Equivalent PTC Benefits (if applicable) can be claimed, and "PTC Deadline" shall mean December 31, 2008; *provided, however*, in the event that (i) the then current deadline to claim PTCs is extended by Applicable Law or (ii) in lieu of extending the deadline, legislation to receive equivalent or better benefits due to the installation of wind Turbines is enacted so that Seller would receive equivalent or better benefits (the "Equivalent PTC Benefits"), the PTC Deadline shall be the date of the extended deadline for the Current PTCs or the date of the deadline to claim Equivalent PTC Benefits.

2.6 Effect of Termination of This Agreement. If this Agreement terminates, the provisions of this Agreement shall remain in effect only to the extent necessary (a) to provide for final billings and adjustments related to the period before termination for the delivery of Buyer's Metered Output and associated Environmental Attributes generated before the termination date and (b) for payment of any money due and owing any Party pursuant to this Agreement; *provided, however*, that such termination shall not affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any such termination. Subject to the foregoing, any termination of this Agreement by Seller pursuant to Section 2.3, 2.4 or 2.5 shall be without any further financial liability or other obligation to Buyer as a result of such termination.

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ARTICLE 3 FACILITY DEVELOPMENT; COMMERCIAL OPERATION

3.1 **Commercial Operation.** Seller shall use Commercially Reasonable Efforts to Complete all Turbines necessary to achieve the Expected Installed Capacity prior to the First Outside Date, *provided* that nothing herein shall limit Seller's right or ability to declare any or all Turbines Completed prior to the First Outside Date. Seller shall provide Buyer with notice five (5) Business Days in advance of the anticipated date of declaring a Turbine Completed and bringing a Completed Turbine online as part of the Facility. Once Seller has declared a Turbine Completed, Buyer shall be required to purchase Buyer's Metered Output and Environmental Attributes associated with such Turbine at the Contract Price; *provided, however*, Buyer shall not be required to purchase Buyer's Metered Output and Environmental Attributes prior to January 1, 2009.

3.2 **Construction After the First Outside Date and Delay Damages.**

3.2.1 If Seller has not Completed one hundred percent (100%) of the Turbines by the First Outside Date, Seller shall have the right, at its sole and exclusive discretion, to (a) terminate the Agreement with respect to any non-Completed Turbines or (b) continue construction of the Facility and attempt to Complete all or a portion of the non-Completed Turbines. Seller shall provide notice to Buyer on or before the First Outside Date of any non-Completed Turbines and Seller's election to either terminate or continue building all or a portion of the non-Completed Turbines. If Seller elects to terminate a non-Completed Turbine under this Section 3.2.1, Seller shall pay Buyer damages equal to [REDACTED] ("Turbine Termination Fee") for each Turbine that Seller elects not to build ("Terminated Turbine"). If Seller elects to continue construction of a non-Completed Turbine ("Delay Turbine") under this Section 3.2.1, Seller shall pay damages to Buyer calculated as the Buyer's Cost to Cover ("Delay Damages").

3.2.2 [REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

3.2.3

[REDACTED]

3.3 Construction of Terminated Turbines. Seller shall have the right, at its sole and exclusive discretion, to build and Commission any Terminated Turbines and sell the energy and Environmental Attributes associated with any such Turbine(s) to a third party free and clear of any obligations hereunder to Buyer.

3.4 Sole and Exclusive Remedies. Buyer's sole remedy and Seller's sole liability for the failure of (a) Seller to Complete a Turbine, (b) to Complete a Turbine by the dates specified

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in this Article 3, or (c) the Facility to achieve at all any level of Installed Capacity, shall be the payment by Seller of Delay Damages and Turbine Termination Fees, as specified in Section 3.2, as applicable. For avoidance of doubt, any such failure under Article 3 shall not be a Seller's Event of Default under Article 8 unless Seller fails to make a payment of Delay Damages or Turbine Termination Fees when such payment is due as provided in Section 8.1.2(i).

ARTICLE 4 METERING AND MEASUREMENT

4.1 **Metering.** Metering and data processing equipment at the Facility, which is registered with the Transmission Provider as the settlement meter (the "Meter(s)") shall be used for the registration, recording and transmission of information regarding Buyer's Metered Output for purposes of determining the amount of Buyer's Metered Output generated by the Facility and is therefore deemed to be delivered to the Delivery Point by Seller, and any associated Environmental Attributes. The Meter shall be operated, maintained and calibrated in accordance with the Interconnection Agreement and Section 38.2.5(e) of the Tariff. In the event of any conflict between the requirements of the Interconnection Agreement and the Tariff, the Tariff shall control. Seller shall provide Buyer with a copy of all metering and calibration information and documents regarding the Meter promptly following receipt of the same by Seller, its Affiliate(s), or the Meter Data and Management Agent. For purposes of permitting Buyer to monitor the generation of the Facility, Seller shall provide, or shall cause to be provided, to Buyer metering data on a real-time basis. Any adjustments in the metering pursuant to the Interconnection Agreement and the Tariff shall be reflected in the next Monthly invoice following such adjustment.

4.2 **Measurements.** The Meter Data and Management Agent's readings of the Meters shall be conclusive as to the amount of electrical energy generated by the Facility; *provided, however*, that Seller, at the direction of Buyer, shall test the Meter(s), and if any Meter is out of service or is determined to be registering inaccurately, measurement of electrical energy generated by the Facility shall be determined in the manner set forth in Section 4.1. If Buyer requests testing of the Meter(s) and a Meter is out of service or is registering inaccurately, Seller shall be responsible for any costs associated with such testing. If Buyer requests such tests and the Meter(s) are deemed to be registering accurately, Buyer shall reimburse Seller for any costs associated with the requested testing.

ARTICLE 5 PURCHASE AND SALE

5.1 Sale and Purchase of Buyer's Metered Output and Environmental Attributes.

5.1.1 **Sale and Purchase of Buyer's Metered Output.** In accordance with the terms and conditions of this Agreement, commencing on the Commercial Operation Date and continuing through the Term, Seller shall sell to Buyer, and Buyer shall purchase from Seller, Buyer's Metered Output at the Delivery Point on an as-generated, instantaneous basis. The sale of Buyer's Metered Output under this Agreement shall include any Capacity Attributes, if such Capacity Attributes become available from the Facility. The obligation of Seller to make

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available to Buyer any energy pursuant to this Agreement is on an as-generated, instantaneous basis and is contingent on the availability of each Turbine, and shall not give Buyer the right to any damages. The failure of the Facility to operate at any specific level of Installed Capacity shall not be a Seller's Event of Default under Article 8.

5.1.2 Sale and Purchase of Environmental Attributes. Seller shall sell to Buyer, and Buyer shall purchase from Seller, all right, title and interest in and to all Environmental Attributes, if any, attributable to Buyer's Metered Output. Consideration for the Environmental Attributes shall be deemed included in the Contract Price paid for Buyer's Metered Output. The Parties shall cooperate to ensure that all Renewable Energy Certificate Reporting Rights are available to Buyer, and shall make such filings, execute such periodic documentation and take such actions as are reasonably required to deliver documentation of Buyer's Renewable Energy Certificate Reporting Rights associated with Buyer's Metered Output directly to Buyer through M-RETS. Buyer shall reimburse Seller for its incremental actual costs and expenses (including reasonable fees and expenses of counsel) incurred by Seller in connection with (i) the preparation, negotiation and execution of any instruments and other related documents necessary or desirable to transfer, convey and assign to Buyer such Environmental Attributes and Renewable Energy Certificate Reporting Rights and (ii) any reporting or management requirements associated with such Environmental Attributes and Renewable Energy Certificate Reporting Rights. Seller shall provide Buyer a written estimate of such incremental costs and expenses, in sufficient detail, for Buyer's approval prior to beginning such preparation, negotiation and execution. Buyer shall notify Seller, in writing, of Buyer's approval of such costs and expenses, and such approval shall not be unreasonably withheld or delayed. Seller shall not report under Section 1605(b) of the Energy Policy Act of 1992 or under any applicable program, as belonging to anyone other than Buyer, any of the Environmental Attributes purchased hereunder, and Buyer may report under such program that such Environmental Attributes purchased hereunder belong to it. Seller makes no written or oral representation or warranty, either express or implied, regarding the current or future existence of any Environmental Attributes.

5.1.3 Sale Price for Buyer's Metered Output and Environmental Attributes. Buyer shall pay Seller for Buyer's Metered Output and the Environmental Attributes delivered to the Delivery Point at a payment rate as set forth in Annex A (the "Contract Price").

5.2 Reductions in Delivery.

5.2.1 Scheduled Maintenance. Seller shall be permitted to reduce deliveries of Buyer's Metered Output during any period of Scheduled Maintenance. Seller shall provide Buyer with reasonable notice of Scheduled Maintenance, and shall provide Buyer with notice by no later than 07:30 EST on at least a Day-ahead basis of any Scheduled Maintenance that will affect more than ten percent (10%) of the number of Turbines of the Facility at the same time.

5.2.2 Forced Outage. Seller shall be permitted to reduce deliveries of Buyer's Metered Output during any Forced Outage. Seller shall provide Buyer with notice and expected duration (if known) of any Forced Outage.

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5.2.3 System Emergency and Other Interconnection Events. Seller shall be permitted to reduce deliveries of Buyer's Metered Output during any period of System Emergency or upon notice by the Transmission Provider or IOU pursuant to the terms of the Interconnection Agreement or applicable tariff.

5.3 [REDACTED]

5.3.2 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 5.4

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

5.5

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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5.6 Test Energy

5.7 Scheduling. Seller shall coordinate with Buyer and the Midwest ISO to register the Facility in the Midwest ISO energy market for purposes of delivering in the Midwest ISO in a manner that, if permitted by Midwest ISO, reflects Buyer's Metered Output. Buyer shall be designated as the Market Participant with respect to Buyer's Metered Output. Seller shall cooperate with and provide information to Buyer to the extent necessary for Buyer to submit schedules to the Midwest ISO for Buyer's Metered Output in accordance with the Tariff.

In the event of a Buyer Event of Default and upon receiving notice from Seller, Buyer shall take all such actions as may be required to cease to be the Market Participant with respect to Buyer's Metered Output no later than the Early Termination Date.

ARTICLE 6 FORCE MAJEURE EVENT

6.1 Definition.

6.1.1 "Force Majeure Event" means any act or event that delays or prevents a Party from timely performing its obligations under this Agreement or from complying with conditions required under this Agreement if such act or event, despite the exercise of Commercially Reasonable Efforts, cannot be avoided or mitigated by, and is beyond the reasonable control of and without the fault or negligence of, the Party relying thereon as justification for such delay, nonperformance or noncompliance.

