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BIOMASS
POWER PURCHASE AGREEMENT
BY AND BETWEEN
NORTHERN STATES POWER COMPANY
AND
FIBROMINN LLC

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**POWER PURCHASE AGREEMENT
BY AND BETWEEN
NORTHERN STATES POWER COMPANY
AND
FIBROMINN LLC**

THIS POWER PURCHASE AGREEMENT ("**Agreement**") is made as of this 31st day of August, 2000, by and between Northern States Power Company ("**NSP**"), a Minnesota corporation with headquarters at 414 Nicollet Mall, Minneapolis, Minnesota 55401, and Fibrominn LLC ("**Seller**"), having its principal place of business at 301 Oxford Valley Road, Yardley, Pennsylvania 19067.

WITNESSETH

WHEREAS, NSP is an investor-owned utility organized under the laws of the State of Minnesota, engaged in the business, among other things, of generating, transmitting, and distributing electric power in the states of Minnesota, North Dakota, and South Dakota;

WHEREAS, Seller is a limited liability company formed under the laws of the State of Delaware, which is in the business of developing biomass fueled electric generation facilities;

WHEREAS, Seller agrees that it or its permitted assignee will construct, operate and maintain an electric generating facility (the "**Plant**") with an installed capacity of 50 MW to be located in Minnesota and designed to use Biomass Fuel to generate electric energy to be sold to NSP as provided in this Agreement; and

WHEREAS, NSP is willing to purchase, and Seller is willing to sell, electric energy generated at the Plant, subject to the terms and conditions and at the prices set forth in this Agreement.

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

ARTICLE I
DEFINITIONS/INTERPRETATION

1.1 Definitions

The following terms shall have the meanings set forth herein:

Accredited Capacity: The level of Plant capacity or capability demonstrated by an annual URGE Test conducted in accordance with the MAPP Requirements; provided, however, that Seller's obligation to comply with additional or revised MAPP Requirements, revised definitions of plant capacity or capability or changes in the ability of NSP to receive credit from MAPP shall be as provided in **Section 2.3**.

Additional Taxes: As defined in **Section 6.7**.

Affiliate: Any Person, which directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with a Party.

Agreement: This contract, including all appendices, as amended or supplemented from time to time in accordance with this Agreement.

Aggregate Energy Production Cap: 7,884,000 MWhs being the aggregate maximum amount of Electric Energy (expressed in MWh) that NSP is required to purchase under this Agreement at the Power Price during the entire Term hereof; provided, that such amount shall not include Electric Energy in excess of the On-Peak Period Generation Baseline delivered during On-Peak Periods as described in **Section 2.2(h)**.

Annual Energy Production Cap: 438,000 MWh per Contract Year; provided, however, that such amount shall be prorated for the first and last Contract Years.

ANSI: The American National Standards Institute.

Ash Revenues: Revenues received by Seller from the sale of any by-products of the combustion of Biomass Fuel at the Plant.

Ash Revenues Calculation (ASH): As defined in **Section 2.6 (a)(vi)**.

Bank Holidays: Any day on which commercial banks in Minneapolis, Minnesota are required or authorized to be closed.

Billing Month: That period of time between successive monthly meter readings required to be made by NSP pursuant to **Section 2.8**; provided, however, that the first Billing Month shall commence on the Initial Operation Date.

Biomass Fuel: Any of the following: (i) "Farm grown closed loop biomass" as defined in the Biomass Mandate as in effect on the Effective Date; (ii) poultry litter and any other fuel permitted by any provision of the Biomass Mandate as in effect on the Effective Date; (iii) any other fuel, including (without limitation) natural gas to the extent and for the duration permitted under the Biomass Mandate as in effect on the Effective Date; and (iv) any other fuel as and to the extent permitted under the Biomass Mandate as in effect at any time.

Biomass Mandate: Minn. Stat. section 216B.2424, as amended.

Business Day: Monday through Friday, excluding Bank Holidays.

Capacity: The electric power production capability of the Plant measured in tenths of a MW.

Capacity Shortfall: The amount by which the Accredited Capacity for a Contract Year is less than 50 MW.

Capital Lease: Any lease of personal property which would, in accordance with generally accepted accounting principles, be required to be capitalized on a balance sheet of the lessee thereof.

Commercially Reasonable Efforts: With respect to any purchase or sale or other action required to be made, attempted or taken by a Party under this Agreement, such efforts as a prudent business would undertake for the protection of its own interest under the conditions affecting such purchase or sale or other action, including without limitation, the amount of notice of the need to take such action, the duration and type of the purchase or sale or other action, the competitive environment in which such purchase or sale or other action occurs, and other material considerations.

Consent and Agreement: The agreement or agreements between NSP and any Financier which establish, among other things, the respective rights and

obligations of NSP and any such Financier or its trustee upon the occurrence of an Event of Default under this Agreement or an event of default under any contract or obligation with any such Financier.

Contract Year: July 1 of one calendar year through and including June 30 of the next calendar year; provided, however, that the first Contract Year shall commence on the Turnover Date and end on the next June 30 and the last Contract Year shall end on the Termination Date.

Contractual Obligations: Any provision of any agreement, instrument or undertaking to which Seller or NSP (as the case may be) is a party or by which it or any of its property is bound.

Coordinating Committee: The committee established under **Article VIII** of this Agreement.

CPI: The Consumer Price Index – Urban Area (CPI-U) for the St. Paul Minneapolis, Minnesota area published monthly by the Department of Commerce; provided, however, that if this index is discontinued or its basis is substantially modified, the Parties shall agree on an equivalent substitute index.

Derate: A condition that requires the load of the Plant to be reduced.

DOE: The United States Department of Energy.

DOE Funds: As defined in **Section 2.5(a)**.

Effective Date: The earlier to occur of (i) the date on which Financial Closing occurs or (ii) the date on which Seller begins a continuous physical on-site program of construction of the Plant as such phrase or similar words having the same intended meaning are interpreted under 42 U.S.C. 7479 (2)(A) (Clean Air Act), 42 U.S.C. 9613 (g)(ii)(B) (CERCA) and the Resource conservation and Recovery Act (RECRA), and in each case the regulations and EPA interpretations and published guidance related thereto.

Electric Energy: Sixty cycle, three-phase, alternating current electricity with a power factor of no less than one (1), that is produced from the Plant and that is available to be delivered to the Point of Delivery.

Emergency: Any condition or situation, which in the judgment of NSP, MAPP (as communicated to NSP), Seller or the Plant operator, that (i) imminently endangers or is reasonably likely to imminently endanger life or property or (ii)

adversely affects or is reasonably likely to adversely affect NSP's ability, or the ability of any participant in MAPP, to maintain safe, adequate, and reliable electric service to NSP's customers or the customers of any participant in MAPP, or (iii) adversely affects or is reasonably likely to adversely affect the safe, adequate and reliable operation of the Plant. In no event shall economic considerations determine when the Plant should be curtailed or shut down during an Emergency.

Environmental Indemnity Agreement: The agreement between Seller and NSP as to environmental liabilities, the form of which is set forth in **Appendix H**.

Environmental Law: Any federal, state or local law, including, but not limited to, statutes, regulations, ordinances, rulings, orders, administrative rules and written decisions and published interpretations and other governmental restrictions and requirements relating to the discharge of air pollutants, water pollutants, solid waste or process waste water or otherwise relating to the environment or hazardous substances, all as amended from time to time.

Environmental Liability: As to either Party, any and all liabilities, obligations, claims, or defense costs of such Party arising under, resulting from or imposed by any Environmental Law or a Governmental Authority enforcing any Environmental Law.

Event of Default: As defined in **Article X** of this Agreement.

FERC: Federal Energy Regulatory Commission.

Final Nonappealable Order: An order from the MPUC from which all rights to seek reconsideration and appeal have been exhausted or the time limits applicable to seeking reconsideration and appeal have expired.

Financial Closing: The date on which the bonds, notes or other negotiable instruments that evidence the Project's debt are initially sold or issued, and the proceeds thereof are available to pay costs of the Project in accordance with the documents related thereto.

Financier: Any individual underwriter or entity providing money or extending credit (including any Capital Lease) to Seller for (i) the construction, term or permanent financing of the Plant, or (ii) the establishment or maintenance of working capital or other ordinary business requirements for the Plant. As used herein, "Financier" shall not include trade creditors of Seller but shall include

the underwriters in connection with any bonds issued to finance costs of the project.

Force Majeure: As defined in **Article IX** of this Agreement.

Fuel Certificate Report: The Report to be submitted by Seller to NSP pursuant to **Appendix G**.

Fuel Transportation Cost Calculation (FT): As specified in **Section 2.6(a)(i)**.

Governmental Authority: The United States of America, or any state or other political subdivision thereof, including, without limitation, any municipality, township or county, and any domestic entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, without limitation, any corporation or other entity owned or controlled by any of the foregoing; provided, however, in no event shall MAPP constitute a Governmental Authority hereunder.

IEEE: Institute of Electrical and Electronic Engineers.

Initial Operation Date: The date upon which the Plant first delivers Electric Energy to NSP.

Interconnection Agreement: An agreement between Seller and the Interconnection Provider relating to the construction, operation, maintenance and use of the Interconnection Facilities.

Interconnection Facilities: All facilities installed for the purpose of interconnecting the Plant to the Interconnection Provider's System as more fully described in the Interconnection Agreement.

Interconnection Provider: The owner of the Interconnection Provider's System, as more particularly described in the Interconnection Agreement.

Interconnection Provider's System: The electric transmission, subtransmission, and facilities owned, operated, and maintained by the Interconnection Provider providing bulk transmission of the Electric Energy from the Point of Interconnection to the Point of Delivery as more particularly described in the Interconnection Agreement.

Interconnection Provider's System Control Center: The facility or facilities into which the Plant is interconnected and by which the Interconnection Provider or its designated authority monitors and controls interconnections or

ties to other systems and which has authority over the Plant as specified in the Interconnection Agreement.

kW: Kilowatt.

Late Payment Rate: An annual rate equal to the average daily prime rate, as determined from the "Money Rates" Section of the Midwest Edition of the Wall Street Journal, plus three percent (3%). In the event the average daily prime rate described herein is discontinued or its basis is substantially modified, a substitute equivalent index shall be used.

LDC: As defined in **Section 15.1(b)**.

Lien: Any security interest, mortgage, pledge, lien, claim, charge, encumbrance, title, retention agreement, lessor's interest under a Capital Lease or analogous instrument, or any other agreement of any kind or nature which has substantially the effect of constituting a security interest in, of, against or on the property of Seller.

Management Committee: The Management Committee established under **Article VIII** of this Agreement.

MAPP: Mid-Continent Area Power Pool.

MAPP Agreement: The Mid-Continent Area Power Pool Restated Agreement dated as of November 1, 1996, as amended from time to time.

MAPP Requirements: The requirements of the MAPP Agreement and related procedures and guidelines relating to the conduct of the URGE Test, as set forth in **Appendix F**.

Market Rate: As defined in **Section 2.2(c)**.

MEQB: The Minnesota Environmental Quality Board.

Milestones: The events and timetables for construction of the Plant set forth in this Agreement.

Minimum On-Peak Delivery Requirement: For each On-Peak Period, an amount (expressed in MWhs) equal to the product of (i) 50 multiplied by (ii) 16, multiplied by (iii) the number of Business Days during such On-Peak Period, multiplied by (iv) 0.90.

MPUC: Minnesota Public Utilities Commission.

MPUC Approval: The MPUC approval of this Agreement in a Final Nonappealable Order in which the MPUC expressly finds that (i) this Agreement complies with and fully satisfies the provisions of Minn. Stat. Section 216B.2424 to the full extent of the 50 MW of Capacity; (ii) this Agreement is reasonable and in the public interest; (iii) all costs incurred by NSP and all amounts to be paid by NSP under this Agreement are fully recoverable under Minn. Stat. Section 216B.1645; and (iv) NSP may recover from Minnesota retail customers the Minnesota jurisdictional portion of the amounts which may be incurred and paid by NSP during the full term of this Agreement.

MW: Megawatt.

MWh: Megawatt-hour.

NERC: North American Electric Reliability Council.

New or Increased Taxes, Additional Taxes, Surcharges and Host Community Benefits Calculation (NEWT): As defined in **Section 2.6(a)(iv)**.

NSP System: The electric facilities owned, operated, and maintained by NSP which are capable of receiving Electric Energy delivered to the Point of Delivery.

Objection Notice: As defined in **Section 6.6**.

Off-Set Payments: As defined in **Section 2.6(a)(v)**.

On-Peak Period: For each Contract Year, the hours of 6:00 am to 10:00 pm Monday through Friday (excluding Bank Holidays) during the period between June 1 and September 15, inclusive.

On-Peak Period Generation Baseline: For each On-Peak Period an amount (expressed in MWhs) equal to the product of (i) 50 multiplied by (ii) 16, multiplied by (iii) the number of Business Days during such On-Peak Period, multiplied by (iv) 0.92.

Other Subsidies: As defined in **Section 2.5**.

Outage: A physical state in which all or a portion of the Plant is not capable of providing Electric Energy to NSP.

Outage and Derate Schedule: The schedule for Planned Outages and Planned Derates for the Plant determined by the Seller; provided that if the schedule for any Contract Year calls for Planned Outages and Planned Derates in excess of 1,000 hours, then Coordinating Committee approval shall be necessary for such excess hours, which approval shall not be unreasonably withheld. The Parties shall reasonably coordinate such schedules with maintenance outages under the Interconnection Agreement.

Parties: NSP and Seller.

Party: NSP or Seller.

Permit: All state, federal and local authorizations, certificates, permits, licenses and approvals required by any Governmental Authority for the construction, operation or maintenance of the Plant.

Person: Any individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity.

Planned Derate: The removal for a predetermined duration of a portion of the Capacity from service or Reserve Shutdown to perform repairs.

Planned Outage: The removal for a predetermined duration of all of the Plant from service or Reserve Shutdown to perform repairs.

Plant: The (1) electric energy generating facility to be constructed, owned or leased and operated by, or on behalf of, Seller at the Site, and (2) all related facilities and Biomass Fuel supply necessary for the generation and delivery of Electric Energy and associated Capacity to the Point of Interconnection in accordance with the terms of this Agreement.

Plant Substation: The substation that will be constructed, owned, or leased and operated by Seller on the Site to receive and transform the Electric Energy produced by the Plant.

Point of Delivery: The point at which NSP accepts title to and risk of loss for Electric Energy sold by Seller to NSP hereunder. If the Interconnection Provider is NSP or any of its Affiliates, then the Point of Delivery shall be the Point of Metering. If the Interconnection Provider is not NSP or one of its Affiliates, then the Point of Delivery shall be a delivery point within the NSP System that has been designated in Seller's reservation of firm transmission of

Electric Energy pursuant to relevant FERC open-access tariffs and the Interconnection Agreement.

Point of Interconnection: The point on the Interconnection Provider's System where the Plant is physically interconnected with the Interconnection Provider's System, as more particularly described in the Interconnection Agreement.

Point of Metering: The high side of the step-up transformer at the Plant.

Potential Event of Default: An event which, but for the passage of time or the giving of notice or both, would constitute an Event of Default.

Power Price: The total price payable by NSP for Electric Energy sold to NSP pursuant to this Agreement.

Pricing Period: As defined in **Appendix A** hereto.

Project: The development, engineering, financing, construction, operation and maintenance of the Plant, together with all associated equipment, vehicles, supplies, materials and contract rights.

Project Proforma: The financial projections prepared by Seller and presented to NSP in connection with the preparation and negotiation of this Agreement.

Prudent Electric Generation Practice: Those methods and that equipment, as amended or changed from time to time, that are commonly used and accepted in electrical engineering and operations to operate electric generating equipment lawfully and with safety, dependability and efficiency, including, but not limited to, the requirements of the National Electric Safety Code, the National Electrical Code, IEEE Standards, NERC standards and procedures, any governmental code or regulation, and any Requirement of Law. Prudent Electric Generation Practice as implemented by the Parties shall mean such Prudent Electric Generation Practices as are applied by the Parties such that in the exercise of reasonable judgment and in light of the information or facts known would have been likely to accomplish the desired result at a reasonable cost consistent with regulatory considerations, reliability, safety and expedition.

Reimbursable Costs: Any and all expenses, costs and financial consequences incurred by NSP related to this Agreement or the Plant for which Seller shall be responsible to reimburse NSP pursuant to the terms of this Agreement. To the extent reimbursable, such expenses, costs and financial consequences include, but are not limited to:

(a) NSP direct labor costs, which shall be calculated as the number of labor hours times NSP's loaded labor rate which includes direct salary or wages and benefits, plus an amount equal to twenty percent (20%) of the total to reflect administrative and general expenses associated with NSP's direct labor costs;

(b) All other expenses incurred by NSP for direct labor including travel, living expenses, and other expenses in accordance with NSP practice in effect at the time, which shall be calculated at actual cost or per diem if applicable;

(c) Costs for third party consultants, architects, engineers and other services, including contract labor used by NSP, which shall be calculated at actual invoiced cost;

(d) Costs for material and supplies, which shall be calculated at actual invoiced cost plus any purchasing and warehouse charges; and

(e) Costs for construction contractors, testing services, equipment rental, temporary facilities and any miscellaneous services, which shall be calculated at actual cost.

Requirements of Law: Collectively, as to either Party, its articles of incorporation and bylaws or other organizational or governing documents and any federal, state or provincial law, treaty, franchise, rule, regulation, order, writ, judgment, injunction, decree, award or determination of any arbitrator or other Governmental Authority, in each case applicable to or binding upon such Party or any of its property or to which such Party or any of its respective properties are subject.

Reserve Shutdown: A state in which the Plant is available for service but not in operation.

Sales and Use Tax Calculation (ST): As specified in **Section 2.6(c)**.

Scheduled Termination Date: The twenty-first (21st) anniversary of the Turnover Date.

Section 45 Credit: As defined in **Section 2.5(a)**.

Seller: The Party defined as "Seller" in the first paragraph of this Agreement.

Site: That Minnesota real property upon which the Plant will be located.

Special Pass-Through Payment (SPTP): As defined in **Section 2.6(a) and (c)**.

Special Pass-Through Payment Calculation (SPTP): As defined in **Section 2.6(a)**.

Station Auxiliary: Electric energy that is generated at the Plant and used to operate the Plant.

Subsidies: As defined in **Section 2.5(b)**.

Taxes: As defined in **Section 2.6(a)(v)**.

