



414 Nicollet Mall
Minneapolis, MN 55401

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June 30, 2017

—Via Electronic Filing—

Daniel P. Wolf
Executive Secretary
Minnesota Public Utilities Commission
121 7th Place East, Suite 350
St. Paul, MN 55101

RE: PETITION FOR APPROVAL TO TERMINATE THE PPA WITH BENSON POWER, LLC, ACQUIRE THE BENSON/FIBROMINN PLANT, AND CLOSE THE FACILITY
DOCKET NO. E002/M-17-_____

Dear Mr. Wolf:

Northern States Power Company, doing business as Xcel Energy, submits to the Minnesota Public Utilities Commission this Petition for approval to terminate the Power Purchase Agreement (PPA) with Benson Power, LLC, acquire the Benson Power biomass plant (Benson plant or Fibrominn), and subsequently close the facility. We also seek recovery of the costs that are necessary to support this transaction and plant closure through the Fuel Clause Adjustment (FCA).

In addition to this filing, we are also making four related but separate filings today in other dockets. The overall goal of all of these filings is the same: to lower customer costs while continuing to provide safe, reliable service. If approved by the Commission, these initiatives together will achieve over \$531 million in total cost savings (nominally) for our customers over the next 10 years. We believe there are more opportunities to further reduce customer costs and will continue to evaluate other potential transactions and may come forward with additional cost-saving proposals in the future.

The Company acknowledges that bringing forward five separate petitions increases the workload for the Department of Commerce and Commission Staff. We believe it was important to pursue these transactions separately because each transaction has its own unique sets of facts and circumstances. With that being said, we look forward to working with the Department and Commission Staff on developing a schedule that is responsive to any concerns they may have.

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This Petition includes information the Company considers to be trade secret data as defined by Minn. Stat. § 13.37(1)(b). The information derives independent economic value from not being generally known or readily ascertainable by others who could obtain a financial advantage from its use. Thus, Xcel Energy considers this non-public data.

We have electronically filed this document with the Minnesota Public Utilities Commission, and copies have been served on the parties on the attached service lists. Please contact Bria Shea at bria.e.shea@xcelenergy.com or (612) 330-6064 if you have any questions regarding this filing.

Sincerely,

/s/

AAKASH H. CHANDARANA
REGIONAL VICE PRESIDENT
RATES AND REGULATORY AFFAIRS

Enclosures
c: Service Lists

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STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION

Nancy Lange	Chair
Dan Lipschultz	Commissioner
Matthew Schuerger	Commissioner
Katie Sieben	Commissioner
John A. Tuma	Commissioner

IN THE MATTER OF THE PETITION OF
NORTHERN STATES POWER COMPANY
FOR APPROVAL TO TERMINATE THE
POWER PURCHASE AGREEMENT WITH
BENSON POWER, LLC, ACQUIRE THE
BENSON POWER BIOMASS PLANT, AND
SUBSEQUENTLY CLOSE THE FACILITY

DOCKET NO. E002/M-17-_____

PETITION

INTRODUCTION

Northern States Power Company, doing business as Xcel Energy, submits to the Minnesota Public Utilities Commission this Petition for approval to terminate the Power Purchase Agreement (PPA) with Benson Power, LLC, acquire the Benson Power biomass plant (Benson plant or Fibrominn), and subsequently close the facility. In addition, we seek recovery of the costs that are necessary to support this transaction and bring the plant to closure through the Fuel Clause Adjustment (FCA). This Petition is submitted pursuant to Minn. Stat. § 216B.50, 216B.2424 subd. 9, 216B.1645, and Minn. R. 7829.3200 and 7829.1300.

The PPA at issue in this Petition is significantly above current market prices as well as most other resources in the NSPM portfolio. Given the pricing, as well as our knowledge that the facility had recently exited the receivership process and the new owners were potentially looking to sell the facility, we entered negotiations with the objective of saving customers money and optimizing the overall NSPM portfolio. We believe the proposed transaction achieves that result.

Due to the high costs of the existing PPA, even after accounting for the costs to terminate the PPA, buy/operate/shut down the plant, and purchase replacement energy that may be necessary to serve our customers, we expect NSPM customers will see a Net Present Value (NPV) savings of approximately \$345 million (\$480

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million nominally) over the remaining life of the PPA.¹ This roughly translates from an existing Levelized Cost of Energy (LCOE) of **[PROTECTED DATA BEGINS PROTECTED DATA ENDS]** over the remaining life of the existing PPA to a new LCOE of **[PROTECTED DATA BEGINS PROTECTED DATA ENDS]** under the terminated PPA. For these reasons, we believe this transaction is reasonable, in the public interest and merits approval.

We recognize that these changes have significant impacts on the surrounding communities and have worked diligently to understand and mitigate those impacts. To that end, we are pleased to report that our proposed plan is backed by the support of not only Benson Power, LLC but also the City of Benson. Since we are proposing to shut down the Benson Power biomass plant, we have negotiated specific terms to recognize and mitigate the community impact and supported legislation that provides \$20 million of funding from the Renewable Development Fund (RDF) to the City of Benson (contingent upon Commission approval of our proposed transaction) to support economic development. In addition, a legislative amendment from the most recent session provides for an economic study of the Benson facility closure.² This study, which will be reported to the legislature in 2018, will analyze the impact of the closure of the facility on employment and income on the local economy, including impacts on ancillary providers of goods and services to the biomass facility. We believe the study will begin shortly and have already been in contact with DEED regarding our support and involvement.