6.1.2 Without limiting the generality of the foregoing, Force Majeure Events may include, without limitation, acts of God; actions of the elements such as heavy rains, floods, earthquakes, hurricanes, tornadoes, lightning, ice storms, landslides, mudslides, high winds of sufficient strength or duration to materially damage the Facility or significantly impair its operation for a period of time longer than normally encountered by wind energy facilities under comparable conditions; subsurface or other site conditions (including, without limitation, environmental contamination, archaeological or other protected cultural resources, and endangered species or protected habitats); explosion; fire; epidemic; sabotage; terrorism; transportation delays; unavailability of materials; defective equipment; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance, strike or other labor difficulty caused or

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suffered by a Party beyond the reasonable control of such Party or its Affiliates (even if such difficulties could be resolved by conceding to the demands of a labor group); or any restraint or restriction imposed by Applicable Law or other acts of Governmental Authorities, which by exercise of due diligence and in compliance with Applicable Law a Party could not reasonably have been expected to avoid and to the extent which, by exercise of due diligence and in compliance with Applicable Law, has been unable to overcome (so long as the affected Party has not applied for or assisted with such act by a Governmental Authority). A curtailment by Midwest ISO, or its successor, at the Delivery Point for any reason that prevents either Party from performing under this Agreement will constitute a Force Majeure Event.

6.1.3 Notwithstanding the foregoing, the term "Force Majeure Event" does not include (1) economic conditions that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer's ability to buy energy or Environmental Attributes at a lower price, or Seller's ability to sell energy or Environmental Attributes at a higher price, than the Contract Price), or (2) inability of a Party to make payment when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above.

6.2 **Force Majeure Occurrence and Notice.** To the extent any Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the "Claiming Party") gives notice and details of the Force Majeure Event to the other Party as soon as practicable, then the Claiming Party shall be excused from the performance of such obligations during the period that the Force Majeure Event prevents performance by that Party. In addition, any deadlines or time periods by which performance is due shall be extended for a period of time equal to the time period of such suspension. The Claiming Party shall use Commercially Reasonable Efforts to remedy the Force Majeure Event with all reasonable dispatch. The suspension of performance due to Force Majeure shall be no longer duration and no greater scope than is required by the Force Majeure Event. The Claiming Party shall promptly notify the non-Claiming Party when it is able to resume its performance obligations under this Agreement, if it is able to do so. The non-Claiming Party shall not be required to perform or resume performance of its obligations to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

6.3 **Force Majeure Termination.**

6.3.1 Either Party may terminate this Agreement, without liability to the other Party, by giving written notice of such termination to the other Party, if material obligations of the Parties under this Agreement have been suspended for [REDACTED] due to a single Force Majeure Event, *provided* that if the Claiming Party is the Party electing to terminate this Agreement, the Claiming Party shall only be entitled to terminate this Agreement under this Section 6.3 if it has met its obligations under Section 6.2. Such termination shall be effective as of the [REDACTED] after the expiration of such [REDACTED] period, or, if the expiration of such [REDACTED] period occurs on or after the [REDACTED], the termination shall be effective as of the [REDACTED] after the expiration of such [REDACTED] period.

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6.3.2 Notwithstanding the provisions of Section 6.3.1, if the Force Majeure Event is one which has materially and adversely affected the production and sale of Buyer's Metered Output and Environmental Attributes as contemplated by this Agreement and if (i) the Force Majeure Event is such that the suspension, in whole or in part, of the production and sale of Buyer's Metered Output and Environmental Attributes can be corrected through repair or restoration work to the Facility or other actions by Seller, (ii) Seller furnishes to Buyer as soon as practicable after such Force Majeure Event, but in no event later than [REDACTED] after the occurrence of such Force Majeure Event, the plans and, if applicable, the construction contract, for the restoration or repair of the Facility, together with evidence reasonably satisfactory to Buyer of the total cost of restoration or repair of the Facility and of Seller's ability to finance such total cost, (iii) Buyer has the reasonable opportunity to review and comment on such plans and financing and (iv) Seller has undertaken and is diligently pursuing the repair work, restoration or other actions, then Buyer shall not have the right to terminate this Agreement during such suspension so long as Seller is using Commercially Reasonable Efforts to complete such repair work, restoration or such other actions.

6.4 **Obligations.** No Party shall be relieved by operation of this Article 6 of any liability for breach of any obligations that were to be performed or that accrued prior to the Force Majeure Event.

ARTICLE 7 BILLING AND PAYMENT

7.1 **Monthly Billing.** The billing period under this Agreement shall be a Month. No later than fifteen (15) Business Days after the end of each Month, Seller shall provide to Buyer an invoice for the amount due Seller by Buyer for Buyer's Metered Output and Environmental Attributes provided by Seller and purchased by Buyer under this Agreement during the previous Month. Each invoice shall show all billing parameters, rates and factors and shall include sufficient detail to allow the receiving Party to verify the invoice. Buyer's Metered Output and Environmental Attributes will be deemed delivered to Buyer for invoicing purposes in the Month in which Buyer's Metered Output is delivered to the Delivery Point. If Seller does not correctly reflect on the Monthly invoice the amount owed by Seller to Buyer, or does not provide an invoice in a Month in which Seller owes amounts to Buyer hereunder, Buyer may submit an invoice to Seller for such amounts in accordance with the provisions of this Section 7.1.

7.2 **Payments.** Unless otherwise specified herein, amounts due and payable to either Party under this Agreement shall be paid by wire transfer of immediately available funds on or before the tenth (10th) Business Day following receipt of the invoice. If the due date does not fall on a Business Day, then the payment will be due on the next following Business Day. Payment will be made in accordance with written wire transfer instructions provided by Buyer or Seller from time to time; *provided, however*, that any changes to such wire transfer instructions will not be effective until two (2) Business Days after the date of receipt of notice from Buyer or Seller. The Parties agree that any payments hereunder shall be deemed made in full when confirmation is received from the financial institution holding the account into which payment is made that the payment has been successfully received in immediately available funds. Such confirmation shall be conclusive evidence of receipt. If the amount due is not paid (or deemed

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paid) on or before the due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be at the Interest Rate. If a due date occurs on a Day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

7.3 Resolution of Alleged Billing Errors.

7.3.1 Maintenance of Records. Each Party will keep complete and accurate books of records and accounts, in which full and correct entries shall be made in accordance with generally accepted accounting principles, consistently applied. Each party shall maintain such data as may be necessary for the purpose of ascertaining the accuracy of all relevant data, estimates or statements of charges submitted hereunder until the later of (i) a period of at least two (2) years after the date the invoice was received by the other Party, or (ii) if there is a dispute relating to an invoice, the date that is two (2) years after the date on which the dispute is resolved.

7.3.2 Deadline for Auditing Invoice. Each Party has [REDACTED] after the date on which an invoice is received to audit that invoice pursuant to Section 18.1.

7.3.3 Billing Disputes. Each Party may dispute invoiced amounts, but shall pay to the other Party at least the undisputed portion of the invoiced amounts on or before the due date; *provided, however*, such payment will not waive such Party's right to dispute the invoice in the future as provided for under this Section 7.3.3. To resolve any billing dispute, the Parties shall use the procedures set forth in Section 17.3. When the billing dispute is resolved, the Party owing shall pay the amount owed within [REDACTED] Days of the date of such resolutions with interest calculated on the amount owed at the Interest Rate. If a potential billing error is discovered after a bill has been paid, either Party will notify the other of the billing dispute as soon as reasonably possible, but in any event within the [REDACTED] period contemplated by this Section 7.3. Any invoice that has not been disputed within such [REDACTED] period will be conclusive, final and no longer subject to adjustment. If either Party overpays a bill through inadvertent errors or as a result of a dispute, the overpayment will be returned by the owing Party upon determination of the correct amount, with interest accrued at the Interest Rate prorated by the Days from the date of overpayment to the date of refund. If Seller under-bills Buyer, Seller may adjust the error by adding the under-billed amount to a subsequent invoice and such amount will become due and owing within the time allowed by Section 7.1.

ARTICLE 8 EVENTS OF DEFAULT; REMEDIES

8.1 Seller's Events of Default.

8.1.1 Any of the following shall constitute an Event of Default of Seller [REDACTED]:

(i) Seller's filing of a petition in voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any

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insolvency act of any state, or Seller voluntarily taking advantage of any such law or act by answer or otherwise;

(ii) Seller's actual fraud or other material intentional misconduct in connection with this Agreement or the operation of the Facility;

(iii) The sale by Seller to a third party, or diversion by Seller for any use of Buyer's Metered Output other than in mitigation of its damages for any Buyer Event of Default or as specifically provided for in this Agreement;

(iv) Seller's assignment of this Agreement or any of its rights hereunder for the benefit of creditors (except for an assignment in accordance with Article 15 of this Agreement);

(v) Seller consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity *and*, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of Seller under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to Buyer or the creditworthiness of Seller or, if applicable, the successor, surviving or transferee entity of Seller, after taking into account any applicable credit support document, is materially weaker immediately after the occurrence of such event than that of Seller immediately prior to the occurrence of such event;

(vi) Seller fails to deliver and maintain Credit Support in the amount and on the dates required by Annex C; or

(vii) With respect to Seller's guarantor ("Guarantor"), if any:

(1) Any representation or warranty made by Guarantor in connection with this Agreement shall prove to have been false or misleading in any material respect when made or ceases to remain true during the term of any guaranty made in connection with this Agreement;

(2) Guarantor fails to make any payment required or to perform any other material covenant or obligation in any guaranty made in connection with this Agreement and such failure shall not be remedied within [REDACTED] Days after written notice;

(3) Guarantor's filing of a petition in voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or Guarantor voluntarily taking advantage of any such law or act by answer or otherwise; or the filing of a case in bankruptcy or any proceeding under any other insolvency law against Guarantor as debtor if Guarantor has failed to have such proceeding dismissed or stayed within [REDACTED] Days after the date of such filing;

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(4) The failure of Guarantor's guaranty to be in full force and effect for purposes of this Agreement (other than in accordance with its terms) prior to the satisfaction of all obligations of Seller under this Agreement without the written consent of Buyer; or

(5) Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of, any guaranty.

8.1.2 Any of the following shall constitute an Event of Default of Seller if Seller has failed to cure such default within [REDACTED] after the date of written notice from Buyer to Seller:

(i) Seller's failure to make any undisputed payment when due under this Agreement (net of outstanding damages and any other rights of offset that Seller may have pursuant to this Agreement); or

(ii) Seller's failure to perform any other material covenant or obligation under this Agreement not specifically enumerated in this Section 8.1 that would result in a material adverse impact on Buyer.

8.1.3 Any of the following also shall constitute an Event of Default of Seller if Seller has failed to cure such default within [REDACTED] after the date of written notice from Buyer to Seller:

(i) Except as permitted in accordance with Article 15 hereof, Seller's assignment of this Agreement or any of its rights hereunder; or

(ii) Any representation or warranty made by Seller in this Agreement that proves to have been false or misleading in any material respect when made or ceases to remain true during the Term if such cessation would reasonably be expected to result in a material adverse impact on Buyer.

8.1.4 The filing of a case in bankruptcy or any proceeding under any other insolvency law against Seller as debtor that could materially impact Seller's ability to perform its obligations hereunder shall be an Event of Default of Seller, if Seller has failed to have such proceeding dismissed or stayed within [REDACTED] Days after the date of such filing.