Taxes Calculation (T): As defined in **Section 2.6(a)(v)**.

Term: The period of time during which this Agreement is in effect.

Termination Date: The date of termination of this Agreement in accordance with the terms hereof which shall be the Scheduled Termination Date unless sooner terminated in accordance with the terms hereof.

Transmission Losses: The reduction of Electric Energy from the Point of Metering to the Point of Delivery in an amount as determined pursuant to all applicable FERC open-access tariffs in effect from time to time.

Turnover Date: The date upon which the Plant (i) initially demonstrates satisfaction of the performance tests under the construction and operating agreements related thereto, such that control and responsibility for the Plant is turned over from the builder to the operator pursuant to such construction and operating agreements, (ii) subject to the provisions of **Section 2.3(b)(iii)**, satisfies an URGE Test demonstrating that the Plant has achieved 50 MW of Accredited Capacity as of the Turnover Date, and (iii) satisfies the other requirements set forth in **Appendix C**.

URGE Test: The Uniform Rating of Generating Equipment test for the determination of generation characteristics and capacity level acceptable for accreditation in the MAPP region, conducted in accordance with the MAPP Requirements as set forth in **Schedule F**.

Utility Interconnection and Enhancements Calculation (UI): As defined in **Section 2.6(c)**.

1.2 Interpretation

Unless the context otherwise requires:

(a) Words singular and plural in number shall be deemed to include the other and pronouns having masculine or feminine gender shall be deemed to include the other.

(b) Any reference in this Agreement to any Person includes its successors and assigns and, in the case of any Governmental Authority, any Person succeeding to its functions and capacities.

(c) Any reference in this Agreement to any Article, Section or Appendix means and refers to the Section contained in, or Appendix attached to, this Agreement.

(d) Other grammatical forms of defined words or phrases have corresponding meanings.

(e) A reference to writing includes typewriting, printing, lithography, photography and any other mode of representing or reproducing words, figures or symbols in a lasting and visible form.

(f) A reference to a specific time for the performance of an obligation is a reference to that time in the place where that obligation is to be performed.

(g) A reference to a Party, entity or organization in this Agreement includes the successors and permitted assigns of such Party, entity or organization.

(h) A reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as novated, amended, supplemented or restated from time to time.

(i) If any payment, act, matter or thing hereunder would occur on a day that is not a business day or on a Bank Holiday, then such payment, act, matter or thing shall, unless otherwise expressly provided for herein, shall occur on the next successive business day.

1.3 Technical Meanings

Words not otherwise defined herein that have well-known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings.

1.4 Interpretation with Interconnection Agreement

The Parties recognize that Seller will enter into a separate Interconnection Agreement with the Interconnection Provider.

(a) The Parties acknowledge and agree that the Interconnection Agreement shall be a separate and free-standing contract and that the terms of this Agreement are not binding upon the Interconnection Provider. Notwithstanding any provision of this Agreement to the contrary, NSP shall not be liable to Seller under this Agreement for any claimed breach or default of the Interconnection Agreement.

(b) Notwithstanding any other provision in this Agreement, nothing in the Interconnection Agreement shall alter or modify Seller's or NSP's rights under this Agreement. This Agreement shall not be construed to create any rights between Seller and the Interconnection Provider.

(c) Seller expressly recognizes that, for purposes of this Agreement, the Interconnection Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with NSP or an Affiliate of NSP.

ARTICLE II PURCHASE AND SALE

2.1 Term

(a) This Agreement shall be effective as of the date hereof and shall continue, unless otherwise terminated in accordance with its terms, until the Termination Date.

(b) Upon the Termination Date, NSP shall have no future or further obligation to purchase or to make any payment whatsoever except for payment

obligations arising or accruing prior to the Termination Date. Except for NSP's and Seller's rights, if any, under **Articles X, XI, XII, and XIV**, the Environmental Indemnity Agreement and other rights arising prior to the Termination Date, this Agreement shall not be construed to provide any residual value to either Party or any other Person, for rights to, use of, or benefits from the other Party's property or system following the Termination Date.

2.2 Sale and Purchase of Electric Energy

(a) During each Contract Year, Seller shall sell and NSP shall purchase Electric Energy delivered to the Point of Delivery by or on behalf of Seller to NSP in accordance with this Agreement. Notwithstanding the foregoing sentence, Seller shall not be obligated to sell and deliver, and NSP shall not be obligated to accept or pay for, Electric Energy from Seller:

(i) to the extent that such Electric Energy is produced by means other than the combustion of Biomass Fuel;

(ii) to the extent that such Electric Energy in any Contract Year exceeds the Annual Energy Production Cap;

(iii) to the extent Seller is unable to deliver such Electric Energy to the Point of Delivery for any reason;

(iv) to the extent that NSP is unable to receive such Electric Energy due to an event of Force Majeure, subject to the provisions of **Section 6.10(b)** and **Article IX**;

(v) to the extent NSP suspends its purchases of Electric Energy hereunder or Seller suspends its supply of Electric Energy hereunder, in each case, pursuant to **Section 10.4**; and

(vi) to the extent that such Electric Energy exceeds 55 MWh per hour.

(b) Prior to the Turnover Date, NSP shall purchase Electric Energy delivered to the Point of Delivery at a price equal to the Power Price set forth in Appendix A. All such amounts of Electric Energy purchased by NSP prior to the Turnover Date shall be counted as part of the Aggregate Energy Production Cap.

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(c) After NSP has purchased Electric Energy in an amount equal to the Aggregate Energy Production Cap, NSP shall, for the remainder of the Term, purchase all additional Electric Energy delivered by or on behalf of Seller in excess of the Aggregate Energy Production Cap at a price equal to the price for long-term purchases of firm electric energy and 50 MW of installed capacity as published in the most relevant market index, such as the Minneapolis Grain Exchange, to be agreed to by the Parties (the "Market Rate"); provided, however, that if the Parties cannot agree on such index then the Market Rate shall be deemed to equal NSP's average system cost of electric energy which includes the fixed cost component for 50 MW of installed capacity for the Contract Year in which the Market Rate takes effect; provided further that Seller, in its sole discretion, shall have the right to reject such Market Rate and terminate this Agreement effective on the date specified in written notice to NSP and with no liability to either Party.

(d) All Electric Energy sold by Seller under this Agreement shall be delivered by Seller to NSP at the Point of Delivery. Seller shall be in exclusive control and responsible for all costs and changes necessary to deliver such Electric Energy to the Point of Delivery. Seller shall be responsible for any loss, property damages or injuries to persons caused by such Electric Energy prior to its delivery to the Point of Delivery. NSP shall take title to all Electric Energy sold by Seller under this Agreement at the Point of Delivery, and NSP shall be in exclusive control and responsible for all costs and charges (including, without limitation, transmission costs) associated with such Electric Energy after it is delivered to the Point of Delivery. NSP shall be responsible for any loss, property damages or injuries to persons caused by such Electric Energy at the Point of Delivery and thereafter. All sales of Electric Energy by Seller to NSP shall be sales for resale.

(e) During the On-Peak Period, Seller shall use Commercially Reasonable Efforts to deliver as much Electric Energy as possible to NSP. Seller shall not schedule any Planned Outages or Planned Derates during the On-Peak Period and shall take all other actions reasonably possible, including Biomass Fuel management practices, designed to maximize Plant electric production during the On-Peak Period; provided, however, that all such actions shall be subject to the reasonably prudent and safe operation of the Plant. If, during the On-Peak Period of any Contract Year, Seller fails to deliver to NSP Electric Energy in an amount equal to the Minimum On-Peak Period Delivery Requirement, and such failure is not the result of an event of Force Majeure, then Seller, at its sole cost, shall pay to NSP an amount equal to the difference between (x) the average cost (expressed in \$/MWh) for all hours during such On-Peak Period incurred by NSP for replacement electric energy generated and purchased by NSP (this amount shall be determined by NSP for each On-Peak

Period on a reasonable basis consistent with NSP practices and subject to verification at the request of Seller by an independent third party selected by Seller and paid for by Seller), and (y) the amount (expressed in \$/MWh) that would have been payable under this Agreement for such Electric Energy had it been delivered during such On-Peak Period; provided, however, that in no event shall such amount be more than [BEGIN TRADE SECRET INFORMATION] \$ [END TRADE SECRET INFORMATION] during any single Contract Year. Damages under this **Section 2.2(e)** shall be calculated on an annual basis following the end of each On-Peak Period and shall be invoiced during the remaining Billing Months of the Contract Year.

(f) The obligation of Seller to pay damages under **Section 2.2(e)** above shall constitute NSP's sole remedy for any Electric Energy delivery shortfall during a Contract Year. Seller shall not be obligated to pay any Electric Energy shortfall damages pursuant to **Section 2.2(e)** or otherwise for any shortfall caused by an event of Force Majeure, as more particularly described in **Article IX**. Seller shall not be obligated to pay damages for any Electric Energy shortfall damages for any delivery shortfall occurring during any portion of the Contract Year other than the On-Peak Period.

(g) If NSP fails to accept Electric Energy delivered or tendered for delivery to the Point of Delivery in accordance with this Agreement and such failure is not the result of an event of Force Majeure, then NSP shall pay Seller for such Electric Energy in an amount equal to the product of (i) the then applicable per MWh Power Price, (ii) the greater of the actual amount of Electric Energy generated during such hours and the product of 50 MW multiplied by average Plant generation capacity factor for the immediately preceding twelve (12) calendar months and (iii) the number of hours during which such Electric Energy was not accepted by NSP, less any amounts received by Seller from Third Parties for sales during such hours, such amounts to be reduced to reflect costs incurred by Seller in procuring such sales. Any partial amount of hours described in (iii) of the immediately preceding sentence shall be rounded to the nearest whole number with 1-30 minutes rounded down and 31-60 minutes rounded up. Amounts payable pursuant to this **Section 2.2(g)** shall be invoiced and payable at the times and in the manner in which invoices are rendered and payment made for Electric Energy that is accepted by NSP hereunder.

(h) Notwithstanding any other provision herein to the contrary, the amount of MWhs of Electric Energy delivered by Seller in an On-Peak Period of a Contract Year in excess of the On-Peak Period Generation Baseline shall not be included in the Aggregate Energy Production Cap but shall be included in the Annual Energy Production Cap for such Contract Year.

(i) Notwithstanding any other provision of this Agreement to the contrary, if at any time during an On Peak Period the Plant is producing Electric Energy and Seller sells, trades or delivers any such Electric Energy to any Person other than NSP for any reason other than the failure of NSP to accept such Electric Energy as required by this Agreement, then Seller shall pay to NSP an amount equal to the difference between the amount received by Seller for all such Electric Energy and the amount that would have been payable under this Agreement for such Electric Energy had it been delivered to NSP during such On-Peak Period. Any amounts payable by Seller to NSP pursuant to this **Section 2.2(i)** shall not be subject to any cap or limitation of amount.

2.3 Capacity

(a) Subject to, and in consideration of, the terms and conditions of this Agreement, Seller agrees to provide to NSP at all times throughout the Term 50 MW of Accredited Capacity as calculated pursuant to an URGE Test. To provide such Accredited Capacity, Seller agrees to dedicate to NSP all of the Capacity of the Plant. Seller shall not sell nor contract to sell any Capacity from the Plant to any Person other than NSP except to the extent permitted by this Agreement.

(b) During each Contract Year, Seller, at its cost, shall conduct an URGE Test (in accordance with the MAPP Requirements, set forth in Appendix F) to determine the Accredited Capacity of the Plant for the upcoming Contract Year.

(i) Seller shall provide to NSP the test data and results of the URGE Tests promptly after completion, or as otherwise determined by the Coordinating Committee and, subject to the provisions of **Section 2.3(b)(iii)**, NSP shall submit such data and results to MAPP together with any other data or documents required for MAPP to approve Accredited Capacity in the amount demonstrated by such URGE Test results. NSP shall have the right to be present at all URGE Tests and shall be notified at least seventy-two (72) hours prior to any such Tests; provided, however, that notice of such URGE Tests to a NSP member on the Coordinating Committee shall constitute notice to NSP under this **Section 2.3(b)(i)**.

(ii) Subject to the provisions of **Section 2.3(b)(iii)**, the Accredited Capacity approved by MAPP shall be binding on both Seller and NSP. Seller and NSP may, separately or jointly, seek review of that

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determination from the MAPP Engineering Committee in order to increase the Accredited Capacity approved by MAPP. Each Party shall cooperate in the MAPP review process, but neither is obligated to agree with or support the other Party's position. The MAPP determination on review of Accredited Capacity shall be final and binding as between NSP and Seller, and shall not be subject to dispute resolution between the Parties under this Agreement, provided that as between the Parties (or either of them) and MAPP, nothing in this Agreement shall limit any right or remedy to seek review of the MAPP determination after final action by the MAPP Engineering Committee.

(iii) NSP will advise Seller of applicable changes to the MAPP Agreement or its associated regulations, practices or procedures through the Coordinating Committee. Notwithstanding any other provision of this Agreement to the contrary, if after the date of this Agreement, MAPP materially changes the definition of capacity or capability, or amends or supplements the MAPP Agreement or its associated regulations, practices or procedures, then, in any such case, the Parties shall negotiate in good faith regarding any changes to the definition of MAPP Requirements set forth in this Agreement or the Plant or Plant operations necessary to satisfy such MAPP Agreement changes; provided, however, that any such change shall not modify or become part of the MAPP Requirements as defined in this Agreement and Seller shall not be obligated to undertake or implement any such change, in either case, if such change requires a capital expenditure or operating cost increase of **[BEGIN TRADE SECRET INFORMATION]** \$ **[END TRADE SECRET INFORMATION]** or more (in aggregate considering all such prior cost increases) unless and until NSP pays Seller the full amount of such increased costs. In the event such changes are not required to be implemented by Seller as described in the immediately preceding sentence, then Seller shall undertake URGE Tests and Accredited Capacity shall be determined, in each case, by the Parties using the MAPP Requirements (without modification thereof as a result of such changes).

(c) Seller shall not be entitled to a separate rate or payment for the Capacity of the Plant which is dedicated to NSP hereunder.

(d) If a Capacity Shortfall exists during any Contract Year and such Capacity Shortfall is not caused by an event of Force Majeure, then Seller shall pay damages to NSP as follows:

(i) For as long as Capacity is traded as a separate product in the upper-Midwest region, Seller shall provide NSP with replacement capacity of the type and quality selected by NSP in its sole discretion and for a duration equal to the duration of the shortfall; provided, however, that if Seller enters

into a contractual arrangement to provide replacement capacity that is for a term longer than the actual duration of the shortfall, NSP shall in no event be responsible for the costs of any such replacement capacity not needed to satisfy Seller's obligation under this Section 2.3(d)(i). The replacement capacity shall be in an amount equal to the difference between 50 MW and the actual Accredited Capacity of the Plant (expressed in MWs); provided, however, that in no event shall Seller be required in any Contract Year to pay in excess of [BEGIN TRADE SECRET INFORMATION] \$ [END TRADE SECRET INFORMATION], adjusted by CPI as of January 1, 2000, for such replacement capacity and, after Seller has expended such amount in any Contract Year for replacement capacity, Seller shall have no further or additional liability for or obligation to obtain replacement capacity for the remainder of such Contract Year.

(ii) In the event and at such time as capacity ceases to be traded as a separate product in the upper-Midwest region, Seller shall pay to NSP an amount equal to [BEGIN TRADE SECRET INFORMATION] \$ [END TRADE SECRET INFORMATION] for each whole or partial MW of Capacity Shortfall, provided, however, that in no event shall Seller be required to pay more than [BEGIN TRADE SECRET INFORMATION] \$ [END TRADE SECRET INFORMATION], adjusted by CPI as of January 1, 2000, for such Capacity Shortfall in any Contract Year.

(iii) Subject to the dispute resolution procedures of **Article XIII**, Seller shall pay any damages owed to NSP pursuant to either **Section 2.3(c)(i)** or **2.3(c)(ii)** for a Contract Year within ninety (90) days after the end of such Contract Year.

(e) The obligation of Seller to pay damages or obtain replacement capacity under **Section 2.3(d)** above shall constitute NSP's sole remedy for any Capacity Shortfall. Seller shall not be obligated to obtain replacement capacity or pay any Capacity Shortfall damages pursuant to **Section 2.3(d)** or otherwise for any Capacity Shortfall to the extent caused by an event of Force Majeure, as more particularly described in **Article IX**.

2.4 Power Price

Seller agrees that (i) the Power Price rates are based on a dollars per MWh of Electric Energy delivered to the Point of Delivery, (ii) the Power Price set forth in **Appendix A** as adjusted pursuant to **Section 2.5 and Section 2.6**, constitutes the Power Price for the Electric Energy sold hereunder in an amount equal to or less than the Aggregate Energy Production Cap and (iii) the

Electric Energy above the Aggregate Energy Production Cap sold hereunder shall be sold to NSP at the Market Price. Seller and NSP agree that the Power Price rates are for wholesale generation service and not for transmission or related ancillary services. Nothing in this Section 2.4 shall require or permit Seller to withhold a portion of the Plant's Electric Energy output for ancillary services, and Seller shall not sell or contract to sell such ancillary services to a Person other than NSP without the prior written consent of NSP; provided, however, that nothing herein shall prohibit or restrict the use of such ancillary services by Seller for its internal Plant requirements.

2.5 NSP Rebate

(a) The Power Price assumes no additional funding from the United States Department of Energy ("**DOE Funds**"), no credit for application of tax credits that may be available to Seller under Section 45 of the Internal Revenue Code ("**Section 45 Credits**") and no other additional government grants of any kind ("**Other Subsidies**").

(b) Seller agrees to seek reductions in the costs associated with the Project by seeking DOE Funds, Section 45 Credits and Other Subsidies (collectively, "**Subsidies**"). For the purposes of this Agreement, the term "Subsidies" and "Other Subsidies" shall not include (A) tax-exempt debt issued to finance qualified costs as described in **Section 2.5(c)(ii)** below, (B) any DOE Funds or other government grants or benefits received or awarded prior to the date of this Agreement or (C) local, state or federal tax relief or rebates.

(c) Subject to the limitations in this subparagraph (c), the benefit of any Subsidies are intended to inure 100% to NSP for pass-through to NSP's ratepayers in the form of a rebate to NSP following the end of the Contract Year in which such revenues are received by Seller or a credit or offset is imputed. Notwithstanding any other provision of this Agreement to the contrary, the NSP Rebate shall not be offset by or adjusted against any other amounts or calculations in this Agreement.