8.2 Buyer's Events of Default.

8.2.1 Any of the following shall constitute an Event of Default of Buyer [REDACTED]:

(i) Buyer's filing of a petition in voluntary bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or Buyer voluntarily taking advantage of any such law or act by answer or otherwise;

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(ii) Buyer's actual fraud or other material intentional misconduct in connection with this Agreement;

(iii) Buyer's assignment of this Agreement or any of its rights hereunder for the benefit of creditors (except for an assignment in accordance with Article 16 of this Agreement);

(iv) Buyer consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of Buyer under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to Seller or the creditworthiness of Buyer or, if applicable, the successor, surviving or transferee entity of Buyer, after taking into account any applicable credit support document, is materially weaker immediately after the occurrence of such event than that of Buyer immediately prior to the occurrence of such event; or

(v) Buyer fails to deliver and maintain Credit Support in the amount and on the dates required by Annex C.

8.2.2 Any of the following shall constitute an Event of Default of Buyer if Buyer has failed to cure such default within [REDACTED] Days after the date of written notice from Seller to Buyer:

(i) Buyer's failure to make any undisputed payment when due under this Agreement (net of outstanding damages and any other rights of offset that Buyer may have pursuant to this Agreement); or

(ii) Buyer's failure to perform any other material obligation under this Agreement (except to the extent constituting a separate Event of Default) not specifically enumerated in this Section 8.2 that would result in a material adverse impact on Seller.

8.2.3 Any of the following also shall constitute an Event of Default of Buyer if Buyer has failed to cure such default within [REDACTED] Days after the date of written notice from Seller to Buyer:

(i) Except as permitted in accordance with Article 15 hereof, Buyer's assignment of this Agreement or any of its rights hereunder; or

(ii) Any representation or warranty made by Buyer in this Agreement that proves to have been false or misleading in any material respect when made or ceases to remain true during the Term, if such cessation would reasonably be expected to result in a material adverse impact on Seller.

8.2.4 The filing of a case in bankruptcy or any proceeding under any other insolvency law against Buyer as debtor that could materially impact Buyer's ability to perform its obligations hereunder shall be an Event of Default of Buyer if Buyer has failed to have such

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proceeding dismissed or stayed within [REDACTED] Days after the date of such filing.

8.3 **Extension of Cure Period.** Notwithstanding the cure periods provided in Sections 8.1 and 8.2, a Non-Defaulting Party shall not be entitled to terminate this Agreement in the case of an Event of Default that is not reasonably capable of being cured within the applicable cure period, if the Defaulting Party (a) has commenced to cure the default within such applicable cure period; (b) is diligently pursuing such cure; (c) such Event of Default is capable of being cured by the Defaulting Party within a reasonable time after the expiration of such cure period; and (d) such Event of Default is in fact cured within such reasonable period of time.

8.4 **Remedies for an Event of Default.** If an Event of Default has occurred and is continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (but not the duty) to exercise any or all of the following remedies: (a) to suspend performance under this Agreement; (b) to terminate this Agreement after the expiration of any applicable cure period in accordance with Section 8.6 hereof; (c) to call on any collateral provided by the Defaulting Party, to satisfy all payments due and amounts otherwise owing under this Agreement; (d) to call on any guarantor to satisfy its obligations under a guaranty provided under this Agreement, or otherwise provided by the Defaulting Party; and (e) subject to the exclusivity of remedies provided in Section 3.4 and subject to Article 9, to exercise any remedy available under this Agreement or at law or in equity.

8.5 **Actual Damages.** For all events described in Section 8.1 or 8.2, the Non-Defaulting Party shall, subject to Article 9, be entitled to receive from the Defaulting Party all of the damages incurred by the Non-Defaulting Party in connection with such event, *provided* that if an Event of Default has occurred and has continued uncured for a period of [REDACTED], the Non-Defaulting Party shall be required to either waive its right to collect further damages on account of such Event of Default or elect to terminate this Agreement in accordance with Section 8.6. The Parties agree that the damages recoverable hereunder on account of an Event of Default of Seller or Buyer, as the case may be, include Buyer's Cost to Cover and Seller's Cost to Cover.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

8.6 Termination.

8.6.1 Upon the occurrence of any Event of Default (and *after* the expiration of any applicable cure period), the Non-Defaulting Party shall have the right to declare a date, which shall be no less than [REDACTED] Days and no more than [REDACTED] Days after the notice thereof, upon which this Agreement shall terminate ("Early Termination Date"). Neither Party shall have the right to terminate this Agreement except as provided for upon occurrence of an Event of Default as described above, or as otherwise may be explicitly provided for in this Agreement. Upon the termination of this Agreement under this Section 8.6, the Non-Defaulting Party shall be entitled to receive from the Defaulting Party, subject to Article 9, an amount (the "Termination Payment") equal to [REDACTED]

[REDACTED]

If the Termination Payment is a negative amount, the amount of the Termination Payment shall be deemed to be zero and no payment shall be made to either Party.

[REDACTED]

[REDACTED]

Barton Windpower LLC

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

8.7 **Duty/Right to Mitigate.** Each Party agrees that it has a duty to mitigate damages and covenants that it shall use Commercially Reasonable Efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement, *provided* that in no event shall the mitigating Party owe any payment to the non-performing Party in connection with such mitigation. Seller shall be entitled to reduce the amount of monetary damages payable by Seller pursuant to Section 8.6.2 as and to the extent Seller provides Buyer with replacement energy or Environmental Attributes (which replacement shall be subject to the consent of Buyer and which consent shall not be unreasonably withheld or delayed) in substitution for any monetary damages that would otherwise have been due pursuant to such section.

8.8 **Remedies Cumulative.** Subject to the exclusivity of the remedies provided in Section 3.4 and subject to Article 9, each right or remedy of the Parties provided for in this Agreement shall be cumulative of and shall be in addition to every other right or remedy provided for in this Agreement, and the exercise, or the beginning of the exercise, by a Party of any one or more of the rights or remedies provided for herein shall not preclude the simultaneous or later exercise by such Party of any or all other rights or remedies provided for herein.

8.9 **Buyer's Failure to Pay.** If Buyer fails to pay Seller any undisputed amount due to Seller in the time period required herein following any applicable cure period, Seller may, in lieu of terminating the Agreement, by written notice to Buyer, elect to suspend supplying

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Buyer's Metered Output and Environmental Attributes to Buyer until such time as the undisputed amount is paid. During any such suspension period, Seller may sell Buyer's Metered Output and Environmental Attributes to any third party purchaser.

8.10 **Cure Rights of Financing Parties and Institutional Investor.** Seller shall provide Buyer with a notice identifying any Financing Parties and Institutional Investor and providing appropriate contact information for any Financing Parties and Institutional Investor. Following receipt of such notice, Buyer shall provide notice of the occurrence of any Event of Default described in Section 8.1 hereof to any Financing Parties or Institutional Investor, and Buyer will accept a cure performed by any Financing Parties or Institutional Investor, negotiate in good faith with any Financing Parties or Institutional Investor as to the cure period(s) that will be allowed for any Financing Parties or Institutional Investor to cure any Seller Event of Default hereunder, and accept a cure performed by any Financing Parties or Institutional Investor so long as the cure is accomplished within the applicable cure period so agreed to by Buyer and any Financing Parties or Institutional Investor.

ARTICLE 9 LIMITATIONS

9.1 Limitation on Damages.

[REDACTED]

9.2 **Waiver and Exclusion of Other Damages.** THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES, PAYMENT OBLIGATIONS AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES; LOST PROFITS; OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE, *PROVIDED* THAT IF EITHER PARTY IS HELD LIABLE TO A THIRD PARTY FOR SUCH DAMAGES AND THE PARTY HELD LIABLE FOR SUCH DAMAGES IS ENTITLED TO INDEMNIFICATION THEREFOR FROM THE OTHER PARTY HERETO, THEN THE INDEMNIFYING PARTY SHALL BE LIABLE FOR, AND OBLIGATED TO REIMBURSE THE INDEMNIFIED PARTY FOR, SUCH DAMAGES. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS

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INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. 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.

ARTICLE 10 GOVERNMENTAL CHARGES

10.1 **Cooperation.** Each Party shall use Commercially Reasonable Efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts.

10.2 **Governmental Charges.** Seller shall pay or cause to be paid all Governmental Charges on or with respect to Buyer's Metered Output and Environmental Attributes arising prior to the delivery of Buyer's Metered Output to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to Buyer's Metered Output and Environmental Attributes arising at and from the Delivery Point. If Seller is required by law or regulation to remit or pay Governmental Charges that are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by law or regulation to remit or pay Governmental Charges that are Seller's responsibility hereunder, Seller shall promptly reimburse Buyer for such Governmental Charges. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

ARTICLE 11 RATES AND TERMS BINDING

11.1 **No Change in Rates.** The rates, terms and conditions of service specified in this Agreement shall remain in effect from the Effective Date until expiration of the Term. Notwithstanding any provision in this Agreement, neither Party shall seek, nor shall support any third party in seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent the prior written agreement of the Parties. Further, absent the prior agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party or the FERC acting *sua sponte* shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 US 332 (1956), and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 US 348 (1956).

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ARTICLE 12 REPRESENTATIONS AND WARRANTIES

12.1 **Seller's Representations and Warranties.** Seller represents and warrants as follows:

12.1.1 Seller is a limited liability company, duly organized and validly existing under the laws of the state of Delaware, authorized to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

12.1.2 Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement.

12.1.3 Seller has obtained, or will obtain prior to commencement of the delivery of Buyer's Metered Output hereunder, all regulatory approvals required by any Governmental Authority in order to perform its obligations hereunder.

12.1.4 The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Applicable Law presently in effect having applicability to Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

12.1.5 Seller has by proper corporate or other company action taken all such action necessary to authorize the execution and delivery of, and the performance by Seller of its obligations under, this Agreement.

12.1.6 This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

12.1.7 Seller makes no written or oral representation, warranty or covenant, either express or implied, regarding the current or future existence of any Environmental Attributes or any law governing the existence of any Environmental Attributes under this Agreement or otherwise or their characterization or treatment under Applicable Law or otherwise.

12.1.8 [REDACTED]

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12.2 **Buyer's Representations and Warranties.** Buyer represents and warrants as follows:

12.2.1 Buyer is a public utility corporation, duly organized and validly existing under the laws of the state of Indiana, authorized to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Buyer.

12.2.2 Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement.

12.2.3 Buyer has obtained or will obtain all regulatory approvals required by any Governmental Authority in order to perform its obligations hereunder.

12.2.4 The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Applicable Law presently in effect having applicability to Buyer, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

12.2.5 This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

ARTICLE 13 INDEMNITY; INSURANCE AND FINES

13.1 **Indemnity.**

[REDACTED]

13.2

[REDACTED]

Barton Windpower LLC

13.3 **Workers' Compensation Waiver.** To the extent permitted by law, Seller expressly (i) waives the benefit, for itself and all subcontractors, insofar as the indemnification of Buyer is concerned, of the provisions of any applicable workers' compensation law limiting the tort or other liability of any employer on account of injuries to the employer's employees, and (ii) assumes liability in accordance with this Article 13.

13.4 **Notice of Claims; Procedure.** Each Party shall, with reasonable promptness after obtaining knowledge thereof, provide the other Party against whom a claim for indemnification is to be made under this Article 13 with written notice of the proceedings, claims, demands or assessments that may be subject to indemnification, which notice shall include a statement of the basis of the claim for indemnification, including a summary of the facts or circumstances that form the basis for the claim, a good faith estimate of the amount of Losses and copies of any pleadings or demands from the third party. A potential Indemnifying Party shall have [REDACTED] Days after its receipt of the claim notice to notify the potential Indemnified Party in writing whether or not the potential Indemnifying Party agrees that the claim is subject to this Article 13 and, if so, whether the Indemnifying Party elects to undertake, conduct and control, through counsel of its choosing and at its sole risk and expense, the settlement or defense of the claim. If within [REDACTED] Days after its receipt of the claim notice the Indemnifying Party notifies the Indemnified Party that it elects to undertake the settlement or defense of the claim, the Indemnified Party shall cooperate with the Indemnifying Party in connection therewith including, without limitation, by making available to the Indemnifying Party all relevant information and the testimony of employees and agents material to the defense of the claim. The Indemnifying Party shall reimburse the Indemnified Party for reasonable out-of-pocket costs incurred in connection with such cooperation. So long as the Indemnifying Party is contesting the claim in good faith and with diligence, the Indemnified Party shall not pay or settle the claim. Notwithstanding the foregoing, the Indemnified Party shall have the right to pay or settle any claim at any time without the consent of the Indemnifying Party, *provided* that in such event it waives any right to indemnification therefor by the Indemnifying Party. If the potential Indemnifying Party does not provide a responsive notice within the [REDACTED] Day period set forth in this Section 13.4, the Indemnified Party shall thereafter have the right to contest, settle or compromise the claim at its exclusive discretion, and the Indemnifying Party will thereby waive any claim, defense or argument that the Indemnified Party's settlement or defense of such claim is in any respect inadequate or unreasonable.

13.5 **Insurance Proceeds.** In the event that a Party is obligated to indemnify the other Party under this Article 13, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's Loss net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

13.6 **Insurance Requirements.** No later than [REDACTED] Days prior to the commencement of construction of the Facility, and annually thereafter, Seller shall provide Buyer with a copy of insurance certificates reasonably acceptable to Buyer evidencing that insurance coverage for the Facility is in compliance with the specifications for insurance coverage set forth in Annex F to this Agreement. Such certificates shall be executed by each insurer or by an authorized representative of each insurer. Such certificates shall (i) name Buyer as an additional insured (except workers' compensation); (ii) [REDACTED]

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[REDACTED]; and (iii) provide a waiver of any rights of subrogation against Buyer, its Affiliates and their respective officers, directors, agents, subcontractors and employees. All policies shall be written with insurers that Buyer, in its reasonable discretion, deems acceptable (such acceptance will not be unreasonably withheld, conditioned or delayed). All policies shall be written on an occurrence basis, except as provided in Section 13.7.1. All policies shall be worded such that Seller's policy shall be primary in all instances regardless of like coverage, if any, carried by Buyer. Seller's liability under this Agreement is not limited to the amount of insurance coverage required herein.

13.7 Term and Modification of Insurance.

13.7.1 All insurance required under this Agreement shall cover occurrences during the Term and for a period of [REDACTED] years after the Term [REDACTED]

13.7.2 Buyer shall have the right, at times deemed appropriate to Buyer during the Term, to request Seller to modify the insurance minimum limits specified in Annex F to maintain a reasonable coverage amount. Seller shall make all Commercially Reasonable Efforts to comply with any such request.

13.7.3 If any insurance required to be maintained by Seller hereunder ceases to be reasonably available and commercially feasible in the commercial insurance market, Seller shall provide written notice to Buyer, accompanied by a certificate from an independent insurance advisor of recognized national standing, certifying that such insurance is not reasonably available and commercially feasible in the commercial insurance market for electric generating facilities of similar type, geographic location and design. Upon receipt of such notice, Seller shall use Commercially Reasonable Efforts to obtain other insurance that would provide comparable protection against the risk to be insured and Buyer shall not unreasonably withhold its consent to modify or waive such requirement.

13.7.4 Subcontractors. In the event that Seller elects to perform a portion of the services provided hereunder through the use of subcontractors, Seller shall require subcontractors to hold insurance at levels reasonable to the scope of the services to be performed by the subcontractor. Seller shall contractually obligate its subcontractors to promptly inform Seller of any lapse of the requisite insurance coverage, and Seller shall promptly inform Buyer of same. Seller assumes all liability for its subcontractors' failure to comply with the insurance provisions of this Agreement.

13.8 Government Fines.

13.8.1 Except as set forth in Sections 13.8.2 and 13.8.3, any fines, penalties or other costs incurred by either Party or such Party's agents, employees or subcontractors for non-

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compliance by such Party or its agents, employees or subcontractors with the requirements of any Applicable Law or Governmental Authorities will not be reimbursed by the other Party but will be the sole responsibility of such non-complying Party.

13.8.2 If such fines, penalties or other costs are assessed against Buyer by any Governmental Authority due to the non-compliance by Seller with any Applicable Law, 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 of the fines, penalties or other costs.

[REDACTED]

13.8.3 If such fines, penalties or other costs are assessed against Seller by any Governmental Authority due to the non-compliance by Buyer with any Applicable Law, 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 of the fines, penalties or other costs.

[REDACTED]

13.8.4 In the case of Sections 13.8.2 and 13.8.3, 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.

ARTICLE 14 TITLE AND RISK OF LOSS

14.1 **Title and Risk of Loss.** Title to and risk of loss related to Buyer's Metered Output shall transfer from Seller to Buyer at the Delivery Point. Title to and risk of loss related to the Environmental Attributes shall pass from Seller to Buyer on a Monthly basis, or as consistent with M-RETS. Seller warrants that it shall deliver to Buyer Buyer's Metered Output and Environmental Attributes free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person arising prior to the Delivery Point.

ARTICLE 15 ASSIGNMENT

15.1 **Assignment.** The rights and obligations of the Parties with respect to assignment of this Agreement are set forth in Annex B, which is specifically incorporated herein.

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ARTICLE 16 CREDIT AND FINANCING LIENS

16.1 **Credit.** The credit and security rights and obligations of the Parties are set forth in Annex C, which is specifically incorporated herein.

16.2 **Financing Liens.** The rights and obligations of the Parties with respect to financing liens are set forth in Annex B, which is specifically incorporated herein.

ARTICLE 17 GOVERNING LAW; DISPUTES

17.1 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of New York, without regard to its principles of conflicts of law other than Section 5-1401 of the New York General Obligations Law.

17.2 **Waiver of Jury Trial.** EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION, CLAIM OR PROCEEDING RELATING TO THIS AGREEMENT.

17.3 **Dispute Resolution.**

17.3.1 Seller and Buyer shall each appoint a representative to coordinate with the other Party the implementation of this Agreement (each a "Representative" and collectively the "Representatives"). If any dispute arises with respect to any Party's performance hereunder, the Representatives shall meet to attempt to resolve such dispute, either in person or by telephone, within [REDACTED] Days after the written request of either Representative. If the Representatives are unable to resolve such dispute within [REDACTED] Days after their initial meeting (in person or by telephone), senior officers or executives of Buyer and senior officers or executives of Seller shall meet, either in person or by telephone, within [REDACTED] Days after either Representative provides notice that the Representatives have been unable to resolve such dispute. [REDACTED]

17.3.2 [REDACTED]

[REDACTED]

17.3.3

[REDACTED]

17.3.4

[REDACTED]

17.3.5

[REDACTED]

**ARTICLE 18
AUDIT RIGHTS**

18.1 **Audit Rights.** Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. Audit rights under this Agreement shall be subject to a disclosing Party's obligations of confidentiality to third parties. Each Party shall use Commercially Reasonable Efforts to address or comply with such confidentiality obligations to enable each Party to exercise its audit rights under this Agreement.

**ARTICLE 19
GENERAL PROVISIONS**

19.1 **General.**

19.1.1 This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof. There are no prior or contemporaneous agreements or representations affecting the same subject matter other than those herein expressed.

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

19.1.3 Each Party agrees that if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment shall not in any way affect this Agreement or any remaining transactions under this Agreement without the prior written consent of the other Parties. Each Party further agrees that it shall not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement.

19.2 **Amendment.** No amendment, modification or change to this Agreement shall be enforceable unless reduced to writing and executed by both Parties.

19.3 **Non-Waiver.** No waiver by any Party hereto of any one or more defaults by the other Party in the performance of any of the provisions of this Agreement shall be construed as a non-waiver of any other default or defaults whether of a like kind or different nature. No failure or delay by any Party hereto in exercising any right, power, privilege or remedy hereunder shall operate as a waiver thereof.

19.4 **Severability.** Any provision of this Agreement declared or rendered invalid, unlawful or unenforceable by any applicable Governmental Authority or deemed unlawful

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because of a change in Applicable Law (individually or collectively, such events referred to as a "Regulatory Event") shall not otherwise affect the remaining lawful obligations that arise under this Agreement; and *provided, further*, that if a Regulatory Event occurs, the Parties shall use Commercially Reasonable Efforts to reform this Agreement in order to give effect to the original intention of the Parties.

19.5 **Survival.** All indemnity rights, audit rights and confidentiality obligations shall survive the termination of this Agreement (with respect to indemnity rights, to the extent provided in Section 13.2; with respect to confidentiality, to the extent provided in Section 20.4; and with respect to audit rights, for the period ending two (2) years following termination of this Agreement).

19.6 **Forward Contract.** The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a "forward contract" within the meaning of the U.S. Bankruptcy Code.

19.7 **No Third Party Beneficiaries.** Nothing in this Agreement shall provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind, it being the intent of the Parties that this Agreement shall not be construed as a third party beneficiary contract. In executing this Agreement, neither Party extends, and shall not be construed to extend, its credit or financial support for the benefit of any third parties lending money to or having other transactions with the other Party; *provided, however*, that nothing in this Section 19.7 shall be construed to prevent either Party from entering into credit or financial agreements with third parties.

19.8 **Relationships of Parties.** The Parties shall not be deemed in a relationship of partners or joint venturers by virtue of this Agreement, nor shall any Party be an agent, representative, trustee or fiduciary of the other Party. Neither Seller nor Buyer shall have any authority to bind the other to any agreement. This Agreement is intended to secure and provide for the services of each Party as an independent contractor.

19.9 **Headings; Attachments and Annexes.** The headings used for the sections and articles herein are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions of this Agreement. Any and all attachments and Annexes referred to in this Agreement are, by such reference, incorporated herein and made a part hereof for all purposes.

19.10 **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Fax and Portable Document Format (pdf) signatures shall have effect and be as binding as original signatures.