(i) Seller shall use Commercially Reasonable Efforts to obtain the maximum amount of DOE Funds available for the development or construction of the Plant. NSP agrees to cooperate with Seller with respect to these efforts. Subject to the provisions of **Section 2.5(c)(iv)** below, DOE Funds obtained by Seller (net of any federal, state or local income tax owed by Seller as a result of the receipt of such DOE funds) shall be rebated to NSP within sixty (60) days of the occurrence of the Turnover Date in which such DOE Funds are received by Seller as more particularly described in **Appendix I**.

(ii) Seller shall use Commercially Reasonable Efforts to either qualify for the maximum amount of Section 45 Credits available for the Plant or to obtain the maximum amount of tax-exempt financing for qualifying costs of the Project. NSP agrees to cooperate with Seller in that effort. Subject to the provisions of **Section 2.5(c)(iv)** below, any Section 45 Credits obtained and used by Seller shall be rebated to NSP at the end of the Contract Year in which they are realized so as to reduce the Seller's tax liability for such year as more particularly described in **Appendix I**. The Parties recognize, however, that the use of lower cost tax-exempt financing for certain qualified costs and taxable financing for the remaining costs of the Project can be expected to preclude any Section 45 Credits and the Seller currently contemplates using such tax-exempt debt to finance qualified costs of the Project.

(iii) Seller shall use Commercially Reasonable Efforts to obtain the maximum amount of Other Subsidies, that are applicable to development or construction of the Plant and that, in the reasonable opinion of Seller, are capable of being obtained within a reasonable time, at a reasonable cost and upon reasonable terms and conditions. Subject to the provision of **Section 2.5(c)(iv)** below, any amounts so obtained shall be rebated to NSP within sixty (60) days of the Turnover Date in which such revenues are realized as more particularly described in **Appendix I**.

(iv) Seller recognizes and agrees that its obligations under clauses (i)-(iii) require it to make reasonable expenditures in pursuit of such Subsidies. Notwithstanding anything to the contrary in this Agreement, in determining the amount of the NSP Rebate resulting from the application of clauses (i)-(iii) above, the aggregate amount of Seller's reasonable costs incurred to perform its obligation to seek, obtain and realize actual cost savings or revenue enhancement from such items which have not previously been taken into account to reduce a prior NSP Rebate pursuant to this **Section 2.5** shall be deducted from the amount of the NSP Rebate then being determined. For example, Seller obtains DOE Funds in the amount of \$1,000,000, and has previously incurred an aggregate of \$100,000 in costs associated with its efforts to obtain each of the items described in **Section 2.5(c)(i)-(iii)** above for which it has not previously received credit pursuant to this **Section 2.5(c)(i)-(iii)**, then the NSP Rebate in respect of such DOE Funds will be \$900,000.

(v) In determining the amount of Seller's costs to obtain the items described in **Section 2.5(c)(i)-(iii)**, such costs shall include the types of costs, expenses and financial consequences described in clauses (a)-(e) of the definition of Reimbursable Costs that are incurred by Seller in connection with its efforts under this **Section 2.5**.

(vi) Upon NSP's written request, Seller shall provide NSP with information reasonably necessary to verify Seller's efforts to achieve the cost savings or revenues described above in this **Section 2.5** and the results of the efforts including, but not limited to, copies of all applications submitted to applicable Governmental Authorities, notifications of action on such applications, schedules of payments or credits to be received. Notwithstanding any other provision of this Agreement to the contrary, Seller's determination of the level of activity and cost expenditures required to satisfy Seller's obligation to realize the savings and revenues described above in this **Section 2.5** shall control unless (i) NSP agrees to reimburse Seller for the costs incurred in connection with any activity that Seller does not believe is reasonably necessary or likely to be successful or cost effective and (ii) Seller is able to undertake, such activity without it having a material adverse effect on the Plant or Seller's ability to perform any of its Contractual Obligations. Notwithstanding the immediately foregoing sentence, NSP may direct Seller at any time to undertake an activity to obtain the items described in **Section 2.5(c)(i)-(iii)** above at Seller's cost; provided, that if Seller disputes its obligation to pay for such additional activities, then such dispute shall be resolved in accordance with the provisions of **Article XIII** before Seller shall be obligated to undertake such activities, provided further that if Seller is subsequently found to have been required to undertake any such activity so directed by NSP (and regarding which Seller disputed and lost such dispute) and the passage of time has rendered the activity moot or otherwise unavailable, Seller shall be liable to NSP for actual damages arising out having failed to undertake such activity prior to resolving the dispute.

2.6 Special Pass-Through Payment

(a) Within 60 days following the end of each Contract Year, Seller shall provide the following calculation to NSP to determine the Special Pass-Through Payment for such Contract Year:

$$\text{SPTP} = \text{FT} + \text{NEWT} + \text{T} + \text{ASH}$$

where:

SPTP means the Special Pass-Through Payment for such Contract Year.

FT means the Fuel Transportation Cost Calculation for such Year (described below).

NEWT means the New or Increased Taxes or Surcharges and Host Community Benefits Calculation for such Contract Year (described below).

T means the Taxes Calculation for the immediately prior Contract Year (described below).

ASH means the Ash Revenues Calculation for such Contract Year (described below).

If the above calculation yields a positive amount, NSP shall pay such amount to Seller within 30 days of receipt of such calculation from Seller. If the above calculation yields a negative amount, then Seller shall pay the positive version of such amount to NSP within 30 days of NSP's receipt of such calculation. (For example, if the above calculation yields -\$100,000 as the Special Pass-Through Payment amount, then Seller shall pay NSP \$100,000.) NSP may dispute Seller's calculation of the Special Pass-Through Payment amount in accordance with the terms of **Article XIII**.

(i) Fuel Transportation Costs: The amount by which Seller's average per-ton costs in a Contract Year for the transportation and handling of poultry litter and other Biomass Fuel to the Plant exceed a baseline of [BEGIN TRADE SECRET INFORMATION] \$ [END TRADE SECRET INFORMATION] per ton for poultry litter and [BEGIN TRADE SECRET INFORMATION] \$ [END TRADE SECRET INFORMATION] per ton for all other Biomass Fuel. Notwithstanding any other provision of this Agreement to the contrary, the calculation for Fuel Transportation Costs shall not include any transportation costs associated with natural gas or other fossil fuels consumed at the Plant. The Fuel Transportation Cost Calculation for a given Contract Year is as follows:

$$FT = \{ \text{Tons}^{PL} \times (\text{Actual}^{PL} - [\text{BEGIN TRADE SECRET INFORMATION}] \$ [\text{END TRADE SECRET INFORMATION}]) \} + \{ \text{Tons}^{BF} \times (\text{Actual}^{BF} - [\text{BEGIN TRADE SECRET INFORMATION}] \$ [\text{END TRADE SECRET INFORMATION}]) \}$$

where:

FT means the Fuel Transportation Cost Calculation for the Contract Year.

Tons^{PL} means the amount of tons of poultry litter delivered to the Plant in such Contract Year.

Actual^{PL} means the average per ton cost actually incurred by Seller to transport and handle poultry litter to the Plant in such Contract Year.

Tons^{BF} means the amount of tons of Biomass Fuel (other than poultry litter) delivered to the Plant in such Contract Year.

Actual^{BF} means the average per ton cost Seller pays or is obligated to pay during such Contract Year to transport and handle Biomass Fuel (other than poultry litter) to the Plant.

(ii) Reserved

(iii) Reserved

(iv) New or Increased Taxes or Surcharges, Additional Taxes and Host Community Benefits: The total amount Seller pays or is obligated to pay during a Contract Year in respect of (A) federal, state or local taxes or surcharges (excluding income taxes and Taxes) which are newly imposed after the date of this Agreement, (B) increases in federal, state or local taxes or surcharges (excluding income taxes and Taxes) after the date of this Agreement, (C) Additional Taxes paid or payable during such Contract Year by Seller pursuant to **Section 6.7** and (D) any benefits to the locality in which the Plant is located that are in excess of a baseline of **[BEGIN TRADE SECRET INFORMATION]** \$ **[END TRADE SECRET INFORMATION]**. Seller shall be solely responsible for any federal, state or local income taxes imposed upon Seller, without reimbursement by NSP. The New or Increased Taxes, Additional Taxes, Surcharges and Host Community Benefits Calculation for a given Contract Year is as follows:

$$\text{NEWT} = \text{TS} + \text{AT} + (\text{HB} - \text{[BEGIN TRADE SECRET INFORMATION] } \$ \text{ [END TRADE SECRET INFORMATION]})$$

where:

NEWT means the New or Increased Taxes or Surcharges, Additional Taxes and Host Community Benefits Calculation for the Contract Year.

AT means the Additional Taxes Seller pays or is obligated to pay during such Contract Year pursuant to **Section 6.7**.

TS means the amount Seller pays or is obligated to pay during such Contract Year with respect to federal, state or local taxes (excluding income taxes imposed on Seller and Taxes described below) which are newly imposed or increased as described above after the date of this Agreement.

HB means the amount Seller pays or is obligated to pay during such Contract Year with respect to benefits to the locality in which the Plant is located that are in excess of a baseline of **[BEGIN TRADE SECRET INFORMATION]** \$ **[END TRADE SECRET INFORMATION]** .

(v) Taxes: The amount Seller pays or is obligated to pay during a Contract Year for or with respect to taxes imposed pursuant to Minn. Statute Chapters 272 and 273 or any successor provisions ("**Taxes**"). Seller shall use its best efforts to negotiate terms with the owner of the Site or the Plant or the municipality in which the Plant will be located to provide to Seller reductions in lease, purchase, royalty or other payments by Seller as an off-set to amounts paid or payable by Seller in respect of Taxes ("**Off-Set Payments**") and such Off-Sets shall be applied to reduce the amount of the Taxes Calculation provided that Off-Sets shall not be applied so as to cause the Taxes Calculation for any Contract Year to be a negative number. The Taxes Calculation for a given Contract Year is as follows:

$$T = \text{Taxes} - \text{Off-Set}$$

where:

T means the Taxes Calculation for the Contract Year.

Taxes means the Taxes paid or payable by Seller in such Contract Year.

Off-Set means the amount of Off-Set Payments received by or credited to Seller in such Contract Year.

(vi) Ash Revenues: The amount by which Seller's Ash Revenues in a Contract Year are below a baseline of **[BEGIN TRADE SECRET INFORMATION]** \$ **[END TRADE SECRET INFORMATION]**. If Seller's Ash Revenues in a Contract Year are above the aforementioned baseline, the Parties agree that the amount in excess of the baseline shall be divided among

the Parties as follows: (A) first, NSP shall be paid the first [BEGIN TRADE SECRET INFORMATION] \$ [END TRADE SECRET INFORMATION] of Seller's Ash Revenues above the baseline of [BEGIN TRADE SECRET INFORMATION] \$ [END TRADE SECRET INFORMATION]; (B) second, Seller shall retain the next [BEGIN TRADE SECRET INFORMATION] \$ [END TRADE SECRET INFORMATION] of Ash Revenues; and (C) NSP and Seller shall divide any additional Ash Revenues (above [BEGIN TRADE SECRET INFORMATION] \$ [END TRADE SECRET INFORMATION]), with NSP receiving 75% of such excess Ash Revenues and Seller receiving the remaining 25%. The Ash Revenues Calculation for a Contract Year is as follows:

(x) If Seller's Ash Revenues in a Contract Year are less than or equal to [BEGIN TRADE SECRET INFORMATION] \$ [END TRADE SECRET INFORMATION]; then:

$$\text{ASH} = ([\text{BEGIN TRADE SECRET INFORMATION}] \\ \$ [\text{END TRADE SECRET INFORMATION}] - \text{AR})$$

(y) If Seller's Ash Revenues in the Contract Year are greater than [BEGIN TRADE SECRET INFORMATION] \$ [END TRADE SECRET INFORMATION] but less than or equal to [BEGIN TRADE SECRET INFORMATION] \$ [END TRADE SECRET INFORMATION], then:

$$\text{ASH} = [\text{BEGIN TRADE SECRET INFORMATION}] \\ \$ [\text{END TRADE SECRET INFORMATION}]$$

(z) If Seller's Ash Revenues in the Contract Year are greater than [BEGIN TRADE SECRET INFORMATION] \$ [END TRADE SECRET INFORMATION], then:

$$\text{ASH} = (.75 \times ([\text{BEGIN TRADE SECRET INFORMATION}] \\ \$ [\text{END TRADE SECRET INFORMATION}] - \text{AR})) - ([\text{BEGIN TRADE SECRET INFORMATION}] \\ \$ [\text{END TRADE SECRET INFORMATION}])$$

where:

ASH means the Ash Revenues Calculation for a Contract Year.

AR means Seller's Ash Revenues for such Contract Year.

(vii) Each of the baselines referenced in this **Section 2.6(a)** shall be prorated for any partial Contract Year. Each of the baselines referenced in this **Section 2.6(a)** shall be adjusted for each Contract Year to reflect increases in the CPI since January 1, 2000 as follows:

$$\text{Amount of Adjustment} = \text{Baseline} \times \frac{[\text{CPI}^{\text{YearX}} - \text{CPI}^{\text{Base}}]}{\text{CPI}^{\text{Base}}}$$

where:

$\text{CPI}^{\text{YearX}}$ = The CPI published on the date closest to and before the first day of the new Contract Year.

CPI^{Base} = The CPI published on the date closest to January 1, 2000.

(b) Seller shall use Commercially Reasonable Efforts to minimize the amounts of payments actually made by Seller, as described in **Section 2.6(a)** above, and **Section 2.6(c)** below, to maximize Ash Revenues and to mitigate the amount of the Special Pass-Through Payment incurred by NSP.

(i) Seller's determination of the level of activity and cost expenditures required to satisfy Seller's obligation to realize such minimization, mitigation or Ash Revenues (as the case may be) shall control unless (A) NSP agrees to reimburse Seller for the costs incurred in connection with any activity that Seller does not believe is reasonably necessary or likely to be successful or be cost effective and (B) Seller is able to undertake such activity without it having a material adverse effect on the Plant or Seller's ability to perform any of its Contractual Obligations. NSP shall pay any invoiced reimbursement amounts within 30 days of its receipt of such invoices, subject to its dispute resolution rights set forth in **Article XIII**. Notwithstanding the foregoing provisions of this **Section 2.6(b)(i)**, NSP may direct Seller at any time to undertake an activity to achieve such minimization, mitigation or Ash Revenues at Seller's cost; provided, that if Seller disputes its obligation to pay for such additional activities, then such dispute shall be resolved in accordance with the provisions of **Article XIII** before Seller shall be obligated to undertake

such activities, provided further that if Seller is subsequently found to have been required to undertake any such activity so directed by NSP (and regarding which Seller disputed and lost such dispute) and the passage of time has rendered the activity moot or otherwise unavailable, Seller shall be liable to NSP for all direct damages arising out of having failed to undertake such activity prior to resolving the dispute.

(c) Within 60 days following the Turnover Date, Seller shall provide the following calculation to NSP to determine the one-time Special Pass-Through Payment for Utility Interconnection and Enhancements and Sales and Use Taxes.

$$\text{One-time SPTP} = \text{UI} + \text{ST}$$

where:

UI means the Utility Interconnection and Enhancements Calculation (described below).

ST means the Sales and Use Tax Calculation (described below).

If the above calculation yields a positive amount, NSP shall pay such amount to Seller within 30 days of receipt of such calculation from Seller. If the above calculation yields a negative amount, then Seller shall pay the positive version of such amount to NSP within 30 days of NSP's receipt of such calculation. NSP may dispute Seller's calculation of the one-time Special Pass-Through Payment Amount in accordance with the terms of **Article XIII**.

(i) Utility Interconnection and Enhancements: The amount by which Seller's payments or payment obligations relating to the Plant's interconnection and enhancements to the Interconnection Provider's System are in excess of a baseline of [BEGIN TRADE SECRET INFORMATION] \$ [END TRADE SECRET INFORMATION]. The Utility Interconnection and Enhancements Calculation is as follows:

$$\text{UI} = (\text{Actual}^{\text{UI}} - [\text{BEGIN TRADE SECRET INFORMATION}]) \\ \$ [\text{END TRADE SECRET INFORMATION}]$$

where:

UI means the Utility Interconnection and Enhancements Calculation.

Actual^{UI} means the amount Seller pays or is obligated to pay for or in respect of the Plant's interconnection and enhancements to the Interconnection Provider's System.

(ii) Sales and Use Taxes: The amount by which Seller's payments or payment obligations in respect of all sales and use taxes on capital equipment purchased for the Plant are in excess of a baseline of [BEGIN TRADE SECRET INFORMATION] \$ [END TRADE SECRET INFORMATION]. The Sales and Use Tax Calculation is as follows:

$$ST = (\text{Actual}^{\text{ST}} - [\text{BEGIN TRADE SECRET INFORMATION}]) \\ \$ [\text{END TRADE SECRET INFORMATION}]$$

where:

ST means the Sales and Use Tax Calculation.

ActualST means the amount of all sales and use taxes relating to capital equipment purchased for the Plant Seller pays or is obligated to pay.

2.7 Sales to Third Parties

(a) Electric Energy and Capacity Purchase Limits and Third Person Sales. To the extent that Electric Energy generated by the Plant is not required to be purchased by NSP hereunder for any reason, then Seller may sell such excess Electric Energy and associated Capacity to any other Person(s) subject to NSP's right of first refusal under this **Section 2.7**. In the event that this Agreement is terminated for any reason, Seller may thereafter sell all Capacity and Electric Energy of the Plant to any other Person without limitation.

(b) Right of First Refusal.

(i) With respect to certain sales by Seller to Persons other than NSP pursuant to **Section 2.7(a)**, NSP shall have a right of first refusal for the Capacity and Electric Energy proposed for sale to be exercised in accordance with the terms of this **Section 2.7(b)**.

(ii) With respect to all proposed sales of such Capacity and/or Electric Energy to a third-party pursuant to a written agreement having a term of one (1) year or longer (any extension options in such contract shall be

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included in determining whether such contract is for a period of one year or longer) Seller shall provide NSP with written notice of its intent to sell no later than thirty (30) days prior to commencement of deliveries under such agreement. The notice shall include:

The term of the proposed sale;

The amount of Accredited Capacity and/or Electric Energy offered;

The hourly pattern and dispatch rights for the Electric Energy offered;

Price terms; and

Any other terms known to Seller at the time of the written notice which are material to Seller's willingness to enter into an agreement for the sale.