19.11 **Cooperation Among Parties.**

19.11.1 The Parties acknowledge that they are entering into a long-term arrangement in which the cooperation of both of them will be required. If, during the Term hereof, changes in the operations, facilities or methods of either Party will materially benefit a

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Party without detriment to the other Party, the Parties commit to each other to make reasonable efforts to cooperate and assist each other in making such change.

19.11.2 Each Party shall deliver or cause to be delivered to the other Party certificates of its officers, accountants, engineers or agents as to matters as may be reasonably requested, and shall make available, upon reasonable request, records relating to the Facility, subject to the confidentiality provisions under Article 20 of this Agreement, to the extent that the requesting Party requires the same to fulfill any regulatory reporting requirements or administrative proceedings before utility regulatory commissions. Buyer shall reimburse Seller for the incremental direct expenses (including, without limitation, the reasonable fees and expenses of counsel) incurred by Seller in the preparation, negotiation, execution and/or delivery of any documents requested by Buyer pursuant to this Section 19.11.2. Such reimbursement shall not apply to any documents requested by Buyer in connection with Buyer's initial utility regulatory commission proceeding seeking approval of this Agreement.

19.12 Cooperation with Tax Investor. If any Person proposes to make an investment in Seller or any of Seller's Affiliates or any successor or permitted assignee of Seller or any of Seller's Affiliates and, as a result of such investment such Person would become an Institutional Investor, then upon receipt of a written request from Seller or any such Person, and in accordance with the provisions of Annex B, Buyer shall execute, or arrange for the delivery of, such certificates, opinions and other documents as may be reasonably necessary in order for Seller to consummate the investment by such Person in Seller or any of Seller's Affiliates or any successor or permitted assignee of Seller or any of Seller's Affiliates.

19.13 Non-Recourse Obligations. Notwithstanding any other provision of this Agreement, no Person (nor any officer, employee, executive, director, agent or authorized representative of any such Person) other than Seller and Buyer and, to the limited extent explicitly set forth in an executed guaranty agreement as described in Article 10 hereof, Seller Guarantor and Buyer Guarantor, shall be liable for any payments due hereunder or for the performance of any obligation hereunder.

ARTICLE 20 CONFIDENTIALITY

20.1 General.

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[REDACTED]

20.2 Public Announcements.

[REDACTED]

20.3 Injunctive Relief.

[REDACTED]

20.4 Survival of Confidentiality Provisions.

[REDACTED]

ARTICLE 21 NOTICES AND COUNTERPARTS

21.1 Notices. All notices, requests, statements or payments shall be made to the addresses and Persons specified in Annex D hereto. All notices, requests, statements or payments shall be made in writing except where this Agreement expressly provides that notice may be made orally. Notices required to be in writing shall be delivered by hand delivery,

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overnight delivery, e-mail (so long as a copy of such e-mail notice is provided immediately thereafter by hand delivery or overnight delivery). Notice by hand delivery or overnight delivery shall be deemed to have been received when delivered. Notice by e-mail shall be deemed to have been received when delivered, so long as a copy of such e-mail notice is provided immediately thereafter by hand delivery or overnight delivery. A Party may change its address by providing notice of the same in accordance with the provisions of this Section 21.1.

21.2 · **Counterparts**. This Agreement may be executed in counterparts, each of which is an original and all of which constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

Barton Windpower LLC

IN WITNESS WHEREOF, the Parties have caused this Wholesale Purchase and Sale Agreement for Wind Energy to be duly executed as of the date first above written. This Agreement shall not become effective as to either Party unless and until executed by both Parties.

NORTHERN INDIANA PUBLIC SERVICE COMPANY

Signature: _____
Name: _____
Title: _____

BARTON WINDPOWER LLC

Signature: _____
Name: _____
Title: _____

Signature: _____
Name: _____
Title: _____

Barton Windpower LLC

Annex A

Contract Price

[REDACTED]

[REDACTED]

[illegible]

[REDACTED]

[REDACTED]

[REDACTED]

Credit Annex

[illegible]

[illegible]

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Barton Windpower LLC

Exhibit C-1 - Page 1

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Exhibit C-1 - Page 2

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Exhibit C-1 - Page 5

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Exhibit C-1 - Page 6

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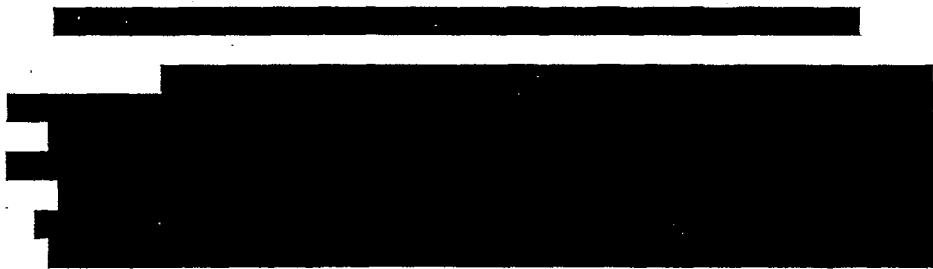
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Barton Windpower LLC



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[REDACTED]

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[illegible]

Barton Windpower LLC

[illegible]

[REDACTED]

Barton Windpower LLC

Barton Windpower LLC

Annex D

Notice

Buyer: Northern Indiana Public Service
Company

All Notices:

Street: 801 E. 86th Ave.

City: Merrillville, Indian 46410

Attn: President

Phone: 219-647-6400

Facsimile: 219-647-6430

DUNS: 961595808

Federal Tax ID Number: 35-0552990

Invoices:

Attn: Market Settlements

CISC Bldg.

Phone: 219-853-5148

Facsimile: 219-853-4228

Scheduling:

Attn: Electric Dispatch

EDCC Bldg.

Phone: 219-853-6934

Facsimile: 219-853-5091

Payments:

Attn: Accounts Payable

Phone: 219-647-6118

Facsimile: 219-647-6116

Wire Transfer:

[REDACTED]

Credit and Collections:

Attn: Director Credit

Phone: 219-647-6142

Facsimile: 219-647-6180

Seller: Barton Windpower LLC

All Notices:

Street: 1125 NW Couch, Suite 700

City: Portland, Oregon 97209

**Attn: Contract Administration
with a Copy to Asset Management**

Phone: 503-796-7034

Facsimile: 503-478-6394

DUNS: 80-821-9617

Federal Tax ID Number: 76-0815113

Invoices:

Attn: Settlements

Phone: 503-796-6917

Facsimile: 503-796-6908

Scheduling:

Attn: Trading/Scheduling

Phone: 503-796-6903

Facsimile: 503-796-6903

Payments:

Attn: Month-End Checkout

Phone: 503-796-6917

Facsimile: 503-796-6908

Wire Transfer:

[REDACTED]

Credit and Collections:

Attn: Credit Manager

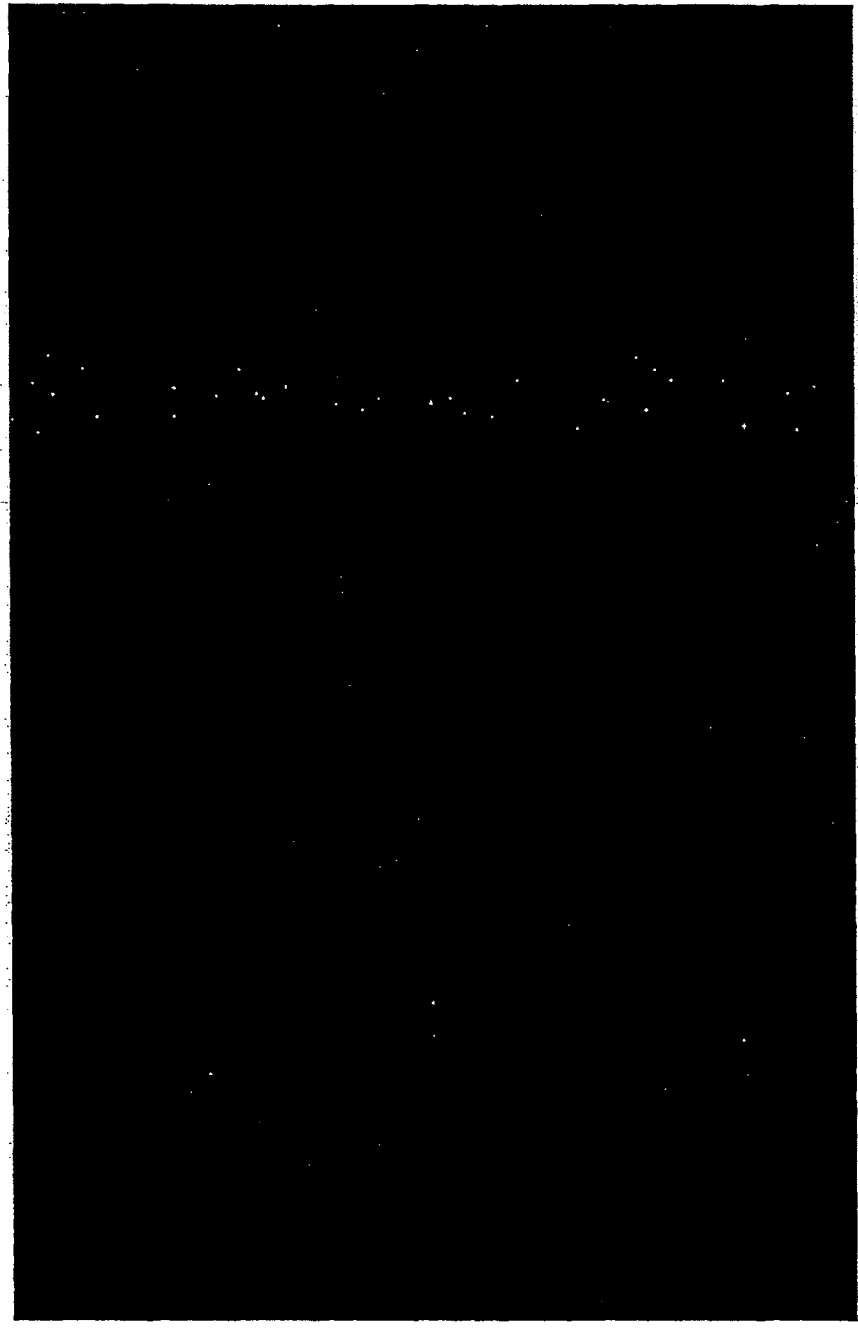
Phone: 503-241-3214

Facsimile: 503-796-6902

[REDACTED]

Annex B






Barton Windpower LLC



Barton Windpower LLC

Annex F

Specification of Insurance Coverage

<u>Type of Insurance</u>	<u>Minimum Limits of Coverage</u>
Commercial General Liability (“ <u>CGI</u> ”)	
Excess/Umbrella Liability	   

Barton Windpower LLC

<u>Type of Insurance</u>	<u>Minimum Limits of Coverage</u>
Business Automobile Liability	[REDACTED]
[REDACTED]	[REDACTED]
Workers' Compensation	[REDACTED]
Employers Liability	[REDACTED]
	[REDACTED]
Builder's Risk	[REDACTED]
[REDACTED]	[REDACTED]
All-Risk Property	[REDACTED]

Minimum Limits of Coverage

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

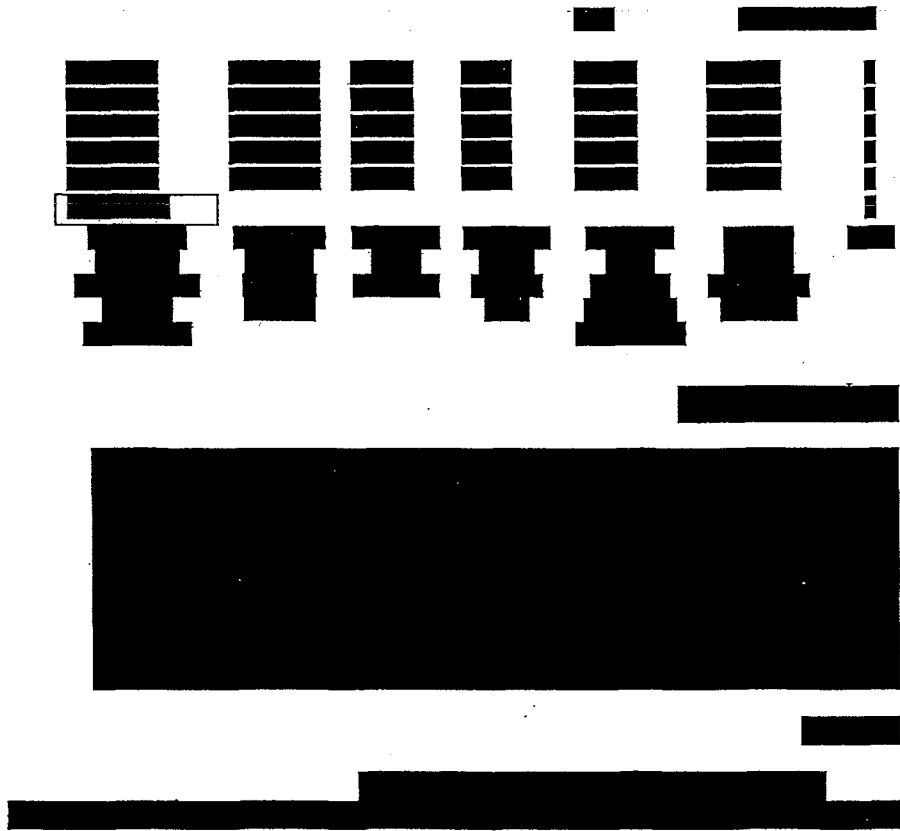
[REDACTED]

[REDACTED]

Barton Windpower LLC

[REDACTED]

[REDACTED]



Barton Windpower LLC

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[REDACTED]

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[REDACTED]

[REDACTED]

Barton Windpower LLC

[illegible]

1. The first group of variables is the "demographic" group, which includes age, sex, and education. These variables are used to control for differences in the population that might affect the results. For example, older individuals might have different preferences for health care than younger individuals, and individuals with higher education might have different health care needs than those with lower education.

[REDACTED]

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Barton Windpower LLC



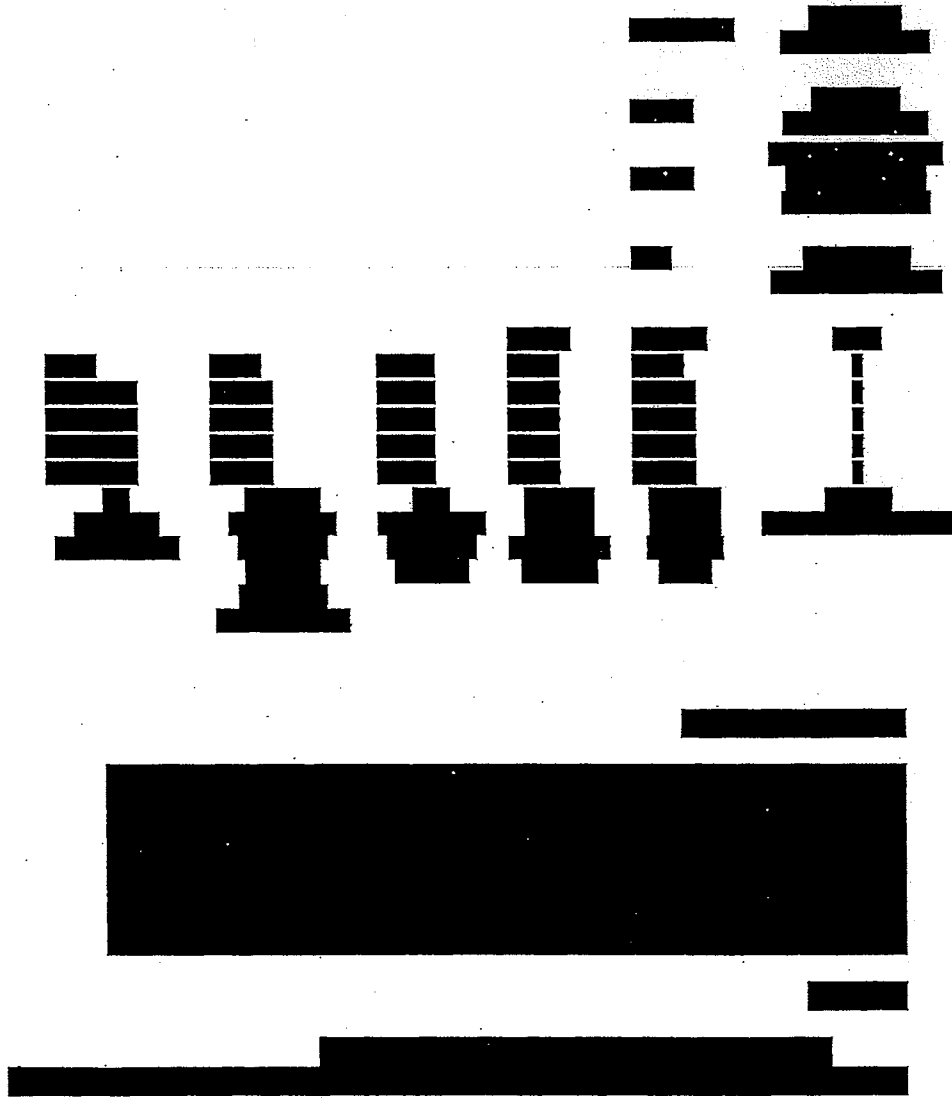
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[REDACTED]

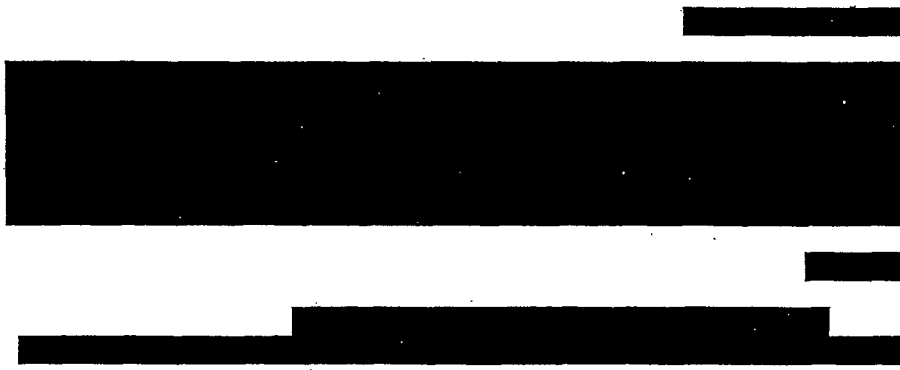
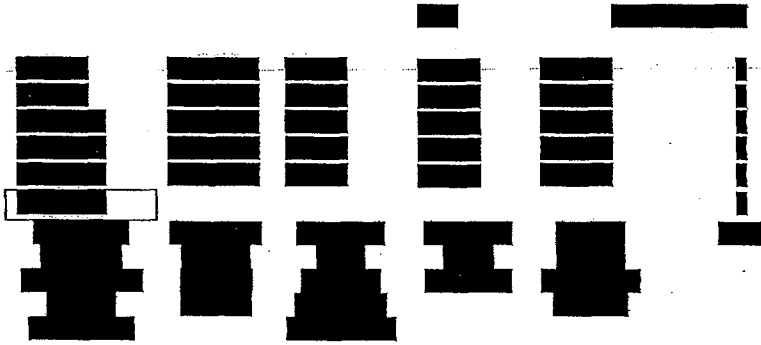
[REDACTED]

Barton Windpower LLC

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Barton Windpower LLC



Barton Windpower LLC

VERIFIED DIRECT TESTIMONY OF CHARLES F. ADKINS

VICE PRESIDENT, CONSULTING

NEWENERGY ASSOCIATES, LLC

CAUSE NO. 43393

1 **Q1. Please state your name, job title, employer and business address.**

2 A1. My name is Charles F. Adkins. I am a Vice President in the Consulting Practice of
3 NewEnergy Associates, LLC ("NewEnergy"). My business address is 400 Interstate
4 North Parkway, Suite 1500, Atlanta, Georgia 30339.

5 **Q2. Please summarize your educational qualifications.**

6 A2. I received a Bachelor of Industrial Engineering from the Georgia Institute of Technology,
7 Atlanta, Georgia, in 1985.

8 **Q3. Please describe your professional experience.**

9 A3. Following my graduation, I was employed by Oglethorpe Power Corporation
10 ("Oglethorpe") where I held positions of increasing responsibility in the power supply
11 planning and operations departments. In 1994, I was a generation planning engineer in
12 the system planning department and responsible for Oglethorpe's request for proposals
13 seeking up to 600 MW of peaking/intermediate power. In 1995, I was promoted to the
14 position of manager, power marketing. My duties included generation planning,
15 corporate impact assessment, and short- and long-term power marketing. In 1996, I was
16 responsible for conducting a power marketing outsourcing request for proposals seeking
17 power marketing services to take over the output of Oglethorpe's existing assets and

1 power marketing functions and provide Oglethorpe's members with long-term, full-
2 requirements power supply. In 1996, I was employed by Electronic Data Systems
3 ("EDS") as the practice area manager for generation and market analysis. In 1997, a
4 portion of EDS' utilities division was acquired by NewEnergy. Since that time, I have
5 served as a vice president for NewEnergy in a diverse set of utility disciplines, including:
6 generation and market analytics, retail operations, financial planning, European
7 operations, and consulting. In 1998, I was the consultant responsible for managing and
8 negotiating a power marketing outsourcing request for proposals seeking power
9 marketing services for Texas-New Mexico Power in Fort Worth, Texas. In 2001, I was
10 the consultant responsible for managing and negotiating power supply options for
11 Nebraska Electric Generation and Transmission Cooperative in Columbus, Nebraska. In
12 2005, I was a consultant responsible for a statewide integrated resource plan for the
13 Michigan Public Service Commission's Capacity Needs Forum. In 2006, I was the
14 consultant responsible for the update to the integrated resource plan for the Michigan
15 Public Service Commission's 21st Century initiative.