(iii) Seller shall respond to NSP's requests for additional information about any proposed sale within two (2) business days of receipt of the request, to the extent such information is necessary for NSP to make an informed decision about whether to exercise its right of first refusal and to the extent such information is available to Seller.

(iv) NSP shall respond to any proposed sale within twenty (20) days of receipt of the Seller's notice to NSP. NSP may match the material terms, in which case Seller shall accept NSP's offer to undertake the sales. If NSP provides a counter-offer to the terms of the proposed sale, Seller shall have five (5) business days within which to accept or reject the counter-offer. If Seller rejects NSP's counter-offer, Seller may consummate the sale with the proposed third party on terms substantially equivalent to those identified in the notice.

(v) During the period of time between Seller's notice to NSP and NSP's decision whether to purchase, Seller shall be entitled to sell any such available Electric Energy and Capacity on a short-term basis for such period of time.

(vi) NSP shall have no right of refusal for Capacity and/or Electric Energy to be sold to Persons other than NSP pursuant to (x) an oral agreement or (y) pursuant to a written agreement, each having a term of less than one year (any extension options in such contract shall be included in determining whether such contract is for a period of one year or longer).

(vii) In the event Seller breaches its obligations under this **Section 2.7**, NSP shall be entitled to recover from Seller an amount equal to

the difference between the price obtained by Seller for any such Electric Energy and the then current Power Price for each MWh of such Electric Energy.

(c) Transmission. In connection with any sale of Accredited Capacity or Electric Energy to a Person other than NSP, Seller will be solely responsible to arrange for any transmission, distribution or ancillary services related to or necessary for such sale of Capacity or Electric Energy in accordance with applicable transmission and distribution tariffs at the time of each proposed sale.

2.8 Metering Requirements

(a) The sale and transfer of Electric Energy and associated Capacity between Seller and NSP at the Point of Delivery shall be measured by metering equipment installed at the Point of Metering. All metered Electric Energy shall be adjusted for Transmission Losses from the Point of Metering to the Point of Delivery.

(b) NSP shall, using Prudent Electric Generating Practice, design, provide, install, own, operate, test, and maintain the meters, associated metering equipment and telemetering equipment and services for the Plant. Seller shall reimburse NSP for all Reimbursable Costs incurred by NSP under this Section in an amount not to exceed market rates for the equipment or services involved.

(c) NSP shall read the meters on the first business day of each calendar month beginning with the calendar month following the month in which the Initial Operation Date occurs and continuing throughout the remainder of the Term. NSP shall supply such meter readings to Seller no later than the end of the third business day of such calendar month. Metering records shall be available for review and copying at all reasonable times to authorized agents and employees of Seller.

(d) The metering equipment shall measure at the Point Of Metering:

Real Electric Energy delivery and use.
Instantaneous real power flow.
Instantaneous reactive power flow.

(e) Metering facilities and capability shall include telemetry to NSP's energy management system and remote-read capabilities. These may be done with computer data links, direct RTUs or through telemetering transmitters

and receivers to an RTU. The equipment shall be of sufficient technical quality to provide the following information:

Interval data for Electric Energy usage and power factor;
Instantaneous real power flow at the Point of
Interconnection;
Instantaneous MWh reading;
Hourly ambient temperature and humidity data;
Instantaneous reactive power flow at Point of
Interconnection;
Voltage reading at Point of Metering.

(f) Seller shall provide, install, maintain and pay for weatherproof telephone service for telemetering and shall pay the applicable monthly service charge.

(g) NSP shall test the meter and metering equipment as provided in this subsection.

(i) Unless the Coordinating Committee decides otherwise, NSP shall test each meter used near the Point of Interconnection or Point of Delivery at intervals of approximately twelve (12) months. NSP shall provide Seller with one (1) business days' prior written notice of such test, and Seller shall have the right to attend. In any event, such testing intervals shall comply at a minimum with the applicable ANSI testing frequency (currently ANSI #C12.1 Section 8) in effect at the time of each test. Seller shall reimburse NSP for any Reimbursable Costs associated with each annual test.

(ii) Either Party may request, at reasonable intervals and under reasonable circumstances, that a special test of the meter and metering equipment be made at any time, at the sole expense of the requesting Party, provided, however, that if the test shows the meter to be inaccurate by more than one-tenth of one percent (0.1 %), then NSP shall reimburse Seller for the cost, if any of the initial test and NSP shall conduct a retest at its expense. If the retest confirms that the meter is inaccurate by more than one-tenth of one percent (0.1 %), NSP shall, at its expense, repair or replace the meter.

(h) If, as a result of any test, any meter shall be found to be registering outside the applicable ANSI accuracy standard (currently ANSI #C12.1 Section 8) in effect at the time of the test, such meter shall be restored to meet the accuracy standard or an accurate meter shall be substituted by NSP, and

previous billings and payments between the Parties shall be corrected as set forth in this Section.

(i) If required by **Section 2.8(h)**, the meter reading between Seller and NSP and all bills based on data from such meter shall be corrected for a period equal to one-half of the elapsed time since the last test up to a maximum period of twelve (12) months, if the date on which the meter became defective or inaccurate is not ascertainable. If, however, the meter became defective or inaccurate at a reasonably ascertainable time since the last test of such meter, the correction shall extend back to such time. The meter reading shall be corrected for the applicable time period by applying the percentage of inaccuracy detected in the appropriate direction. Should metering equipment at any time fail to register, then (i) NSP shall immediately notify Seller of such failure and (ii) the Electric Energy delivered during such failure shall be determined from the best available data.

(j) All meters shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified, or relocated. In the event that Seller breaks a seal, Seller shall notify NSP as soon as practicable.

(k) The meter and metering equipment shall be maintained by NSP in an accurate condition. Seller shall reimburse NSP for all Reimbursable Costs associated with that maintenance.

2.9 Billing

(a) Seller shall bill NSP for each Billing Month within ten (10) days of the date on which the Seller receives the meter data from NSP. In the event NSP fails to provide meter data within the first five days of a calendar month, Seller may provide its invoice based on its good faith estimate of the amount of Electric Energy delivered during the previous Billing Month. Each bill shall be calculated in whole MWh increments. If Seller's net metered deliveries to NSP are between 0.00 and 0.49 MWh, then the billing MWh shall be rounded down to the last whole MWh. If Seller's net metered deliveries to NSP are between 0.50 and .99 MWh, then the billing shall be rounded up to the next whole MWh.

For example, if the Billing Month net meter readings are:

Net Metered Delivery:	1000.35 MWh Round to:	1000 MWh
Net Metered Delivery:	1000.50 MWh Round to:	1001 MWh

Each bill shall be calculated using the appropriate Power Prices and shall be in a form reasonably acceptable to NSP.

(b) Beginning on the Turnover Date and continuing during each Contract Year thereafter, Seller shall pay NSP a monthly charge equal to **[BEGIN TRADE SECRET INFORMATION]** \$ **[END TRADE SECRET INFORMATION]** per month (escalated annually, starting on January 1, 2000, at a rate equal to the preceding year's change in the CPI) for NSP's costs associated with meter reading, billing information and verification.

(c) Seller shall pay NSP a non-refundable one time fee for Reimbursable Costs incurred by NSP in connection with computer programming necessary to incorporate the Plant into the NSP energy management system and energy accounting billing system. The amount of that fee shall not exceed **[BEGIN TRADE SECRET INFORMATION]** \$ **[END TRADE SECRET INFORMATION]**. Seller shall pay this fee on the Turnover Date or within thirty (30) days of receipt of an NSP invoice for such services, whichever is later.

2.10 Timing of Payment

NSP's payment to Seller hereunder shall be made within twenty (20) days following receipt of the bill from Seller. If the due date falls on a Saturday, Sunday or legal holiday, the due date shall be the next business day. Payments shall be deemed made when placed in the U.S. Mail, addressed to Seller, first class postage prepaid, or otherwise delivered to Seller. Payments made after the due date shall be considered late and shall bear simple interest on the unpaid balance at an annual rate equal to the Late Payment Rate for the number of days elapsed from and including the day after the due date, to and including the payment date of the full amount including accrued late payment interest.

2.11 Wire Transfer

NSP shall pay Seller's bills via wire transfer of funds on or before the due date described in **Section 2.10** if requested to do so in writing by Seller, which request shall contain adequate payment information. NSP shall be entitled to conclusively presume, without any liability whatsoever, that the payment information furnished by Seller (including name, financial institution, account numbers, payee, etc.) is accurate. In no event will NSP be required to pay any

bill more than once if the invoice was first paid via wire transfer of funds in accordance with Seller's instructions unless NSP receives a refund of the initial payment.

2.12 Reimbursable Costs

(a) With respect to Reimbursable Costs, Seller shall be responsible only for (i) the one-time fee set forth in **Section 2.9(c)** and the recurring monthly charges set forth in **Section 2.9(b)**, (ii) any Reimbursable Costs associated with NSP's activities requested by Seller and (iii) any Reimbursable Costs which do not exceed \$5,000 in total cost per Contract Year.

(b) For any natural grouping of NSP work activities that are expected to generate Reimbursable Costs in excess of \$2,000 in total cost, NSP shall provide Seller a cost estimate prior to commencing the work activities. NSP's estimate shall include (x) a listing of major tasks, their timing and estimated cost, (y) a projection of total estimated cost and (z) a forecast of quarterly billings to Seller for these activities. Seller agrees that such estimates are not binding on NSP and are provided solely for the convenience of Seller. Seller further agrees that NSP has the right to set off the actual Reimbursable Costs of such work against payments to be made to Seller in accordance with the terms set forth in **Section 2.13(a)**.

(c) The Parties agree to investigate in good faith, and if agreed to by both Parties, to implement if commercially reasonable, electronic or other technologically improved methods of meter reading, billing, and payment under this Agreement.

2.13 Retention

(a) If Seller fails to make any required payment to NSP in a timely fashion, then NSP shall have the right to set off and/or retain against payments to be made to Seller hereunder any amount reasonably believed by NSP to be due to NSP from Seller under this Agreement in accordance with this **Section 2.13**. NSP's exercise of its right of retention under this **Section 2.13** is without prejudice to Seller's right to contest the retention and the claim upon which the retention is based, and shall be done only in accordance with the procedures of this Section. To the extent NSP is ultimately found to have received an amount in excess of that found appropriate, NSP shall pay Seller the excess amount plus interest at the Late Payment Rate calculated from the

date that NSP received the excess amount to the date on which NSP paid the excess amount plus accrued interest to Seller.

(b) Notwithstanding the authority granted to NSP in this **Section 2.13** or the definition of Reimbursable Costs herein, NSP's right to set-off or retain amounts due NSP from payments otherwise due to Seller under this Agreement shall be exercised in the following manner. With respect to any amount in excess of \$1,000 which NSP believes is appropriate for set-off or retention, NSP shall provide Seller with thirty (30) days notice prior to the Billing Month in which NSP intends to exercise such set-off or retention rights. NSP's notice shall identify the Reimbursable Costs involved or other right to payment and provide supporting data sufficient in detail to allow Seller to review the reasonableness of the Reimbursable Costs or payment right and the amount to be set-off or retained.

(c) With respect to any amount which NSP believes is appropriate for set-off or retention, to the extent disputed by Seller, shall be resolved through the procedures established in **Article XIII** prior to set-off or retention. Pending the resolution of the dispute, and without further notice, NSP may utilize its right of set-off or retention to recover any undisputed amount, but NSP may not utilize its set-off or retention rights to recover any disputed amounts. To the extent NSP is ultimately found to be entitled to recover an amount in addition to any undisputed amount previously received, Seller shall pay NSP the recoverable amount plus interest at the Late Payment Rate calculated from the date of NSP's receipt of the undisputed amount to the date which Seller paid the additional amount plus accrued late payment interest to NSP.

(d) In addition to the foregoing provisions of **Section 2.13**, if the total cumulative amount to be set-off by NSP during any Billing Month exceeds \$25,000, NSP shall defer retention of the amount in excess of \$25,000 to the successive Billing Month and for as many successive Billing Months as necessary to recover the balance due. No interest shall accrue on any such deferred balance.

**ARTICLE III
CONDITIONS PRECEDENT**

3.1 Approvals and Termination

Notwithstanding any other provision in this Agreement to the contrary, the termination rights under this **Section 3.1** shall not be subject to the terms or limitations of **Article X**.

(a) Promptly after the date of execution of this Agreement by both Parties, NSP shall submit this Agreement for MPUC Approval. NSP shall use Commercially Reasonable Efforts to obtain MPUC Approval and Seller shall use Commercially Reasonable Efforts to assist and cooperate with NSP in seeking MPUC Approval.

(b) If at any time (i) the MPUC affirmatively rejects this Agreement, (ii) the MPUC denies the MPUC Approval, (iii) NSP determines in NSP's sole discretion that it is unlikely that MPUC Approval will be obtained by July 1, 2001 upon terms satisfactory to it or (iv) the MPUC conditionally approves this Agreement with conditions that are not mutually acceptable to each of the respective Parties, each in its sole discretion, then either Party shall have the option to terminate this Agreement or, at the election of the Parties, they shall continue to seek acceptable MPUC Approval until July 1, 2001, after which point this Agreement shall terminate automatically with no liability to either Party, unless both Parties waive the condition of obtaining the MPUC Approval or agree to further extend this Agreement. Notwithstanding the foregoing, NSP shall not be entitled to terminate this Agreement pursuant to clause (iii) above until 180 days following the execution of this Agreement during which time NSP shall continue to work with Seller in good faith to obtain acceptable MPUC Approval of this Agreement.

(c) Either Party may provide the other Party with written notice of MPUC Approval of this Agreement. The receiving Party may object to such notice by providing the noticing Party with a written objection, stating the reasons for such objection, within ten (10) days after receiving such notice. Failure to so object shall constitute a waiver of any future objections.

(d) If (i) the Effective Date has not occurred on or before July 1, 2002 or (ii) either Party makes a reasonable determination that it is unlikely that the Effective Date will occur on or before June 30, 2002, then either Party may terminate this Agreement effective immediately upon written notice to the other Party and without payment or liability to the other Party.

3.2 Milestones

(a) The Parties shall cause the following events to occur on or before the Effective Date:

(i) Approval of this Agreement by the Board of Directors or other governing body of Seller and NSP's receipt of a certificate from a Person authorized to bind Seller in acceptable form reflecting such approval;

(ii) NSP, upon request of Seller and at Seller's expense, shall obtain an opinion of its counsel addressed to Seller as to the matters covered by the representations in **Article V** as of the Effective Date. Seller, upon request of NSP and at Seller's expense, shall obtain an opinion of its counsel addressed to NSP as to the matters covered by the representations in **Article IV** as of the Effective Date. The opinions of counsel referenced herein shall be in form and subject to qualifications customary in the locality and for transactions of the type contemplated hereby.

(iii) Provision by each Party to the other Party of a certificate signed by an officer of the providing Party as to matters related to the representations and warranties of the providing Party contained in this Agreement whether any Event of Default exists; whether the providing Party is in compliance with all material duties and obligations imposed by this Agreement, including obligations and duties to third parties and any Governmental Authority; and whether all the requirements and conditions precedent of this Agreement have been accomplished, satisfied or waived; provided, that nothing in this clause (iii) shall require either Party to certify to any statement which such Party believes is not true or correct or to undertake any action or spend any money in order to change a statement.

(iv) Agreement by the Parties upon the substance of **Appendix B**.

(v) Submission by Seller to NSP of a written Plan on how Seller proposes to meet its ongoing obligation to secure Biomass Fuel for the Plant throughout the Term.

(vi) Submission by Seller to NSP of the Project Proforma submitted to Seller's Financiers.

(vii) The relevant sections of the MAPP Agreement which constitute the URGE Test will be attached on or before the Effective Date.

(b) Prior to the Turnover Date:

(i) Seller shall perform an URGE Test which demonstrates that the Plant has achieved 50 MW of Accredited Capacity as of the Turnover Date.

(ii) Seller shall provide NSP with an Environmental Indemnity Agreement in favor of NSP with respect to the Site and the Plant, in the form set forth in **Appendix H**.

3.3 Plant Operation

(a) The Plant is scheduled to be operational on or before December 31, 2002 and shall deliver some amount of Electric Energy on or before such date. Seller's failure to deliver Electric Energy in some amount prior to December 31, 2002 shall constitute a breach of this Agreement. Seller shall use Commercially Reasonable Efforts to cause the Initial Operation Date to occur on or before December 31, 2002.

(b) In the event the Initial Operation Date has not occurred by December 31, 2002 (as such milestone date may be extended due to an event of Force Majeure as provided in **Article IX**), then Seller shall pay liquidated damages and not as a penalty to NSP as follows: (i) **[BEGIN TRADE SECRET INFORMATION]** \$ **[END TRADE SECRET INFORMATION]** per day for the first 180 days of delay; and (ii) **[BEGIN TRADE SECRET INFORMATION]** \$ **[END TRADE SECRET INFORMATION]** per day thereafter, provided, however, that once Seller has paid damages in the amount of **[BEGIN TRADE SECRET INFORMATION]** \$ **[END TRADE SECRET INFORMATION]** in the aggregate under this **Section 3.3(b)**, no additional delay damages shall be due from Seller to NSP pursuant to this **Section 3.3(b)**. The payment of such damages shall constitute NSP's sole remedy resulting from the unexcused delay in the occurrence of the Initial Operation Date. Seller's obligation to pay NSP the damages described in the immediately prior sentence shall continue until the earlier of (i) the Initial Operation Date, (ii) the date of termination of this Agreement by Seller pursuant to **Section 10.5** or (iii) the date on which Seller has incurred the maximum damage liability under this **Section 3.3(b)** as described above. With respect to any damages which Seller is required to pay to NSP pursuant to this **Section 3.3(b)**, NSP shall periodically submit an invoice setting forth the amount of NSP's damages, along with reasonable documentation supporting the nature, cause and amount of such damages. If Seller contests all or any part of NSP's invoice,

Seller shall provide to NSP written notice of its objection and the basis therefore within ten (10) days of receipt of NSP's invoice. The Management Committee shall meet and attempt to resolve the controversy. If the Management Committee does not resolve this matter within five (5) days of referral of the matter to the Management Committee, the Parties shall utilize the mediation/arbitration procedure set forth in **Article XIII** to resolve the dispute. Seller shall pay the undisputed amount set forth in each invoice within twenty (20) days of receipt of the invoice.