16 **Q4. What are your responsibilities as Vice President in NewEnergy's Consulting**
17 **Practice?**

18 A4. As Vice President, my general responsibilities include managing integrated resource
19 planning, request for proposals solicitations, planning system's infrastructure
20 development, and market analysis consulting projects. NewEnergy brings a dedicated
21 team of expert consultants that combines experience, industry knowledge, market
22 knowledge, and software expertise to support consulting engagements. NewEnergy

1 provides professional consulting services to energy companies in the areas of integrated
2 resource planning, market price forecasting, resource evaluation and planning, trading
3 and settlement, and electric transmission economic analysis. As a part of its resource
4 evaluation and planning services, NewEnergy assists utilities in market approaches to
5 meeting power supply needs through requests for proposals. NewEnergy has assisted
6 numerous municipal, cooperative, and investor-owned utilities in the development,
7 issuance, and evaluation of requests for proposals for power supply. Additionally,
8 NewEnergy has assisted clients in the procurement of contract capacity, facility
9 acquisition, and full-requirements power supply in the Midwest Independent
10 Transmission System Operator, Inc. ("Midwest ISO"), Electric Reliability Council of
11 Texas, SERC Reliability Corporation, Western Electric Coordinating Council and
12 Southwest Power Pool. The resources acquired have been used for many different
13 purposes including: base, intermediate, and peaking capacity; full- and partial-
14 requirements power supply; and renewables. Over the past 10 years, NewEnergy has
15 managed and supported requests for proposals for several thousand megawatts ("MW")
16 of capacity. NewEnergy's integrated resource planning software tool, Strategist®, is used
17 by over fifty utilities, cooperatives, municipals, commissions, and consultants to evaluate
18 requests for proposals and develop long term capacity expansion plans. NewEnergy is a
19 valued partner to electric utilities in the development of their integrated resource plans.

20 **Q5. Have you previously testified before this or any other regulatory commission?**

21 A5. No, I have not.

22 **Q6. What is the purpose of your testimony in this proceeding?**

1 A6. The purpose of my testimony is to explain the analysis NIPSCO used to evaluate its
2 various options for wind energy and why the wind power purchase power agreements
3 (the "Wind PPAs") with Buffalo Ridge I LLC ("Buffalo Ridge") and Barton Windpower
4 LLC ("Barton"), are an economic choice for helping meet NIPSCO's retail electric load.

5 **Q7. Are you sponsoring any exhibits to your testimony?**

6 A7. Yes. I am sponsoring Exhibit Adkins-1, a news release issued by NIPSCO announcing
7 its intent to explore potential options to meet the future needs of its residential,
8 commercial and industrial electric customers; Exhibit Adkins-2 (Confidential), a graph of
9 the wind proposal economic screen; and Exhibit Adkins-3 (Confidential), a graph of the
10 wind energy projects' economics. Exhibits Adkins-2 (Confidential) and Adkins-3
11 (Confidential) are confidential and will be filed under seal. Both were prepared by me or
12 under my direction and supervision.

13 **Q8. When did you first become involved in NIPSCO's integrated resource planning**
14 **process?**

15 A8. I have been involved with NIPSCO's integrated resource planning ("IRP") process since
16 February 2006.

17 **Q9. What are your responsibilities with NIPSCO's IRP process?**

18 A9. NIPSCO retained NewEnergy to manage the integration of demand-side, self-build
19 supply-side and market options into NIPSCO's 2007 Integrated Resource Plan ("2007
20 IRP"). I was charged with the management of this project by NewEnergy.

21 **Q10. What general conclusions resulted from the 2007 IRP?**

1 A10. The 2007 IRP demonstrates that NIPSCO's forecasted demand reflects steady growth and
2 shows a need for additional generating capacity to meet the needs for electricity within
3 NIPSCO's service area. As a result of these factors, the 2007 IRP identified a need for
4 800 MW of capacity in 2008 and about 1,000 MW by 2014 to meet NIPSCO's reserve
5 planning margin of 15 percent and the demand for electricity within NIPSCO's service
6 area.

7 **Q11. Does the 2007 IRP identify a strategy for obtaining the necessary additional**
8 **capacity?**

9 A11. Yes. NIPSCO's 2007 IRP identifies the best portfolio of resource options for
10 consideration and potential implementation for the planning horizon of the next 20 years
11 ("Action Plan") for both the short-term and the long-term. This Action Plan includes
12 demand-side options, self-build supply-side options, and market-based options. NIPSCO
13 also set a target to seek out and obtain 100 MW of renewable energy resources.

14 **Q12. How did NIPSCO arrive at this target for renewable energy?**

15 A12. NIPSCO set a target of securing 100 MW of renewable energy resources based on its
16 regulatory and business judgment at the time of its resource solicitation and negotiations.
17 NIPSCO recognizes the benefits of wind power as a source of energy. Witness Shambo
18 elaborates on these benefits in his testimony. NIPSCO sought to draw on these benefits
19 in setting its target for renewable energy resources. Accordingly, 100 MW of wind
20 energy resources were considered in the 2007 IRP with a start date of January 1, 2009.
21 This target is also consistent with the wind energy resources Indiana Michigan Power
22 Company and Duke Energy Indiana, Inc. have contracted to receive.

1 **Q13. What role did you play in evaluating NIPSCO's renewable supply-side options?**

2 A13. I was personally involved in evaluating the proposals submitted by interested parties.

3 **Q14. Please describe the process that NIPSCO used to solicit market-based options for**
4 **renewable supply-side options.**

5 A14. Faced with the need for 800 MW by 2008 and 1,000 MW by 2014, NIPSCO employed
6 NewEnergy to help it develop a request for proposal ("RFP") to evaluate all potential
7 sources for additional capacity in 2006 (the "2006 All-Source RFP"). The goal of the
8 2006 All-Source RFP was to: (1) test the market availability and viability of a broad
9 range of supply-side, demand-side, and renewable options from various providers; (2)
10 analyze and compare these alternatives with other self-build supply-side and demand-side
11 options; and (3) ultimately identify those resources that best meet the objectives of the
12 2007 IRP and to include those options in the 2007 IRP short-term Action Plan.
13 Responses to the 2006 All-Source RFP were evaluated in a consistent and non-biased
14 manner so that all options were afforded an equal opportunity to compete within the RFP
15 framework.

16 **Q15. Why did NewEnergy perform the RFP analysis instead of NIPSCO management**
17 **and personnel?**

18 A15. NIPSCO informed me that it wanted to engage NewEnergy to manage the entire RFP
19 evaluation process because of NewEnergy's expertise in this area and because using a
20 third party in the evaluation of the various and competing resource options would help
21 ensure objectivity.

1 **Q16. What was the objective of NIPSCO's 2006 All-Source RFP?**

2 A16. The goal of the NIPSCO's 2006 All-Source RFP was to provide NIPSCO with capacity
3 and energy proposals that would meet NIPSCO's long-term projected needs with a
4 reliable, least-cost and diversified energy portfolio. In NIPSCO's previous IRP
5 submitted in 2005 ("2005 IRP"), NIPSCO projected a need by 2014 of up to 600 MW of
6 incremental long-term resources. NIPSCO's 2005 IRP demonstrated that the potential
7 solutions with the greatest potential to meet NIPSCO's objectives were a combination of
8 supply-side and renewable/demand-side management ("DSM") resources.

9 **Q17. Please provide a brief chronology of and response to NIPSCO's 2006 All-Source**
10 **RFP.**

11 A17. On May 17, 2006, NIPSCO issued a press release announcing its intent to explore
12 potential options to meet the future needs of its residential, commercial and industrial
13 electric customers. A copy of the press release is attached to my testimony as Exhibit
14 Adkins-1. On June 1, 2006, NewEnergy issued the 2006 All-Source RFP to over 575
15 market participants. On September 1, 2006, bid responses (*i.e.* proposals) were received
16 from 18 companies. These 18 companies tendered 25 proposals for a total of 6,637 MW.

17 **Q18. How many renewable energy resource proposals were received in response to the**
18 **2006 All-Source RFP?**

19 A18. NIPSCO received a total of nine responses that included proposals for renewable/DSM
20 technology. Eight proposals provided wind power for a total nominal capacity of 738.25
21 MW. One proposal provided DSM with a nominal capacity of 70 MW.

1 **Q19. Describe the screening process NewEnergy used to evaluate proposals.**

2 A19. Proposals were required to pass four screens to warrant further consideration. First,
3 NewEnergy ensured the proposals were complete, received on time and signed by a duly
4 authorized officer or agent of the bidder. Second, NewEnergy utilized a threshold screen
5 to ensure the proposals complied with the requirements of the 2006 All Source RFP.
6 Third, NewEnergy employed an economic screen to rank the proposals, based on their
7 individual economics, and eliminate the least economically ranked proposals from further
8 evaluation. Finally, NewEnergy scored proposals based on price and non-price criteria
9 that included: (1) economic impact on the NIPSCO system, (2) experience, (3) credit, (4)
10 technology and operations, (5) project plan, (6) proposal flexibility, and (7) fuel diversity.

11 **Q20. Did any of the renewable energy proposals fail the 2006 All-Source RFP initial**
12 **compliance screen?**

13 A20. No. All proposals were received on time with all of the required forms completed in their
14 entirety, and signed by a duly authorized officer or agent of the bidder, all as required by
15 the RFP.

16 **Q21. Did any of the renewable energy proposals fail the 2006 All-Source RFP threshold**
17 **screen?**

18 A21. Yes. NewEnergy individually reviewed all responses to the 2006 All-Source RFP to
19 ensure each proposal met the requirements set forth in the RFP. Three wind proposals
20 and one DSM proposal failed to meet these requirements and were eliminated. The RFP
21 requirements that these four responses failed to fulfill included failure to: (1) deliver to a
22 Midwest ISO commercial pricing node; (2) provide audited financials, (3) have a credit

rating no less than BBB-, (4) have a sufficient tangible net worth; and (5) provide evidence of transmission feasibility.

Q22. Please describe the process for the economic screening of the RFP's remaining wind proposals.

A22. Each proposal was ranked by its individual economics. Exhibit Adkins-2 demonstrates the inherent differences in the availability of wind among the wind proposals. Engineering, procurement and construction of wind turbines are similar regardless of location; however, if the wind blows more in one area than another, more electricity is generated and the cost per kilowatt-hour drops. The availability of wind between certain states, such as Indiana, and states in the Upper Midwest was reflected in the cost of the bids. For instance, the Indiana-based wind proposals were more expensive than the Upper Midwest wind proposals. Because of the cost differential, the Indiana-based wind proposals were eliminated from further analysis.

Q23. What was the result of the price and non-price scoring of the wind proposals?

A23. None of the wind proposals failed on the basis of price and non-price scoring. The weighed price and non-price scores for the remaining four wind proposals ranged from 4.00 to 6.00, out of a maximum possible score of 10. The close proximity of the scores indicates that the price and non-price criteria did not substantially differentiate the wind proposals from one another. As a result, all of the wind proposals were considered as viable market options for potential inclusion in NIPSCO's 2007 IRP.