(c) Any expenses, costs, damages, losses or penalties incurred by Seller as a result of any extension of the Initial Operation Date requested by Seller, and NSP's approval of any extension, shall not in any way be deemed an acceptance of any such liability by NSP, or an agreement by NSP to reimburse Seller for any such amounts, nor shall it entitle Seller to any adjustment of the Power Price solely as a result of NSP's approval of such extension.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER

Seller makes the following representations and warranties to NSP:

4.1 Existence, Good Standing and Requirements of Law

Seller:

(a) is duly formed, validly existing and in good standing under the laws of the State of Delaware;

(b) has the authority to own and operate its business and property, to own or lease the property it occupies and to conduct the business in which it is currently engaged; and

(c) is duly qualified to do business as a limited liability company in Minnesota and is in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification and where the failure to be so qualified has a material adverse affect on Seller's business, property or ability to perform under this Agreement.

4.2 Subsidiaries and Affiliates

Seller's material subsidiaries and Affiliates shall be substantially as described and contemplated in **Appendix J**.

4.3 Authorization and Validity

The execution, delivery, performance and observance by Seller of its obligations under this Agreement are within Seller's powers, have been duly authorized by all necessary Company action and do not and will not:

(a) require any consent or approval of the members of Seller which has not been obtained;

(b) contravene, conflict or violate any provision of Seller's organizational documents or any Requirements of Law presently in effect having applicability to Seller;

(c) require the consent or approval of or filing or registration with any Governmental Authority or other Person which is not specified as a condition precedent to this Agreement or which is not required to be made after the date hereof; or

(d) result in a breach of or constitute a default under any Contractual Obligation which default will have a material adverse effect on Seller's ability to perform its obligations hereunder.

4.4 Enforceable Obligations

Seller represents and warrants that this Agreement is a legal, valid and binding obligation of Seller and is enforceable against Seller in accordance with its respective terms except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting the enforcement of creditors' rights generally.

4.5 Litigation

No litigation, arbitration, investigation, involuntary bankruptcy or other proceeding and no claim, lien, or judgment is pending or to the best of its knowledge threatened against Seller, or any of its Affiliates:

(a) with respect to this Agreement and the transaction contemplated thereby, the Site or the Plant; and

(b) which would, if adversely determined, have a material adverse effect on the ability of Seller to perform its obligations under this Agreement.

4.6 Permits

All Permits required to be obtained by Seller from any Governmental Authority for the construction, operation and maintenance of the Plant are expected by Seller to be obtainable by a date sufficient to allow Seller to achieve the Initial Operation Date by December 31, 2002 and no unusual or burdensome conditions are expected by Seller to be placed upon or created by such Permit; and the anticipated use of the Plant complies with all anticipated restrictive covenants affecting the Site.

4.7 Taxes

Seller has filed or caused to be filed all required tax returns and has paid, or shall cause to be paid, all taxes, fees or other charges shown to be due and payable on said returns or on any assessments made against it or any of its property, or imposed on it or any of its property by any Governmental Authority; and no tax liens have been filed and no claims are being asserted with respect to any such taxes, fees or other charges.

4.8 Compliance with Environmental Laws

Seller's business has been, is currently and such business together with the Plant and the Site will in the future be operated by Seller in material compliance with all Environmental Laws, Permits, licenses, rules or orders promulgated, issued or otherwise required by a Governmental Authority having jurisdiction or enforcement power under any Environmental Law. The Seller, after due inquiry, has no knowledge of and has not received notice of any past, present or future actions or plans which, with respect to the Site or the Plant, may interfere with or prevent compliance with Environmental Laws or may give

rise to any Environmental Liability or to any common law or legal liability or otherwise form the basis of any claim, action, demand, suit, proceeding, hearing, study or investigation under any Environmental Law which would, if adversely determined, have a material adverse effect on the condition of Seller taken as a whole or the ability of Seller to perform its obligations under this Agreement. There is no civil, criminal or administrative action, suit, demand, claim, investigation or proceeding pending or to Seller's best knowledge after due inquiry and investigation, threatened against the Seller relating to compliance of the Site or the Plant with any Environmental Law, and Seller has not received any hearing notice, demand letter, notice of violation, claim or notice of assessment with respect to compliance of the Plant or the Site with any Environmental Law which would, if adversely determined, have a material adverse effect on the condition of Seller taken as a whole or the ability of Seller to perform its obligations under this Agreement. Seller's business, the Plant and the Site will comply in full with the Environmental Indemnity Agreement and all Permits.

4.9 Fuel Supply

Seller intends that the contracts that Seller will enter into for the supply and transportation of Biomass Fuel to the Plant, together with subsequent contracts, will provide reliable supply and means of delivery of Biomass Fuel of quality and in quantity sufficient to meet Seller's Electric Energy delivery requirements under this Agreement and the requirements of Minn. Stat. Section 216B.2424 in effect on the date of this Agreement for the applicable period of time.

4.10 Seller's Authorization

Seller is or will be authorized by all relevant Governmental Authorities to sell Electric Energy to NSP.

4.11 NSP's Reliance

Seller understands and agrees that NSP:

(a) Is relying upon the Electric Energy provided by the Seller pursuant to this Agreement to meet NSP's obligations to supply electricity to its

customers and to meet the obligations of Minn. Stat. Sections 216B.2424 and 116C.771 in effect on the date hereof;

(b) Is not making any representations or warranties about siting, designing, licensing, permitting, constructing or operating a power plant or the Plant or about the legislation, load growth forecast or other factors that may cause, create or contribute to NSP's need for Electric Energy or associated Capacity except as otherwise expressly stated herein, on which Seller is relying; and

(c) Is relying on the representations and warranties of Seller and that such reliance is reasonable.

4.12 Indemnification

If during the Term of this Agreement any of the representations and warranties made by Seller become untrue, Seller agrees to use Commercially Reasonable Efforts to correct the circumstances giving rise to the inaccuracy and shall indemnify and hold NSP harmless against any and all claims, demands, suits, actions, costs and liabilities, damages, losses or judgments arising out of, relating to or resulting from any such event, as well as against any fees, costs, charges, or expenses (including attorneys' fees) which NSP might incur in the defense of any such claim, suit, action or similar demand made or filed which may adversely affect NSP as a consequence of such event. Satisfaction by Seller of its indemnity obligations to NSP under this **Section 4.12** shall constitute NSP's sole remedy for any inaccuracy of any of the foregoing representations and warranties by Seller.

4.13 Pricing and Project Proforma

(a) The pricing provisions set forth in **Appendix A** and in **Article II** constitute the lowest price of Electric Energy Seller is willing or able to accept under the terms and conditions of this Agreement.

(b) The Project Proforma dated August 30, 2000 and submitted to NSP on or before the date of this Agreement is the Project Proforma used by Seller as of the date of execution of this Agreement and that it was prepared in good faith and, to Seller's best knowledge, is true, complete and correct and contains all of Seller's financial assumptions regarding the Plant, including revenue and expense amounts.

**ARTICLE V
REPRESENTATIONS AND WARRANTIES OF NSP**

NSP represents and warrants to Seller as follows:

5.1 Existence and Good Standing

NSP is a corporation duly organized, validly existing and in good standing under the laws of the State of Minnesota.

5.2 Authorization and Validity

(a) The execution, delivery, and performance by NSP of its obligations under this Agreement are within NSP's corporate powers, do not conflict with NSP's Articles of Incorporation or Bylaws, have been duly authorized by all necessary corporate actions, and does not require the consent or approval or filing or registration with any Governmental Authority or other Person which is not specified as a condition precedent to this Agreement.

(b) This Agreement is a legal, valid and binding obligation of NSP and is enforceable against NSP in accordance with its respective terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization or similar laws affecting the enforcement of creditors' rights generally, and public utility laws and regulations enforced by MPUC or other regulatory agencies, provided that upon receiving the MPUC Approval, further action or inaction by the MPUC, and changes in applicable public utility laws and regulations, including the Biomass Mandate, shall not affect NSP's obligation to Seller under this Agreement.

5.3 Litigation

No litigation, arbitration, investigation, involuntary bankruptcy or other proceeding and no claim, lien, or judgment is pending or to the best of its knowledge threatened against NSP with respect to this Agreement and the transaction contemplated thereby, the Site or the Plant or, which would, if adversely determined, have a material adverse effect on the ability of NSP to perform its obligations under this Agreement.

5.4 NSP's Authorization

NSP is or will be authorized by all relevant Governmental Authorities to perform its obligations under this Agreement.

5.5 Seller's Reliance

NSP understands and agrees that Seller is relying on the representations and warranties of NSP, that such reliance is reasonable, and that Seller will continue to reasonably rely on each of the representations and warranties.

5.6 Indemnification

If during the Term of this Agreement any of the representations and warranties made by NSP become untrue, NSP agrees to take Commercially Reasonable Efforts to correct the circumstances giving rise to the inaccuracy and shall indemnify and hold Seller harmless against any and all claims, demands, suits, actions, costs and liabilities, damages, losses or judgments arising out of, relating to or resulting from any such event, as well as against any fees, costs, charges, or expenses (including attorneys' fees) which Seller might incur in the defense of any such claim, suit, action or similar demand made or filed which may adversely affect Seller as a consequence of such event. Satisfaction by NSP of its indemnity obligations to Seller under this **Section 5.9** shall constitute Seller's sole remedy for any inaccuracy of any of the foregoing representations and warranties by NSP.

ARTICLE VI SELLER'S OBLIGATIONS

During the Term of this Agreement, Seller hereby agrees to be bound by and to perform each of the following affirmative obligations:

6.1 General Operations of the Plant

Seller shall use Commercially Reasonable Efforts to:

(a) Design and construct the Plant and provide Electric Energy in accordance with Prudent Electric Generation Practices in order to perform its obligations under this Agreement; and

(b) Operate, maintain, and repair the Plant in accordance with this Agreement, the Interconnection Agreement, all Requirements of Law, Contractual Obligations, Permits, and Prudent Electric Generation Practices. To the extent any such standards impose on Seller the obligation to act in a manner below Prudent Electric Generation Practice, Seller's conduct shall at a minimum conform to Prudent Electric Generation Practice. Seller shall obtain any necessary authorization from FERC or other Governmental Authority necessary for Seller to satisfy its obligations to sell Electric Energy in accordance with this Agreement.

(c) Seller shall not schedule or take any Planned Outages or Planned Derates of the Plant during the On Peak Periods unless required in connection with reasonably prudent and safe operation of the Plant. Seller shall use Commercially Reasonable Efforts to maximize the Plant's availability during On-Peak Periods.

6.2 Fuel

(a) NSP shall not be obligated to purchase Electric Energy generated from the Plant using fuel other than Biomass Fuel. To that end, Seller shall at its own cost, use Commercially Reasonable Efforts to procure and maintain Biomass Fuel supplies and transportation of those supplies to the Plant in amounts and under terms and conditions sufficient to meet Seller's obligations under this Agreement.

(b) Seller shall have the right, in its sole discretion, to change the source or composition of the Biomass Fuel from poultry litter to any other Biomass Fuel.

6.3 Insurance

Seller shall use Commercially Reasonable Efforts to obtain and maintain the policies of insurance in the amounts and during the times required by the Financier in connection with the financing of the construction and operation of the Plant. Such insurance policies shall list NSP as an additional insured.

6.4 Points of Interconnection and Delivery

(a) The Parties recognize that Seller must enter into an Interconnection Agreement with the Interconnection Provider into whose system the Plant will be interconnected. NSP, in its capacity as power purchaser under this Agreement, has no right or power to enter into or accept terms for the Interconnection Agreement, whether or not the Plant is located on the NSP System.

(b) Seller shall use Commercially Reasonable Efforts to enter into an Interconnection Agreement to provide for delivery of Electric Energy from the Point of Interconnection to the Point of Delivery consistent with applicable law, including without limitation any applicable regulations of FERC or other regulatory authority exercising jurisdiction over the Interconnection Provider's System.

(c) Seller shall be obligated to provide that the Interconnection Agreement include provisions with respect to (i) the interconnection of the Plant in a timely manner with the Interconnection Provider's System, including the upgrade of the Interconnection Provider's System as necessary to receive power

at the Point of Interconnection and any upgrades of the Interconnection Provider's System that may be required as a result of any transmission path designated by Seller to transmit the Electric Energy from the Point of Interconnection to the Point of Delivery, (ii) communications and control interfaces between the Plant and the Interconnection Provider's System Control Center thereto, (iii) the technical requirements for the electrical connection of the Plant to the Interconnection Provider's System, and (iv) the power quality specifications for reliable delivery of electricity to the Interconnection Provider's System.

(d) Seller shall be solely responsible for any and all transmission or wheeling charges, if applicable, and Transmission Losses for the delivery of Electric Energy to the Point of Delivery. NSP shall be solely responsible for arranging and paying for transmission and Transmission Losses from the Point of Delivery.

6.5 [RESERVED]

6.6 Fines and Penalties

Seller shall pay when due all fees, fines, penalties or costs incurred by Seller or its agents, employees or contractors for noncompliance by Seller, its agents, employees, or contractors, with any provision of this Agreement, or any Contractual Obligation, Permit or Requirements of Law except for such fines, penalties and costs which are being actively contested in good faith and with due diligence by Seller. If fees, fines, penalties, or costs are owed by NSP to any Governmental Authority due to noncompliance by Seller with this Agreement, any Requirements of Law with which compliance is required by this Agreement, any Permit or Contractual Obligation, or, if the work of Seller or any of its contractors or subcontractors is delayed or stopped by order of any Governmental Authority due to Seller's noncompliance with any Requirements of Law with which compliance is required by this Agreement, Permit, or Contractual Obligation, then Seller shall indemnify and hold NSP harmless against any and all losses, liabilities, damages, and claims suffered or incurred by NSP, including claims for indemnity or contribution made by third parties against NSP, except to the extent NSP recovers any such losses, liabilities or damages through other provisions of this Agreement, from its own sources (including insurance) or from any other Person; provided, however, that Seller's indemnification of NSP under this **Section 6.6** is contingent upon NSP providing Seller with prompt notice of any such losses, liabilities, damages or

claims and granting Seller the right to initiate, participate in and control any litigation or other action between NSP and any third parties which may arise in connection with such losses, liabilities, damages or claims.

6.7 Taxes and Fees

Seller, during the Term of this Agreement, shall pay, or cause to be paid, all present or future federal, state, municipal, or other lawful taxes or fees applicable to Seller or the Plant or by reason of the sale of Electric Energy under the Agreement except as specifically provided in **Section 2.5** and **Section 2.6**. Seller shall receive the benefit of any new tax credits, allowances, exemptions or other tax credits related to the Plant except as specifically provided in **Section 2.5** and **Section 2.6**. If the application of any law or regulation or Requirements of Law imposed by any Governmental Authority (including any interpretation thereof) adversely affects NSP's liability for additional taxes, fees, assessments or impositions of any type or kind for contributions in aid of construction related to the performance of obligations under this Agreement ("**Additional Taxes**"), such Additional Taxes shall be paid by Seller in the first instance and shall be reimbursed to Seller as part of the Special Pass-Through Payment under Section 2.6.

6.8 Notification of Electric Energy Forecasts and Operational Status

(a) Seller shall use Commercially Reasonable Efforts to report to NSP daily by telephone call, facsimile transmission, electronic mail, or courier service received by NSP before 8:00 a.m. Central Time regarding the operational status of the Plant, including the status of any Outage or Derate, and including, without limitation, any Forced Outage, Planned Derate, Planned Outage or other operating constraints or limitations, unless other notification procedures are otherwise agreed to by the Coordinating Committee.

(b) Seller shall use Commercially Reasonable Efforts to inform NSP within ten (10) minutes or as promptly as possible of any significant unexpected changes in the status of the Plant, including emergencies, accidents, faults, or unplanned Outages or Derates that alter plant Capacity by 5000 kW or more. Longer notification periods or higher kW amounts may be agreed upon by the Coordinating Committee.

6.9 Daily Scheduling and Control

Seller agrees that the Plant shall be dispatchable by NSP only an Emergency as provided in **Section 6.10** and in accordance with the Interconnection Agreement. Seller shall use Commercially Reasonable Efforts to promptly comply with all such instructions, directions, or orders from NSP.

6.10 Emergency Operation

(a) Seller agrees that NSP shall have unilateral authority during Emergency conditions to change production schedules, generation voltages and other Plant values in order to maintain system security, stability, continuity of service or to satisfy MAPP procedures or operating requirements; provided, however, that any Emergency event(s) resulting in curtailment or shutdown of the Plant caused by or resulting from light load or light demand conditions on the NSP System ("**Light Load Emergencies**") shall be accounted for separately and to the extent Light Load Emergencies result in the demonstrable loss of generation in excess of 2190 MWh per Contract Year. Any such excess shall be reimbursed to Seller in accordance with **Section 2.2(g)**, provided that the amount of MWh associated with such Light Load Emergencies shall be the average of the amount of Electric Energy generated by the Plant during the four (4) hours immediately preceding such curtailment or shutdown. Seller shall use Commercially Reasonable Efforts to respond as promptly as practicable to the direction of the Interconnection Provider's System Control Center during an Emergency.

(b) Each of the Parties shall use Commercially Reasonable Efforts to alleviate any Emergency or Force Majeure event that adversely affects such Party's ability to perform its obligations hereunder, and restore normal performance hereunder as promptly as reasonably possible.

6.11 Station Auxiliary Power

(a) Seller shall provide its own Station Auxiliary electric power from the gross output of its on-site generators when they are operating.

(b) At Seller's option, and if the Plant is located in NSP's retail service area, NSP shall provide Seller with standby and supplemental electric power in accordance with the then effective retail tariffs, as such may be changed from time to time. If the Plant is located outside NSP's retail service area, Seller shall be responsible for obtaining standby and supplemental power at no additional expense to NSP.

**[PUBLIC VERSION - TRADE
SECRET INFORMATION
REDACTED]**

6.12 NSP Inspections

Seller shall allow NSP, its representatives and agents, upon reasonable prior notice, to visit the Site and Plant to, among other things, examine the Site and Plant during and after construction, review Seller's operating practices, and examine the operating logs, financial, billing and other records maintained by Seller in connection with this Agreement, the Site and Plant. NSP shall have access to all operation and maintenance logs for the Plant. While conducting such visits, NSP and its representatives and agents shall use due care to avoid interfering with the operation of the Plant and shall comply with all safety and security rules in place relating to the Plant and Site. NSP and its representatives and agents shall maintain the confidentiality of all proprietary or confidential information obtained during any such visit.