1 **Q24. After the RFP process, did legislative action impact the way NIPSCO viewed the**
2 **Indiana wind energy projects?**

3 A24. Yes. The Indiana General Assembly considered but did not pass legislation mandating an
4 Indiana renewable portfolio standard ("RPS") in the 2007 legislative session.

5 **Q25. What is an RPS?**

6 A25. An RPS is the defined amount of energy that must be produced through renewable energy
7 sources.

8 **Q26. What was the key issue in the legislation that affected NIPSCO's reconsideration of**
9 **the wind proposals submitted in the 2006 All-Source RFP?**

10 A26. Both the House and Senate bills (HB 1824 and SB 206) relating to an Indiana RPS
11 considered incentives for electric utilities to procure Indiana-based wind power.

12 **Q27. Did NIPSCO make any further effort to evaluate the Indiana-based wind**
13 **proposals?**

14 A27. Yes, it did. On May 5, 2007, NewEnergy issued the invitation to two developers of
15 Indiana-based wind energy proposals to reinstate their offering on NIPSCO's behalf.

16 **Q28. What was the result of this invitation?**

17 A28. One developer chose to resubmit its proposal. The other developer did not respond.
18 NIPSCO accepted the resubmitted proposal on June 5, 2007 and added the proposal to
19 the short list of wind energy projects under consideration.

20 **Q29. What was the short list of wind energy projects?**

1 A29. The short list of wind energy projects included the MinnDakota wind project (later
2 renamed Buffalo Ridge I LLC) and the Barton wind project.

3 **Q30. After the determination of the short list, what was the next step?**

4 A30. NIPSCO requested NewEnergy to accompany NIPSCO's representative, Bradley Sweet,
5 and to act as its agent and consultant in two-party negotiations with the developers of the
6 wind energy projects on the short list to further refine the commercial terms of their
7 proposals.

8 **Q31. What was the first step in the two-party negotiations with the developers?**

9 A31. The first step was to establish the commercial terms to be included in the Wind PPAs.
10 The developers' proposals offered flexible commercial terms including: (1) fixed and
11 escalating pricing, (2) pricing with and without renewable energy credits ("RECs") and
12 (3) varying terms between 15 and 20 years. NIPSCO asked each bidder to provide a
13 pricing matrix that included: (1) fixed and escalating prices, (2) pricing with and without
14 RECs, and (3) 15-year and 20-year terms.

15 **Q32. What are RECs?**

16 A32. RECs are the property rights to the environmental benefits from generating electricity
17 from renewable energy sources (e.g., wind, solar, biomass, and geothermal).

18 **Q33. How did NIPSCO evaluate the pricing with and without RECs?**

19 A33. Selection of REC pricing was the result of NIPSCO's strategic decision that it would
20 consider only pricing that included RECs and only wind energy projects priced to include

1 RECs. Its decision was based on the premise that NIPSCO may ultimately need RECs to
2 abide by any future Indiana or federal RPS.

3 **Q34. How did NIPSCO value the RECs?**

4 A34. RECs have a market value. As a proxy value, NewEnergy relied on the market price of
5 \$3.00 per REC published by Evolution Markets, a leading broker in global green markets
6 and the clean energy sector, in its May 2007 Monthly Market Update. NewEnergy's
7 analysis assumed market prices for RECs would escalate with the Consumer Price Index.
8 NewEnergy calculated the anticipated RECs generated over the life of the contracts for
9 the various wind proposals.

10 **Q35. How did NIPSCO evaluate the contract term to be included in the Wind PPAs?**

11 A35. The evaluation was quite simple and based on economic value. The economic value of
12 the wind proposals is driven by the length of the prospective term. The longer the term,
13 the greater the economic value. Petitioner's Exhibit Adkins-3 overlays the wind
14 proposals' average pricing on NIPSCO's average incremental cost to serve. NewEnergy
15 recommended, and NIPSCO selected the longest term available for each proposal. The
16 resulting terms were 15 years for two wind proposals and 20 years for the remaining two.

17 **Q36. How did NIPSCO evaluate the fixed versus escalating pricing of the wind**
18 **proposals?**

19 A36. NewEnergy conducted a net present value ("NPV") analysis of the wind proposals'
20 levelized energy rate. The analysis consisted of computing the NPV rate of each wind
21 proposal's revenues, fixed or escalating price times the expected generation, discounted

1 at NIPSCO's weighted average cost of capital ("WACC"). The sum was then divided by
2 the NPV of the wind proposal's expected generation, discounted at NIPSCO's WACC.
3 NIPSCO selected the lowest levelized energy rate whether based on fixed or escalating
4 pricing.

5 **Q37. Did NewEnergy consider the locational marginal price-related ("LMP") impacts of**
6 **the wind proposals?**

7 A37. Yes. Because of NIPSCO's participation in the Midwest ISO day-ahead and real-time
8 energy markets, the impact of LMP could be determined for the wind energy projects.
9 LMP is a mechanism that incorporates the cost of transmission congestion and marginal
10 losses into the cost of energy. The wind proposals were adjusted to include the LMP
11 differential to reflect the potential cost or benefit of each project's unique location.
12 NewEnergy computed a round-the-clock average day-ahead LMP for each proposed
13 delivery point and for the NIPSCO load zone using historical data for 2006, compiled by
14 the Midwest ISO. A positive differential reflected a benefit, and was included as fixed
15 annual revenue; a negative differential reflected a cost and was included as a fixed annual
16 expense. No hedging strategies were assumed for the wind energy projects because they
17 will not qualify as Designated Network Resources under the Midwest ISO Open Access
18 Transmission and Energy Markets Tariff.

19 **Q38. Please discuss your recommendation for NIPSCO with regard to the acquisition of**
20 **wind power?**

21 A38. The wind proposals from Buffalo Ridge and Barton offered the greatest economic value
22 to NIPSCO. I therefore recommend that NIPSCO acquire these resources.

1 **Q39. Please discuss your rationale for recommending that NIPSCO select Buffalo Ridge**
2 **and Barton.**


3 A39. Based on NewEnergy's analysis of the proposals NIPSCO received for renewable energy
4 resources, the Buffalo Ridge and Barton Wind PPAs provide the most economical means
5 of obtaining 100 MW of renewable energy. The Wind PPAs also bring several other
6 benefits. First, if and when capacity attributes are recognized by the Midwest ISO, the
7 Wind PPAs ensure NIPSCO is assigned what capacity attributes may exist for the wind
8 energy projects. Second, inclusion of the wind energy resources in NIPSCO's generation
9 mix will minimize the impacts of fuel and energy market volatility by providing greater
10 price stability through contracts with fixed and known pricing. Finally, the Wind PPAs
11 diversify NIPSCO's fuel energy mix with a source that is clean and comes from
12 renewable energy resources.

13 **Q40. Does this conclude your prefiled direct testimony?**

14 A40. Yes, it does.

VERIFICATION

I, Charles F. Adkins, Vice President, Consulting of NewEnergy Associates, LLC, affirm under penalties of perjury that the foregoing representations are true and correct to the best of my knowledge, information and belief.



Charles F. Adkins

Date: November 30th 2007

NEWS



A NiSource Company

801 E. 86th Avenue
Merrillville, IN 46410

FOR IMMEDIATE RELEASE

May 17, 2006

FOR ADDITIONAL INFORMATION

Tom Cuddy, Manager
NIPSCO Communications
219-647-6556

NIPSCO EXPLORING OPTIONS TO MEET POTENTIAL INCREASE IN POWER DEMAND

Utility Plans to Issue Requests for Proposals to Secure Power Supplies

MERRILLVILLE, Ind. – Northern Indiana Public Service Company (NIPSCO) today announced that it is exploring potential options to meet the future needs of its residential, commercial and industrial electric customers.

The company plans to issue two Requests for Proposals (RFP) seeking bids on power supplies. The long-term RFP (3 to 40 years) seeks capacity and energy proposals and alternatives for up to 600 megawatts of electricity to address the company's projected electricity supply needs during the 2009-2014 time period. A short-term RFP seeks seasonal capacity and energy needs for the period of 2007-2008. Schedule and details will be made available at the time of release of each RFP. Parties interested in receiving notice regarding the release of the RFP's are encouraged to register at www.nipSCO2006RFP.com and monitor the site for updates.

"Looking at capacity and energy resources available within the industry is a part of the process to ensure a safe, reliable supply of electricity for our customers and the company," said NIPSCO President Mark Maassel. "We're committed to providing reliable, environmentally sound, cost-effective power to our customers. This is simply one step in our integrated power supply planning process as we look into the future."

The company has historically provided electricity to customers using a portfolio that combines its own generating capacity with purchased power. However, with the strengthening economy and the continued growth of customers' demand, electricity forecasts indicate that NIPSCO needs to supplement its current generation capacity.

Evaluation of any proposals will be done over the coming months this year, with the goal to award the short-term power supply contracts by the end of 2006 and the long-term power supply contracts in 2007. The evaluations will include many factors, such as cost, reliability, operating characteristics, timing of availability and location of resources used to provide the electricity, as well as the capability of transmission facilities to deliver the power to NIPSCO's service area. NIPSCO anticipates selecting a portfolio of products from the bids received to add to its current generating capacity to meet Northern Indiana's electricity needs.

-more-

NIPSCO EXPLORING OPTIONS
PAGE 2

About NIPSCO

NIPSCO, with headquarters in Merrillville, Ind., is one of the 10 energy distribution companies of NiSource Inc. (NYSE: NI). With nearly 712,000 natural gas customers and 445,000 electric customers across the northern third of Indiana, NIPSCO is the largest natural gas distribution company, and the second largest electric distribution company, in the state. NiSource distribution companies serve 3.7 million natural gas and electric customers primarily in nine states. More information about NIPSCO is available at www.nipsco.nisource.com.

###

Petitioner's Exhibit Adkins-2 (Confidential)

Contains Confidential, Proprietary, Competitively Sensitive And/Or

Trade Secret Information And Will Be Filed Under

Seal Upon Entry Of An Appropriate Protective Order

Petitioner's Exhibit Adkins-3 (Confidential)

Contains Confidential, Proprietary, Competitively Sensitive And/Or

Trade Secret Information And Will Be Filed Under

Seal Upon Entry Of An Appropriate Protective Order

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the Case-In-Chief of Petitioner Northern Indiana Public Service Company has been served by hand delivery, on Susan L. Macey, Esq., Indiana Office of Utility Consumer Counselor, 115 W. Washington Street, Suite 1500 South, Indianapolis, Indiana 46204.

A courtesy copy of the foregoing has also been provided by United States Mail, first class, postage prepaid, to the following:

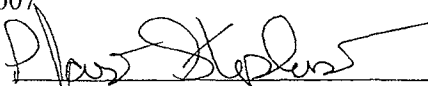
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50 South Meridian Street, Suite 500
Indianapolis, Indiana 46204

Jerome E. Polk
Polk, Hyman & Associations, LLC
309 W. Washington Street, Suite 233
Indianapolis, IN 46204

Dated this 30th day of November, 2007



P. Jason Stephenson