6.13 Operational Data

(a) Seller shall provide NSP with all Plant operational data required by NSP to prepare reports to or answer reasonable information requests from MAPP, NERC or any Governmental Authority regarding Plant operations. In addition, upon the reasonable request of NSP, Seller shall provide to NSP copies of all its submittals to MAPP or NERC related to the operation of the Plant. Seller shall use Commercially Reasonable Efforts to provide this information to NSP in sufficient time for NSP to review it and meet any submission or response deadlines imposed by Requirements of Law or the requesting organization.

(b) Seller shall provide NSP with Plant operating data reasonably required for NSP to respond to information requests of it from any Governmental Authority, or any other Person achieving party or intervenor status in any NSP rate or regulatory proceeding before any Governmental Authority, or in any judicial proceeding involving the Plant. Seller shall use its Commercially Reasonable Efforts to provide this information to NSP in sufficient time for NSP to review it and meet any response deadlines imposed by any Requirements of Law or by the requesting Person.

6.14 Decommissioning

Seller shall be responsible for all costs to decommission the Plant and shall hold NSP harmless from and indemnify NSP from any such costs; provided, however, that nothing herein shall prohibit Seller from selling the

Plant to any other Person and/or requiring such purchaser or any other third-party to decommission the Plant; provided, further, that any such sale shall not relieve Seller's obligations to NSP under this **Section 6.14**.

6.15 Records

(a) Seller and NSP shall use Commercially Reasonable Efforts to keep complete and accurate operating and other records and all other data for the purposes of proper administration of this Agreement, including such records as may be required by any Governmental Authority, MAPP (in the form required by MAPP), NSP, the Coordinating Committee and as otherwise required by Prudent Electric Generation Practice.

(b) Seller shall use Commercially Reasonable Efforts to maintain an accurate and up-to-date operating log at the Plant with records of real and reactive power production for each clock hour; changes in operating status; and any unusual conditions found during inspections.

(c) Seller shall use Commercially Reasonable Efforts to keep availability records in accordance with NERC's Generating Availability Data System (GADS) and report the same to NSP on a monthly basis.

(d) Seller and NSP shall use Commercially Reasonable Efforts to maintain all records, kept pursuant to this Agreement, for a minimum of six (6) years after the creation of the record or data and for any additional length of time required by any Governmental Authority with jurisdiction over Seller or NSP provided, however, that Seller and NSP shall not dispose of or destroy any such records even after six (6) years without thirty (30) days prior written notice to the other Party; provided, however, that no such notice shall be required with respect to records disposed after the sixth anniversary of the Termination Date.

6.16 Additional Information

Subject to the confidentiality provisions of this Agreement, Seller shall use Commercially Reasonable Efforts to provide to NSP such information regarding the permitting, engineering, design, construction, operation or condition of the Plant, financial or otherwise, or other data concerning the Plant as NSP may, from time to time, reasonably request in order to confirm, verify or monitor performance of this Agreement.

6.17 Annual Certification

On May 1 of each Contract Year Seller shall provide to NSP a certificate from an authorized officer of Seller stating: (1) whether or not each representation and warranty by Seller set forth in **Article IV** remains accurate, true and correct; (2) whether or not Seller is in compliance with all duties and obligations under this Agreement and (3) that no Event of Default or Potential Event of Default exists as of the date of the certificate.

6.18 Accurate Documents

All documents required to be delivered by Seller to NSP under this Agreement shall be true, accurate and complete with no intentional material misstatement of fact and no intentional omission of material fact or of any fact necessary to make the statements contained therein not misleading.

6.19 Liens

During the Term of this Agreement, Seller agrees to indemnify and hold NSP harmless from all claims, judgments, losses, damages and defense costs, including reasonable attorneys fees, incurred or suffered by NSP as a result of the imposition or pendency of any (other than a Lien in favor of NSP or its Affiliates) against the Seller, the Plant or the Site.

6.20 Collateral Assignment

NSP shall not be required to enter into collateral assignments of this Agreement except as provided by this **Section 6.20**. Subject to the terms and conditions of this Agreement, NSP shall, prior to the Effective Date and upon 30 days prior written request by Seller, execute a Consent and Agreement with respect to a collateral assignment hereof in favor of the Financier(s) in a form required by the Financier(s) and reasonably acceptable to NSP; provided that (i) Seller shall reimburse NSP for all reasonable costs incurred by NSP in connection therewith, including reasonable attorneys' fees, (ii) NSP's duty to make factual statements or representations in such Consent and Agreement shall be contingent upon the truthfulness and accuracy of such statements or representations at the time the consent to assignment is delivered, and (iii) NSP shall not be required to agree to any term in such Consent and Agreement which materially affects NSP's' rights under this Agreement. The Parties

further agree that any Consent and Agreement or collateral assignment may provide for the designation by any assignee of a receiver or new operator provided that such operator has reasonable power plant operating experience and is willing to abide by the terms and conditions of this Agreement.

6.21 Notice of Default

Seller shall provide written notice to NSP within ten (10) Business Days of: (i) Seller's failure to (a) engage in business of the same type as now conducted by it, or reasonably related to the type now conducted by it, including, but not limited to, the construction, operation, and maintenance of the Plant, (b) preserve, renew and keep in full force and effect its organizational existence in good standing, (c) take Commercially Reasonable Efforts to obtain and maintain all Permits, rights, privileges, licenses, and franchises necessary or desirable in the ordinary course of business or (d) comply with all Contractual Obligations and material Requirements of Law; or (ii) Seller's receiving notice or becoming aware of the occurrence of any Event of Default or Potential Event of Default under this Agreement under any Contractual Obligations, which default would be reasonably likely to materially and adversely affect the ability of Seller to perform its obligations under this Agreement.

6.22 Management of Seller

During the Term, Fibrowatt LLC, a Delaware limited liability company, shall remain the managing member of Seller unless NSP provides its prior written consent of a change in the identity of Seller's managing member, which consent shall not be unreasonably withheld.

6.23 Employment Laws

During the Term, Seller agrees to implement and comply with its own internal policies, practices and procedures relating to equal opportunity in employment as well as to comply with all federal, state and local employment laws and regulations applicable to Seller.

**ARTICLE VII
[RESERVED]**

**ARTICLE VIII
COORDINATING AND MANAGEMENT COMMITTEES**

8.1 Coordinating Committee

(a) There shall be a Coordinating Committee which shall be responsible for establishing and enforcing such practices, rules, and procedures as may be required to coordinate the operations of the Plant and the Interconnection Provider's System, for the purpose of allowing for reliable, safe and efficient interchange of Electric Energy and Capacity from Seller to NSP, including, but not limited to, compliance with FERC, NERC, MAPP and NSP operating standards and requirements, Prudent Electric Generation Practice, and the obligations of this Agreement and the Interconnection Agreement.

(b) Each Party shall appoint one (1) authorized representative to the Coordinating Committee and one (1) alternate who may act in the absence of such representative. Each Party shall have one (1) vote.

(c) The Coordinating Committee shall keep written summary minutes of all meetings and decisions.

(d) Routine expenses incurred by Coordinating Committee members while carrying out their duties under this Agreement shall be borne by the represented Party. Special expenses shall be paid as determined by the Coordinating Committee.

(e) The duties and authority of the Coordinating Committee shall be limited to the following:

(i) Coordination of generation and transmission maintenance schedules.

(ii) Coordination of system operations between Seller and NSP to meet the applicable guidelines established by NERC, procedures implemented by MAPP and the requirements of this Agreement.

(iii) Review of current and expected operations for their impact on system security and reliability, and establish procedures and operating guidelines as appropriate to ensure secure operation in an economic manner.

(iv) Coordination of the exchange of operating data.

(v) Collection and analysis of operating data pertinent to the Parties' operations and arrangement for conducting such network studies as may be necessary to solve operating problems.

(f) Each year the Coordinating Committee shall develop a three (3) year Planned Outage and Planned Derate schedule for the Plant. Seller shall have final approval for all Planned Outage and Planned Derate schedules provided such approvals shall be consistent with Prudent Electric Generation Practice. The Planned Outage and Planned Derate schedule shall be set in conjunction with planned outages by other energy suppliers, NSP plants and the Interconnection Provider's System and the Plant Substation.

(g) The Coordinating Committee shall not have the authority to amend this Agreement. This Agreement shall control if there is a conflict between the terms of this Agreement and the terms of any Coordinating Committee minutes or other documents or procedures.

(h) The Coordinating Committee shall meet at the request of either Committee Member. Written minutes shall be kept of all meetings and copies of such minutes shall be mailed within ten (10) working days after each meeting to each member and each alternate member of the Coordinating Committee. A unanimous vote of the Committee is required to take any action. A decision by the Coordinating Committee as set forth in the minutes will be considered final and binding thirty (30) days after mailing of final minutes unless written objection is made thereto by either Party.

(i) If written objection is made by either Party prior to the expiration of the thirty (30) day period, the matter shall be referred to the Management Committee.

8.2 Management Committee

There shall be a Management Committee consisting of a member or designated alternate from each Party.

(a) The Management Committee shall have the following authority and responsibilities:

(b) Resolution of problems, disputes or misunderstandings relating to or arising from the performance, administration or breach of this Agreement, including, but not limited to, matters referred to it by the Coordinating Committee.

(i) Proposal of amendments to this Agreement for consideration and action by the Parties.

(ii) The Management Committee shall have no direct control over the operation of the Plant, which control shall be held solely by Seller, subject to this Agreement.

(c) The Management Committee shall meet at the request of either Party. Written minutes shall be kept of all meetings and decisions. Copies of all minutes shall be mailed within ten (10) working days after each meeting to each member and designated alternate member of the Management Committee. A unanimous vote of the Management Committee is required to take any action. A decision of the Management Committee as set forth in the minutes will be considered final and binding on the Parties thirty (30) days after the mailing of final minutes unless written objection is made thereto by either Party.

(d) If written objection is made by either Party prior to the expiration of the thirty (30) day period, the Management Committee shall have sixty (60) days after the mailing of the objection to reach agreement. If agreement is not reached within this sixty (60) day period, the matter shall be resolved in accordance with **Article XIII**.

**ARTICLE IX
FORCE MAJEURE**

9.1 Force Majeure

The performance of each Party under this Agreement is subject to interruptions, delay or excusal (as the case may be) due to an event of Force Majeure. The term "Force Majeure" shall mean an event or circumstance beyond the control of the Party affected, which, by exercise of due diligence and foresight, could not reasonably have been avoided, including, but not limited to, an Emergency, flood, storm, strike, earthquake, epidemic, war, riot, civil disturbance, sabotage and act of God or any other cause beyond the control of the Party affected. Specifically as it relates to Biomass Fuel, Force Majeure shall include any natural disaster or other natural phenomenon of an exceptional, inevitable, or irresistible character, including but not limited to, flood, fire, drought, earthquake, and crop failure resulting from climatic conditions, infestations, or disease.

9.2 Remedial Action

A Party shall not be liable to the other Party in the event it is prevented from or delayed in performing its obligations hereunder in whole or in part due to an event of Force Majeure. To the extent an event of Force Majeure prevents either Party from performing and the other Party's performance is contingent on such prevented performance, then the other Party's obligation to perform shall be excused. The Party rendered unable to fulfill any obligation of this Agreement by reason of an event of Force Majeure shall take all action reasonably necessary to remove such inability with due speed and diligence and nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed; provided, however, that nothing herein shall require the expenditure of extraordinary amounts or the purchase of power from a third party for delivery to NSP hereunder in order to remove any performance inability due to Force Majeure.

9.3 Exclusions from Definition of Force Majeure

Notwithstanding anything in this Agreement to the contrary, "Force Majeure" shall not mean or include:

(a) Inclement weather which is common and predictable in the area. For purposes of this exclusion, common inclement weather shall not include gales, floods or tornadoes directly affecting the Plant or the Site.

(b) Unavailability of equipment, spare parts or repairs for the Plant or at the Point of Delivery except to the extent caused by a qualifying event of Force Majeure.

(c) Any breakdown of a mechanical or electrical component of the Plant to the extent caused by the design or construction of such component(s) or the failure to operate or maintain such component in accordance with Prudent Electric Generation Practice.

(d) Any full or partial curtailment in the delivery or receipt of the electric output of the Plant to the Point of Delivery which is caused by any third party including, without limitation, the Interconnection Provider, any vendor or supplier of the Plant or NSP, except to the extent caused by a qualifying event of Force Majeure.

(e) Changes in economic or market conditions that affect performance by either Party under this Agreement.

(f) Economic dispatch of the Plant for any reason.

(g) Changes in law that affect performance by either Party under this Agreement.

9.4 Notice

In the event of any delay or nonperformance resulting from Force Majeure or any Emergency or an event of Uncontrollable Force under the MAPP Agreement, the Party suffering the event of Force Majeure, an Emergency or an event of Uncontrollable Force under the MAPP Agreement shall, as soon as practicable, notify the other Party verbally and, no later than three (3) business days after occurrence of the Force Majeure event, shall notify the other Party in writing of the nature, cause, time of commencement and the anticipated extent of the delay.

ARTICLE X
DEFAULT/REMEDIES/TERMINATION

10.1 Event of Default by NSP

The following shall each constitute an Event of Default by NSP:

- (a) **[Reserved]**.
- (b) NSP fails to make any payment (together with any accrued interest) within ten (10) days after such payment is due in accordance with the terms of this Agreement.
- (c) After the Turnover Date, (i) an event of Force Majeure occurs which is not eliminated by NSP and which causes NSP not to accept Electric Energy tendered for delivery under this Agreement for more than thirty (30) consecutive days or (ii) NSP refuses, for any reason other than the occurrence of a Force Majeure events that precludes acceptance, to accept Electric Energy tendered for delivery under this Agreement for either ten (10) consecutive days or thirty (30) nonconsecutive days, in each case, in any 365 day period.
- (d) NSP fails to cure any breach of any other material provision of this Agreement not specifically enumerated herein, within ninety (90) days after receiving written notice of such default from the other Party; provided, however, that failure to complete the cure of such breach within the ninety (90) day period shall not constitute an Event of Default if the breach is not capable of being cured with ninety (90) days and NSP is using its best efforts to cure the breach in the shortest possible time, not to exceed 180 days in the aggregate.

10.2 Events of Default by Seller

The following shall each constitute an Event of Default by the Seller:

- (a) Before the Effective Date, Seller fails to cure or commence and diligently pursue action reasonably designed to cure, any breach of any material provision of this Agreement not specifically enumerated herein, within thirty (30) days after receiving written notice of such default from NSP, unless such default is contested in which case the thirty (30) day period shall commence on the date on which the dispute is resolved against Seller, provided

that occurrence of the Effective Date during the pendency of any such dispute shall not relieve Seller of the obligations of this paragraph.

(b) After the Turnover Date, the Plant being unavailable to provide Electric Energy for one hundred eighty (180) consecutive or non-consecutive days in any three hundred sixty-five (365) day period commencing on the Initial Operation Date unless such unavailability is due to (i) an event of Force Majeure (including, without limitation, a breach of this Agreement by NSP or the Interconnection Agreement by the Interconnection Provider); or (ii) an inability by NSP to accept Electric Energy.

(c) Prior to the Initial Operation Date, the material suspension by Seller of its performance for any reason, including an event of Force Majeure, for a period exceeding six (6) months, or after the Turnover Date, the suspension of Seller's performance for any reason, including an event of Force Majeure, for a period exceeding eighteen (18) months.

(d) Seller fails to make any payment (together with accrued interest) within ten (10) days after such payment is due in accordance with this Agreement.

(e) Seller fails to cure any breach of any other material provision of this Agreement not specifically enumerated herein, within ninety (90) days after receiving written notice of such default from the other Party; provided, however, that such failure to complete the cure of such breach within the ninety (90) day period shall not constitute an Event of Default if the Event of Default is not capable of being cured within ninety (90) days and Seller is using its best efforts to cure the breach in the shortest possible time, not to exceed 180 days in the aggregate.

10.3 Notice of Event of Default; Cure; Waiver

(a) Upon the occurrence of an Event of Default, the non-defaulting Party shall have the right to terminate this Agreement only as provided in **Sections 10.3(b), 10.5 and 10.6** but may pursue any and all other legal and equitable remedies, including specific performance, and all actual damages and remedies as provided in this Agreement against the defaulting Party and shall be entitled if it prevails to recover from the defaulting Party all costs (including reasonable attorneys' fees) incurred by the non-defaulting Party in connection with the pursuit of such remedies.

(b) The right of termination due to an Event of Default under this Agreement shall be subject to written notice of the Event of Default.

(i) For an Event of Default set forth in **Sections 10.1(b), 10.1(d) and 10.2(b) and 10.2(e)**, the defaulting Party shall be provided a period of thirty (30) days from the date of receipt of the notice to cure the Event of Default prior to the exercise by the nondefaulting Party of its right to terminate this Agreement pursuant to **Section 10.6**.

(ii) For an Event of Default set forth in **Section 10.1(c), 10.2(a), 10.2(c), and 10.2(d)**, the nondefaulting Party's right of termination under **Section 10.6** of this Agreement shall be subject only to written notice of the Event of Default to the defaulting Party, without opportunity to cure.

(c) Any waiver at any time by either Party of its rights with respect to an Event of Default under this Agreement, or with respect to any other matters arising in connection with this Agreement, shall not be a waiver with respect to any subsequent default or other matter.

(d) The right of the nondefaulting Party to seek specific performance by the defaulting Party shall not be affected by **Sections 10.3 and 10.4** unless and until the nondefaulting Party elects to terminate this Agreement.

10.4 Suspension

(a) NSP may suspend its purchases of Electric Energy and associated Capacity under this Agreement if an Event of Default set forth in **Section 10.2(e)** occurs upon an additional two days written notice to Seller by NSP that it intends to pursue such suspension right. NSP must resume its purchases of Electric Energy and associated Capacity under this Agreement within one (1) business day of Sellers' cure of the default.

(b) Seller may suspend delivery of Electric Energy and associated Capacity to NSP under this Agreement (and may sell such Electric Energy and associated Capacity to any third-party) if either (i) an Event of Default set forth in **Section 10.1(c)** occurs or (ii) NSP cannot or does not purchase Electric Energy hereunder for more than two (2) consecutive days due to Force Majeure or for any other reason that does not require NSP to pay for such Electric Energy as if it had been delivered and accepted by NSP hereunder, in each case upon two (2) days prior written notice to NSP by Seller that it intends to pursue such suspension right. Seller shall resume its sale of Electric Energy under

this Agreement as soon as practicable in light of Seller's alternative sales to one or more third parties.

10.5 Special Termination

(a) If the Initial Operation Date has not occurred by December 31, 2003, then in lieu of continuing to pay liquidated damages pursuant to **Section 3.3(b)**, either Party, in its sole discretion, may terminate this Agreement without additional payment or liability to the other Party.

(b) Either Party may terminate this Agreement without liability to the other Party in the event the Plant sustains property damage equal to or in excess of eighty percent (80%) of the replacement cost of the Plant and the Seller or Financiers have elected, in their sole discretion, not to rebuild the Plant.

(c) If Seller, in its sole discretion, determines that the Market Rate is unacceptable, Seller may, upon written notice to NSP, terminate this Agreement effective at the time specified in its notice of termination.

10.6 Notice of Termination

Subject to dispute resolution under **Article XIII**, if either Party is entitled to terminate this Agreement in accordance with the terms hereof, such Party may terminate this Agreement at its sole discretion by notifying the other Party, and the effective date of termination shall be 10 Business Days following receipt of such notice unless the termination is due to an Event of Default or the failure of an event to occur and such Event of Default is cured or the event occurs, in either case, within such 10 Business Day period or unless otherwise agreed to by both of the Parties.

10.7 Other Damages

(a) For all claims, causes of action and damages not expressly included in the liquidated damages provisions of this Agreement, the Parties shall be entitled to the recovery of actual direct damages allowed by law unless otherwise limited by this Agreement.

(b) Except as otherwise specifically and expressly provided in this Agreement, no Party shall be liable to the other Party under this Agreement for any indirect, special, consequential or punitive damages, including, but not limited to, loss of use, loss of revenue, loss of profit, interest charges, cost of capital, or claims of its customers to which service is made, from any cause. Notwithstanding the foregoing, the arbitrators under **Article XIII** can award consequential, special, indirect or punitive damages against a Party that willfully and intentionally violates its obligations under this Agreement with knowledge that the other Party is suffering, or is likely to suffer, such consequential, special or direct damages if the arbitrators determine that such an award appears necessary to prevent repetition of such willful misconduct.

10.8 Specific Performance

Seller recognizes that the Plant is expected to constitute a portion of the generating supply available to NSP and that NSP is subject to certain statutory requirements to provide biomass generation of the type and in the amounts represented by the Plant. Excepting obligations hereunder which are subject to Commercially Reasonable Efforts, Seller and NSP each hereby waive any and all rights to invoke any defenses to their respective obligations to perform under this Agreement based on the doctrines of commercial impracticability or frustration of purpose. Subject to the restrictions set forth in **Section 10.5**, Seller and NSP each further agree that, if it defaults under this Agreement, and if the other Party thereafter brings an action seeking specific performance of this Agreement, it shall not defend against such action on the basis of the other Party having an adequate remedy at law.

ARTICLE XI INDUSTRY RESTRUCTURING

(a) The Parties recognize and agree that the price paid for the Electric Energy under this Agreement exceeds the price NSP would pay for the long term purchase of an equivalent amount of electric energy and capacity from a generating facility which burns natural gas as its primary fuel.

(b) The Parties agree that the amount to be paid by NSP hereunder is prudent and reflects the additional costs associated with the requirement that NSP purchase electric energy generated from Biomass Fuel.

(c) There shall be no adjustment in the Power Price if, after the MPUC Approval, any Governmental Authority changes any law, rule or regulation that operates to prevent NSP from recovering any payment due under this Agreement from its ratepayers. In such a case, Seller and NSP shall negotiate in good faith regarding potential amendments to this Agreement to improve NSP's ability to recover payments due hereunder; provided, however, that Seller is not required to accept any amendment to this Agreement which Seller considers, in Seller's sole discretion, to be adverse to Seller, and, absent mutual agreement of the Parties to any amendment, this Agreement shall remain in full force and effect in accordance with its unamended terms as then in effect.

ARTICLE XII INDEMNIFICATION

Seller and NSP agree to defend, indemnify and hold each other, and their respective officers, directors, employees, and agents, harmless from and against all claims, demands, suits, actions, losses, liabilities, damages, judgments, fees, costs, charges and expenses (including reasonable attorneys' fees) (collectively "**Damages**") for personal injury or death to persons and damage to each other's physical property or facilities or the property of any other person or corporation to the extent arising out of, resulting from or caused by the negligent or intentional acts, errors, or omissions of the indemnifying Party. Furthermore, each Party shall defend, indemnify and hold the other harmless from and against all Damages that are or were incurred or suffered by the indemnified Party and which relate to the indemnifying Party's breach or failure to perform any of the covenants, agreements, obligations, representations, or warranties contained in this Agreement, except as provided in **Article X**. Nothing in this Section shall relieve Seller or NSP of any liability to the other for any breach of this Agreement. This indemnification obligation shall apply notwithstanding any negligent or intentional acts, errors or omissions of the indemnities but the indemnifying Party's liability to pay Damages to the indemnified Party shall be reduced in proportion to the percentage by which the indemnities' negligent or intentional acts, errors or omissions caused the Damages, neither Party shall be indemnified for its Damages resulting from its sole negligence or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

**ARTICLE XIII
DISPUTE RESOLUTION**

13.1 Conditions Precedent to Arbitration and Mediation

(a) Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be subject to resolution by mediation and arbitration as set forth in this **Article XIII**.

(b) Prior to initiation of mediation and arbitration, the Management Committee or other persons designated by the Parties shall meet for the purposes of discussing and resolving the controversy or claim. If the dispute is not resolved within the time allowed, the Parties agree to submit the dispute to mediation in accordance with the commercial mediation rules of the American Arbitration Association, or other mediation procedures agreed to by the Parties, before proceeding to arbitration. The Parties agree to each pay one-half the costs of the mediation.

13.2 Mediation Procedure

(a) The Parties shall have ten (10) days to agree upon a mutually acceptable and neutral mediator and, if the parties cannot so agree, they shall jointly request the American Arbitration Association or other agreed mediation service to propose potential mediators and to assist in the selection of a disinterested mediator.

(b) The Parties shall, with the mediator, devise procedures appropriate for negotiating a resolution of the dispute(s). The Parties agree to participate in good faith in the mediation and related negotiations, and to expeditiously exchange information and documents necessary for the fair and full discussion of the dispute(s).

(c) The mediator shall be disqualified as a witness, consultant, expert, or counsel for either party with respect to the dispute(s) and any related matters. The Parties agree that the mediator shall not be liable to either Party for any statement, action or omission related to the mediation. The mediator shall keep confidential all information disclosed in private discussions with either Party when that Party has requested that the information be kept confidential.

(d) The Parties agree that the mediation procedure is a compromise negotiation for purposes of the Federal Rules of Evidence and any State rules of evidence. The entire procedure is confidential, and no stenographic, visual or audio record shall be made. All conduct, statements, promises, offers, views and opinions, whether oral or written, made in the course of the mediation by either of the Parties, their agents, employees, representatives or other invitees and by the mediator (who will be the Parties' joint agent for purposes of these compromise negotiations) are confidential and shall, in addition and where appropriate, be deemed to be work product and privileged. Such conduct, statements, promises, offers, views and opinions shall not be discoverable or admissible for any purposes, including impeachment, in any litigation or other proceeding involving the Parties, and shall not be disclosed to anyone not an agent, employee, expert, witness, or representative of either of the Parties; provided, however, that evidence otherwise discoverable or admissible is not excluded from discovery or admission as a result of its use in the mediation.

(e) The Parties agree to participate in the mediation for a period of 30 days, which period may be extended by agreement. If the Parties are not successful in resolving the dispute(s) through mediation within such 30 day period, then they agree to submit the unresolved dispute(s) or portions thereof to binding arbitration as provided in this Article.

13.3 Arbitration Procedure

All disputes arising between the Parties under or concerning this Agreement, and which are not successfully resolved or through mediation shall be submitted to arbitration at the request of either party to the dispute, in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect, and with the following provisions.

(a) The demand for arbitration shall be filed in writing with the other Party and with the Minneapolis, Minnesota office of the American Arbitration Association within ten days after the conclusion of mediation. No arbitration initiated by the Parties shall include, by consolidation, joinder or in any other manner, any other person unless such person and both Parties agree to the inclusion and unless such person is substantially involved in a common question of law or fact or its presence is required if complete relief is to be accorded in the arbitration. This agreement to arbitrate between the Parties, and any fully executed subsequent agreement to arbitrate with a third party, shall be specifically enforceable under the Minnesota or federal arbitration act, whichever is applicable.

(b) If the dispute(s) submitted to arbitration is identified as involving claims whose total value exceeds \$250,000, the Parties shall be entitled to utilize the discovery provisions contained in Minnesota Rules of Civil Procedure 26-37 and 45 with the following exceptions:

(i) Each party shall be limited to three depositions unless approval of the arbitrator(s) is obtained for additional depositions, which approval shall only be granted upon a showing of good cause;

(ii) Each party shall be restricted to no more than 25 interrogatories, with subparts counted as separate interrogatories.

(iii) All discovery issues shall be determined by order of the arbitrator(s) upon motion made to them by either Party. When a Party is asked to reveal material which the Party considers to be proprietary information or trade secrets, the Party shall bring the matter to the attention of the arbitrator(s) who shall make such protective orders as are reasonable and necessary or as are otherwise provided by law.

(c) The arbitrator(s) shall have jurisdiction and authority to interpret, apply, or determine compliance with the provisions of this Agreement insofar as shall be necessary to the determination of issues properly before the arbitrator(s), including the right to order specific performance of this Agreement against either Party. In making the decision, the arbitrator(s) shall issue appropriate findings and conclusions regarding the issues. The arbitrator(s) shall not have jurisdiction or authority to alter the provisions of this Agreement or any applicable law or rule of civil procedure. The arbitrator(s) shall have the authority to require either Party to specifically perform its obligations under this Agreement. The arbitrator(s) shall render a decision within 60 days after the completion of the hearing on the matter.

(d) The arbitration shall be closed to observation or monitoring by third parties.

(e) The award rendered by the arbitrator(s) shall be final and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. Any decision (including orders arising out of disputes as to the scope or appropriateness of a request for, or a response to discovery) of the arbitrator(s) may be enforced in state or federal district court, whichever is applicable, with all costs, including attorneys fees, paid by the losing Party. Nothing in this **Article XIII** shall prohibit a Party (i) from instituting litigation to enforce a final decision of the arbitrator(s).

(f) The expense of any such arbitration, including compensation for the arbitrator(s), shall be borne and paid equally by the Parties unless the arbitrator(s) finds that the position taken by either Party on any issue is not substantially justified, in which case all or part of the costs and fees of the Party prevailing on that issue shall be awarded to it.

(g) All arbitration proceedings under this **Article XIII** shall take place in Minnesota. Any arbitration shall be held at a location agreed upon by the Parties and, in the event of failure to agree, the arbitrator(s) shall determine the most convenient location based on the location of the majority of the documentary evidence and prospective witnesses.

(h) Pending the final decision of the arbitrator(s), the Parties agree to diligently proceed with the performance of all obligations, including the payment of all sums, required by this Agreement.

(i) Nothing in this **Article XIII** shall preclude a Party from seeking specific performance of this Agreement or injunctive relief in state or federal court pending the outcome of Mediation/Arbitration if the Party seeking such equitable relief would otherwise be irreparably harmed by the passage of time involved for the completion of the mediation and arbitration processes set forth in this Article. Any judicial decree or order granting such specific performance shall be effective only to the extent and for the time period necessary to prevent the irreparable harm specifically found by the court. Final resolution of any underlying dispute, or related issues, shall still occur pursuant to the provisions of this **Article XIII**.

13.4 Compromise and Settlement

(a) Except as may be necessary for (i) any review by the district court, MPUC, FERC, or other Governmental Authority or (ii) any enforcement proceeding under **Section 13.3 (e)**, or (iii) as otherwise may be required by law, no communications sent or documents delivered by either Party because of a proceeding under **Article XIII** shall be disclosed by the other Party to a third person if that communication or document contains the caption "Privileged and Confidential; Settlement Proceedings" or similar caption.

(b) Except as may be necessary for (i) any review by the district court, MPUC, FERC or other rate regulatory agency of any matter determined to be • within its exclusive jurisdiction or (ii) any enforcement proceeding, the arbitration decision shall be deemed to be a settlement between the Parties and the decision shall be treated as a settlement for all purposes in the future.

13.5 Effect of Termination

This **Article XIII** shall survive the termination of this Agreement as necessary to resolve any disputes arising out of, in connection with or relating to this Agreement.

ARTICLE XIV [RESERVED]

ARTICLE XV GENERAL

15.1 Non-Assignment; NSP Reorganization

(a) The rights and obligations of this Agreement may not be assigned by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any purported assignment of this Agreement in the absence of the required consent shall be void.

(b) Notwithstanding **Section 15.1(a)** above, Seller may collaterally assign this Agreement as security to the extent necessary to finance costs of the Plant. Further, NSP may, without Seller's consent, assign this Agreement to a wholly owned subsidiary or corporate successor or as security in any financing by NSP, provided that such assignment shall not relieve NSP of its liability hereunder.

(c) Notwithstanding **Section 15.1(a)** above, NSP may, at its sole option and without Seller's consent or approval, sell, transfer, or assign all or any part of the Electric Energy and associated Capacity delivered to it under this Agreement to another electric utility or other buyer(s); provided, however, that such transfer or assignment shall not affect Seller's obligations or rights under this Agreement.

(d) In the event of a reorganization or desegregation of NSP into one or more entities involved in the electric generation, transmission, marketing, distribution or supply business, the contractual duties under this Agreement

will be assumed by the entity which retains the legal obligation to provide the local distribution of electricity to retail customers (the “LDC”), provided that the LDC may assign this Agreement without Seller’s consent, as provided in **Section 15.1(b)** above or for purposes of administering the Agreement. Nothing in this **Section 15.1(d)** is intended to (i) restrict, limit or interfere with NSP’s ability to reorganize or desegregate, or (ii) require Seller consent for any such desegregation or reorganization.

15.2 Notices

Except as otherwise provided herein, any notice, demand, request or communication required or authorized by this Agreement shall be delivered either by hand, facsimile, overnight courier or mailed by certified mail, return receipt requested, with postage prepaid, to:

NSP Generation
Northern States Power Company
414 Nicollet Mall
Minneapolis, MN 55401
Attention: President

on behalf of NSP;

and to:

Fibrominn LLC
301 Oxford Valley Rd.
Suite 704A
Yardley, Pennsylvania 19067
Attention: President

on behalf of Seller. The designation and titles of the person to be notified or the address of such person may be changed at any time by written notice by either Party. Delivery of any such notice, demand, request or communication shall be deemed complete on receipt if delivered by hand or facsimile and on deposit by the sending party if delivered by overnight courier or U.S. mail. Notices for billing and payment and daily operations shall be as provided in **Appendix E**.

15.3 Captions

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

15.4 Effect of Termination of MAPP Membership

In the event NSP ceases to be a member of MAPP during the Term of this Agreement, all terms and conditions with respect to MAPP in effect at the time NSP terminates its membership with MAPP shall be of no further force and effect unless NSP joins a comparable organization which has rules of uniform application to electric generators substantially similar to such MAPP rules, in which case such substantially similar rules of the comparable organization shall apply; provided, however, Seller's obligation to amend the MAPP Requirements shall remain subject to the terms of **Section 2.3(b)(iii)**. Notwithstanding the foregoing, Seller's obligation to provide 50 MW of Accredited Capacity in accordance with the URGE Test shall continue regardless whether NSP terminates its membership in MAPP.

15.5 No Third-Party Beneficiary

No provision of this Agreement is intended to nor shall it in any way inure to the benefit of any customer, or any other third party, so as to constitute any such person a third-party beneficiary under this Agreement, or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a Party hereto, including MAPP.

15.6 Non-Dedication

No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public or affect the status of NSP as an independent public utility corporation or Seller as an independent individual or entity and not a public utility.

15.7 Entire Agreement; Modification and Waiver

(a) This Agreement, together with all Appendices attached hereto, constitutes the entire agreement between the Parties relating to the transaction described herein and supersedes any and all prior oral or written understandings. No amendment, addition to or modification of any provision shall be binding upon either Party, and neither Party shall be deemed to have waived any provision hereof or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable Party or Parties and all necessary approvals from any Governmental Authority have been obtained.

(b) It is the intent of the Parties that this Agreement and the attached Appendices be read consistently. However, in the event of conflict between the terms and conditions of this Agreement and any of its Appendices, the terms and conditions of this Agreement shall govern.

15.8 Right of Access; Right to Audit

(a) Each Party shall have the right from time to time, upon written request and at its own expense, to audit the other Party's books, records, and files necessary to audit compliance by the other Party of this Agreement, including hourly metering and scheduling records, for reading or checking meters, or for constructing, testing, repairing, renewing, exchanging, or removing any or all of its equipment which may be located on the property of the other Party, or for any work incident to performing system operations under this Agreement or rendering service hereby contracted for. Said audit shall be limited to the preceding three (3) fiscal years. This right to audit shall be subject to reasonable provisions and protections necessary to prevent disclosure of confidential or proprietary information.

(b) Each Party shall upon request provide access to the other Party to all financial and operating records and data kept relating to transactions under, and administration of, this Agreement at any time during the period the records are required to be maintained.

15.9 Governing Law

This Agreement is made in the State of Minnesota and shall be interpreted and governed by the laws of the State of Minnesota and/or the laws of the United States, as applicable.

15.10 Contract Drafting

The Parties expressly agree that neither Party shall be deemed solely responsible for drafting all or any portion of this Agreement and, in the event of a dispute, responsibility for any ambiguities arising from any provision of this Agreement shall be shared equally by both Parties.

15.11 Form of Business Relationship

(a) The duties, obligations and liabilities of each of the Parties are intended to be several and not joint or collective. This Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Seller and NSP or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Seller and NSP shall not have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

(b) The relationship between NSP and Seller shall be that of contracting party to independent contractor. Accordingly, subject to the specific terms of this Agreement, NSP shall have no general right to prescribe the means by which Seller shall meet its obligations under this Agreement.

(c) Seller shall be solely liable for the payment of all wages, taxes, and other costs related to the employment of persons to perform Seller's obligations under this Agreement, including all federal, state, and local income, social security, payroll, and employment taxes, and statutorily mandated workers' compensation coverage. None of the persons employed by Seller shall be considered employees of NSP for any purpose; nor shall the Seller represent to any person that he or she is or shall become an NSP employee or agent.

15.12 No Endorsement by NSP

NSP makes no representation, express or implicit, as to technical or financial viability of the Plant or Seller's activities related to the Plant either in its performance of this Agreement or in meeting any of its obligations to any regulatory commission or the public.

15.13 Good Faith and Fair Dealing

The Parties agree to act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement, (i) where this Agreement requires the consent, approval, or similar action by a Party, such consent or approval shall not be unreasonably withheld or delayed and (ii) wherever this Agreement gives a Party a right to determine, require, specify or take similar action with respect to matters, such determination, requirement, specification or similar action shall be reasonable.

15.14 Lawful Money

All references in this Agreement to the payment or deposit of money refers to the lawful money of the United States of America.

15.15 Severability

Should any provision of this Agreement be or become void, illegal, or unenforceable, the validity or enforceability of the other provisions of this Agreement shall not be affected and shall continue in force. The Parties will, however, use their best endeavors to agree on the replacement of the void, illegal, or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

15.16 Confidentiality

This Agreement and all Appendices and amendments, and all trade secret technology related to the Plant (including boiler technology and fuel

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supply delivery) and all materials delivered hereunder that is designated proprietary by Seller, shall be considered proprietary and shall not be provided to a third party without prior written approval of the other Party, unless a Party is required to disclose such information by law or court or administrative agency order or when such information is already in the public domain or to the extent Seller is required to disclose such documents in connection with permitting, financing or construction of the Plant, in which case Seller shall take steps satisfactory to NSP to obtain a commitment by any recipient to maintain the confidentiality of the documents. In the event certain information must be provided pursuant to a regulatory proceeding, the Parties shall take reasonable steps to protect the confidentiality of proprietary information. This confidentiality provision shall not extend to prevent NSP's or Seller's disclosure to any Person of the effect the purchases under this Agreement will have on the price of electricity to NSP's retail customers during the Term. NSP and Seller will cooperate reasonably in making the calculations necessary to allow either Party to disclose the impact of this Agreement on the price of electricity.

15.17 Counterparts

This Agreement may be executed in one or more duplicate counterparts, and when executed by both Seller and NSP and such counterparts are delivered shall constitute a single binding agreement. Facsimile copies of any signature shall have the same effect as an original signature.

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

FIBROMINN LLC

By _____
Carl W. Strickler
Vice President

NORTHERN STATES POWER COMPANY

By _____
Name: _____
Title: _____

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APPENDIX A

POWER PRICE

**(FOR ELECTRIC ENERGY SOLD IN AGGREGATE AMOUNT UP TO THE
AGGREGATE ENERGY PRODUCTION CAP)**

[BEGIN TRADE SECRET INFORMATION]

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[END TRADE SECRET INFORMATION]

APPENDIX B

DESCRIPTION OF PLANT, SUBSTATION AND SITE

[Seller to provide General Description of the Plant, Substation, Engineering Specifications, and legal description of the Site prior to the Effective Date.]

APPENDIX C

TURNOVER DATE REQUIREMENTS

For purposes of achieving the Turnover Date, Seller shall demonstrate, in writing, compliance with each of the following:

- 1) Completion of the URGE Test, demonstrating that the Plant has Accredited Capacity of at least 50 MW;
- 2) Interconnection of the Plant to the Interconnection Provider's System in compliance with this Agreement and the Interconnection Agreement.
- 3) Obtain, if applicable, firm transmission service to the Point of Delivery of Electric Energy pursuant to relevant FERC open-access tariffs and the Interconnection Agreement.

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APPENDIX D

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APPENDIX E

NOTICES

Any official notice, demand, request or communication required or authorized by this Agreement shall be delivered pursuant to the requirements of **Section 15.2**. Other notices shall be as follows:

Billing/Payment Communications

- | | | |
|----|-------------------------------|-------------|
| 1. | For NSP | For Seller: |
| | Name | Title |
| | Account Manager | Address |
| | Electric Supply Management | Phone No.: |
| | Northern States Power Company | Fax No.: |
| | 414 Nicollet Mall - 7th Floor | |
| | Minneapolis, MN 55401 | |

System Control/Operations

- | | | |
|----|-----------------------------|-------------|
| 1. | For NSP | For Seller |
| | (All Hours) | (All Hours) |
| | NSP's System Control Center | Location |
| | Name | Title |
| | Phone: (612) 330-xxxx | Phone No.: |
| | Fax: (612) 330-yyyy | Fax No.: |

For Seller
(M-F, 8:00 a.m. - 5:00 p.m.)

Location
Title
Phone:
Fax:

The notice provisions of this **Appendix E** may be modified by either Party by official written notice to the other Party.

APPENDIX F

MAPP REQUIREMENTS

[The relevant sections of the MAPP Agreement which constitute the URGE Test will be attached on or before the Effective Date.]

APPENDIX G

FUEL CERTIFICATION REQUIREMENTS

A. Annual Fuel Certification

Pursuant to this Agreement, Seller shall provide a written Fuel Certification Report to NSP no more than 60 days after the completion of each Contract Year. The Fuel Certification Report shall include the following information:

1. A summary listing each of the specific Biomass Fuels and other fuels consumed at the Plant during the most recently completed Contract Year and a listing of all of the specific fuel types consumed on a contract-to-date basis.
2. A fuel consumption summary table that identifies: (1) the quantity of each fuel types burned, in tons, Mcf or other appropriate measure; (2) the heating value of each of those fuels, in Mbtu/ton, Mbtu/Mcf or other appropriate measure; (3) a calculation of the total heat input provided by each of those fuels, in Mbtu; and includes a calculation of the percentage of heat input provided by each of those fuels out of the total heat input provided by all fuels. The summary table shall provide such information for the most recently completed Contract Year as well as on a contract-to-date basis.
3. Copies of receipt and/or bills of lading for all fuel delivered to the Seller's Plant during the most recent Contract Year.

The Fuel Certification Report shall be certified by an individual or individuals authorized to bind the Seller. The Management Committee shall establish specific procedures and Fuel Certification Report formats acceptable to both NSP and Seller to fulfill requirements of the Annual Fuel Certification described above.

APPENDIX H

ENVIRONMENTAL INDEMNITY AGREEMENT

This Agreement (the "Indemnity Agreement") is made this ____ day of _____, 2000 by and between Fibrominn LLC, a Delaware limited liability company, (the "**Company**") and Northern States Power Company, a Minnesota corporation ("**NSP**").

RECITALS

A. NSP is a public utility providing electric and natural gas service to customers in Minnesota, North Dakota, South Dakota, Wisconsin and Michigan.

B. The Company intends to supply electric energy and capacity from a facility (the "**Plant**") to be sited on real property located in Minnesota described on Exhibit A hereto (the "**Site**").

C. NSP will not enter into the Power Purchase Agreement without assurances from the Company that NSP will not be responsible for environmental emissions, releases or other sources of potential liability related to or arising from the Plant or Site.

D. To induce NSP to enter into the Power Purchase Agreement, the Company warrants, represents and agrees as follows:

AGREEMENT

1. Definitions. Any terms mentioned in the following subsections which are defined in state or federal statutes and/or regulations promulgated in relation thereto shall have the meaning subscribed to such terms in said statutes and regulations. The state and federal statutes, rules and regulations referred to include, without limitation, (1) the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. Sections 9601-9657; (2) the 1986 Superfund Amendments and Reauthorization Act (SARA), codified as a part of 41 U.S.C. Section 9601 et seq.; (3) the Minnesota Environmental Response and Liability Act (MERLA), Minn. Stat. Sections 115B.01-115B.17; (4) the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Sections 6901-6987; (5) legislation and regulations governing underground storage tanks (UST), including applicable federal laws and the

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Minnesota Petroleum Tank Release Clean-Up Act, Minn. Stat. Sections 115C.01- 115C.10; and (6) state and federal laws creating any liens for clean-up costs, including applicable provisions of SARA and comparable Minnesota laws, Minn. Stat. Sections 514.671-514.676; (7) Groundwater Protection Act, Minn. Stat. Sections 103H.001-103H.280; (8) the Clean Air Act, 42 U.S.C. Sections 7401 et seq.; (9) the federal Clean Water Act, 33 U.S.C. Sections 1321 et seq.; (10) the Hazardous Materials Transportation Act, 49 U.S.C. Sections 1802 et seq.; (11) the Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq.; (12) the federal Water Pollution Control Act, 15 U.S.C. Sections 2601 et seq.; and (13) any other federal, state, city, municipal, local or other statute, law, ordinance or regulation enforcing, governing or related to the creation, handling, release, containment, transport or disposal of any pollutant, contaminant, hazardous or unhealthy substance or to human health or the environment; and (14) any regulations interpreting, applying or complementing each of the statutes described in clauses (1) through (13). These statutes, rules and regulations, as amended from time to time, are referred to collectively as the "Applicable Environmental Laws".

The term "release" shall have the meaning specified in CERCLA and MERLA, and the terms "solid waste" and "disposal" (or "disposed") shall have the meanings specified in RCRA; provided, in the event either CERCLA, SARA, RCRA, MERLA or MPTRCA is amended so as to broaden the meaning of any term defined thereby, such broader meaning shall apply subsequent to the effective date of such amendment. "Hazardous Substances" means asbestos, ureaformaldehyde, polychlorinated biphenyls ("**PCBs**"), nuclear fuel or material, chemical waste, radioactive material, explosives, known carcinogens, petroleum products and by-products and other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Applicable Environmental Laws.

2. Representations by the Company. The Company represents and warrants, on which representations and warranties NSP has relied and will continue to rely, as follows:

A. To the best of the Company's knowledge, the Site does not now and has never, contained: (a) any underground storage tanks of any size or description; (b) or any wells of any depth or description.

B. To the best of the Company's knowledge, none of the real property described in Exhibit A attached hereto and made a part hereof and the improvements thereon has ever been used by previous owners or operators or the Company to generate, manufacture, refine, transport, treat, store, handle or dispose of Toxic Material, Hazardous Substances, Solid Waste or

Hazardous Wastes, as the terms are defined above and in any Applicable Environmental Laws, and the Company does not intend to use any of its real property, including, but not limited to, the Site, for such purposes.

C. The Site does not contain, through the action or inaction of the Company, either asbestos, ureaformaldehyde foam insulation, PCBs, other toxic materials or any other Hazardous Substances, whether used in construction or stored on the Site.

D. The Company has not received a summons, citation, directive, letter or other communication, written or oral, from any governmental agency or department concerning (1) any intentional or unintentional action or omission on the Company's part which resulted in the releasing, spilling, leaking, pumping, pouring, emitting, emptying or dumping of Toxic Material, Hazardous Substances, Solid Waste or Hazardous Waste into waters or onto lands of the State of Minnesota or into waters outside the jurisdiction of the State of Minnesota where damage may have resulted to the lands, waters, fish, shellfish, wildlife, flora, air or other resources owned, managed, held in trust or otherwise controlled by the State of Minnesota; (2) the existence of any condition on or affecting the Site which currently violates, or which, with the passage of time, will violate, any Applicable Environmental Law. The Company, the Plant and the Site are not subject to any existing or pending investigation or inquiry by any governmental authority or to any remedial obligations under any Applicable Environmental Law. These representations and warranties would continue to be true and correct following disclosure to the applicable governmental authorities of all relevant facts, conditions and circumstances pertaining to the Company or the Plant and Site known by the Company on the date hereof.

E. The location, construction, occupancy, and intended operation and use of the Plant and Site do not violate any Applicable Environmental Laws.

3. Site Use. The Company agrees that the use which the Company makes and intends to make of the Site will not result in the disposal or release of any Hazardous Substance or Solid Waste on or to the Site. The Company shall not cause or permit to exist, as a result of any intentional or unintentional act or omission on its part, a releasing, spilling, leaking, pumping, emitting, pouring, emptying or dumping of any Toxic Material, Hazardous Substance, Solid Waste or Hazardous Waste into waters or onto lands of the State of Minnesota or into waters outside the jurisdiction of the State of Minnesota where damage is likely to result to the lands, waters, fish, shellfish, wildlife, flora, air or other resources owned, managed, held in trust or

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REDACTED]**

otherwise controlled by the State of Minnesota, unless said release, spill or leak is pursuant to and in compliance with the conditions of a permit issued by the appropriate federal, state and local government authorities.

4. Indemnification. The Company acknowledges that NSP is relying on this agreement in entering into the Power Purchase Agreement. The Company agrees to defend, indemnify and hold NSP and its officers, directors, employees, agents and representatives, and their respective successors and assigns, from and against all claims, actions, demands, losses, liabilities, damages, judgments, penalties, injuries and expenses, including reasonable attorneys' fees, arising from or related to any violation of any Applicable Environmental Law by the Company, or arising in connection with or as a result of any past, present or future existence, use, handling, storage, transportation, manufacture, release or disposal of any Hazardous Substance in, on or under the Site, whether foreseeable or unforeseeable, regardless of the source, time of occurrence, or time of discovery including, but not limited to, (1) any claim for personal injury or property damage by any other person or corporation arising out of, resulting from or caused by any violation of any Applicable Environmental Law by the Company or concerning the Plant or Site; (2) any assessment, fine, penalty, lien or other imposition by any governmental authority arising out of, resulting from or caused by any violation of any Applicable Environmental Law by the Company or concerning the Plant or Site; (3) any liability, losses, or remedial costs arising out of, resulting from or caused by any violation of any Applicable Environmental Law by the Company or concerning the Plant or Site.

The foregoing indemnification includes, without limitation, indemnification against all costs incurred by NSP in law or in equity for the removal, response, investigation or remediation of any kind related to the Site or the Plant, and disposal of such Hazardous Substance, all costs imposed on NSP for the determination by a Governmental Authority of whether the Site is in compliance with, and of causing the Site to be in compliance with, all Applicable Environmental Laws, all costs associated with claims for damages to persons, property, or natural resources, and NSP's reasonable attorneys' and consultants' fees, court costs and expenses incurred in connection with any thereof. The obligations of this Indemnity Agreement shall survive the termination of the Power Purchase Agreement for a period of three (3) years.

5. Release. The release and return of this Indemnity Agreement shall not affect or impair any rights or remedies or claims NSP may have outside the scope of this Indemnity Agreement, at law or in equity, with respect to the Company or others.

6. Interest on Late Payments. Any amount owed to NSP hereunder that is not paid by or on behalf of the Company within thirty (30) days after written demand from NSP (which demand shall include an explanation of the amounts demanded) shall bear interest at an annual rate which shall be equal to three percent (3%) over the rate of interest equal to the average daily prime rate as determined from the "Money Rates" section of the Midwest Edition of the Wall Street Journal, for the number of days elapsed from and including the day after the due date, to and including the payment date.

7. Binding Effect and Assignment. This Indemnity Agreement shall inure to the benefit of NSP and any assignee of NSP. This Indemnity Agreement shall be binding on the Company and its successors, heirs and assigns.

8. Waiver of Other Remedies. NSP shall not be required to resort first to any other indemnitors, persons or corporations or their respective properties or estates, or to any collateral, property, liens or other rights or remedies available to NSP before seeking indemnification as provided from the Company; provided, however, that the Company shall have the right of subrogation with respect to such other remedies and if necessary for the Company to realize the benefits of such right, NSP shall reasonably pursue or undertake any actions reasonably requested of it by the Company provided that any reasonable third party costs incurred by NSP in compliance with its cooperation obligation under this section 7 shall be reimbursed to it by the Company.

9. Subordination of Subrogation Rights. No payment by the Company pursuant to this Indemnity Agreement shall entitle the Company, by subrogation to the rights of NSP or otherwise, to any payments by the Company or any other indemnitor until the Company's obligations, and all accrued costs, expenses and attorneys' fees paid or incurred by NSP in endeavoring to enforce, this Indemnity Agreement have been fully satisfied and paid as of the date the Company seeks to assert such rights. The Company will not exercise or enforce any right of contribution, reimbursement, recourse or subrogation available to the Company as to any payments made hereunder, or against any person liable therefor, or as to any collateral security therefor, unless and until all obligations of the Company under this Indemnity Agreement as of the date the Company seeks to assert such rights.

10. Governing Law. This Indemnity Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

**[PUBLIC VERSION - TRADE
SECRET INFORMATION
REDACTED]**

THE UNDERSIGNED REPRESENT, CERTIFY, AND AGREE THAT THE
UNDERSIGNED HAVE READ THIS INDEMNITY AGREEMENT AND
UNDERSTAND ITS TERMS AND PROVISIONS.

FIBROMINN LLC

Dated: _____, 2000

By: _____
Name: _____
Title: _____

NORTHERN STATES POWER
COMPANY

By: _____
Name: _____
Title: _____

APPENDIX I

NSP REBATE EXAMPLES

1. Section 2.5(c)(i) and (iii). If construction of the Plant commences in July 2001 and in December 2002 the Company receives the full amount DOE grant of \$500,000 and \$50,000 of a \$100,000 State of Minnesota grant (in each case) for assistance in defraying the costs of construction of the Plant as a biomass facility in December 2002, then assuming the Turnover Date occurs on July 15, 2002, the Company will be obligated to pay \$550,000 (less costs incurred to obtain NSP Rebates as described in Section 2.5(c)(iv) but without any other deduction or set-off) to NSP, within 60 days following July 15, 2002.

If in addition to the foregoing in the spring of 2002, Minnesota enacts an exemption for the Company from the obligation to pay Taxes and also enacts a new tax on biomass energy generative facilities of \$1.00 per MW sold but exempts the Company for 50% of such new tax, then neither of these events will result in an NSP Rebate (because they are not government grants) but they will impact the Special Pass Through Payment under Section 2.6.

2. Section 2.5(c)(ii). If the Company receives a Section 45 tax credit that reduces the federal taxes owed by the Company on April 15, 2006, by \$250,000, then the Company will be obligated to pay \$250,000 (less costs incurred to obtain NSP Rebates as described in Section 2.5(c)(iv) but without any other deduction or set-off) to NSP, on or before June 30, 2006 (the last day of the Contract Year in which such credit is realized).

If for tax year 2008 a Section 45 tax credit of \$250,000 has been enacted but due to the Company's tax position it cannot or does not use such credit to

reduce its federal tax liability, then no amount will be owed to NSP for such Contract Year in respect of NSP Rebate for Section 45 Credits.

APPENDIX J

SELLER'S SUBSIDIARIES AND AFFILIATES

Affiliates: Fibrowatt LLC

Subsidiaries: None