This proposed cost-saving initiative was aided by amendments made to Minn. Stat. § 216B.2424 in the most recent legislative session. We have provided the statute as Attachment A to this filing and note that the amendment provides that the Commission may approve an amended biomass PPA, the early termination of a biomass PPA, or the purchase and closure of a biomass facility if (1) all parties to the PPA agree to the terms and conditions of the amended/terminated PPA/ purchase and closure of a facility and (2) the action is the best interest of the customers. The amendment further provides that the Company can recover its investments, expenses and costs, and earnings on the investments associated with its PPA termination and acquisition and closure of the biomass facility.

¹ As discussed in more detail later in the Petition, recent legislation provides that if the Commission approves this transaction, the City of Benson will receive \$20 million from the Renewable Development Fund (RDF) to support economic development. These funds have not been included in the expected customer savings because RDF-related legislative mandates are collected from our customers through the RDF Rate Rider and will continue to be collected regardless of the proposed transaction.

² Laws of Minnesota 2017, Regular Sess., Chapter 94, Article 6, Section 26

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If our proposal is approved, we will take the following steps in order to facilitate an orderly shutdown of the plant:

1. Obtain the necessary regulatory approvals and, within three days, close the transaction with Benson Power, LLC (which means we terminate the current PPA and take ownership of the plant).
2. Submit the Midcontinent Independent System Operator (MISO) Attachment Y within days of closing transaction.
3. Operate the Benson facility for 6 months (assuming MISO approval of our Attachment Y) - these 6 months entail operating near normal levels until we eliminate inventory and honor fuel supply contracts and then offering the unit for emergency use only until closing post MISO approval.
4. Begin closure of the facility; remove all hazardous material etc., which will take about one month.
5. Facilitate demolition efforts, equipment salvage, and restoration which we estimate will take about 18 months.

If all goes as currently planned and Commission approval occurs by early 2018, we expect the plant shutdown and associated efforts will be complete by early 2020.

The proposed transaction is poised to save customers approximately \$345 million (NPV) over the next decade. We believe this fact alone demonstrates that the transaction is in the best interests of our customers. That said, we can also demonstrate broad support for the transaction. For these reasons, we believe this transaction is reasonable, in the public interest and merits approval.

We respectfully request that the Commission take the following actions:

- Approve our proposal to early terminate the PPA with Benson Power, LLC, acquire the Benson plant, and subsequently close the facility;
- Approve cost recovery through the FCA of the investments, expenses and costs, and earnings associated with the transactions;
- Approve the creation of a regulatory asset for the costs associated with the Benson transaction—to include a cost of capital return on that asset;
- Approve a FCA variance; and
- Waive application of Minn. R. 7825.1800, subp. B.

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I. SUMMARY OF FILING

A one-paragraph summary is attached to this filing pursuant to Minn. R. 7829.1300, subp. 1.

II. SERVICE ON OTHER PARTIES

Pursuant to Minn. R. 7829.1300, subp. 2, the Company has served a copy of this filing on the Office of the Attorney General – Antitrust and Utilities Division. A summary of the filing has been served on all parties on the enclosed service list.

III. GENERAL FILING INFORMATION

Pursuant to Minn. R. 7829.1300, subp. 3, the Company provides the following information.

A. Name, Address, and Telephone Number of Utility

Northern States Power Company, doing business as:
Xcel Energy
414 Nicollet Mall
Minneapolis, MN 55401
(612) 330-5500

B. Name, Address, and Telephone Number of Utility Attorney

Amanda Rome and Ryan Long
Lead, Assistant General Counsel/Principal Attorney
Xcel Energy
401 Nicollet Mall, 8th Floor
Minneapolis, MN 55401
(612) 215-5331 / (612)-215-4659

C. Date of Filing

The date of this filing is June 30, 2017.

D. Statute Controlling Schedule for Processing the Filing

Minn. Stat. § 216B.16 subd. 1 requires 60-days of notice to the Commission of a proposed tariff change. Under the Commission's rules, the proposed tariff change

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discussed in this Petition falls within the definition of a miscellaneous tariff filing under Minn. R. 7829.0100, subp. 11, since no determination of Xcel Energy's general revenue requirement is necessary.

E. Utility Employee Responsible for Filing

Al Krug and Bria Shea

Associate VP, State Regulatory Policy/ Director, Regulatory and Strategic Analysis
Xcel Energy

401 Nicollet Mall, 7th Floor

Minneapolis, MN 55401

(612)-330-6270 / (612) 330-6064

IV. MISCELLANEOUS INFORMATION

Pursuant to Minn. R. 7829.0700, the Company requests that the following persons be placed on the Commission's official service list for this proceeding:

Amanda Rome

Lead, Assistant General Counsel

Xcel Energy

401 Nicollet Mall, 8th floor

Minneapolis, MN 55401

amanda.j.rome@xcelenergy.com

Carl Cronin

Records Analyst

Xcel Energy

401 Nicollet Mall, 7th Floor

Minneapolis, MN 55401

regulatory.records@xcelenergy.com

Any information requests in this proceeding should be submitted to Mr. Cronin at the Regulatory Records email address above.

V. EFFECT OF CHANGE UPON XCEL ENERGY REVENUE

If approved, the Company would receive less revenue because lower costs would be recovered through the FCA as demonstrated through Table 1 below.

Table 1: Revenue Requirement Impact (Nominal)

	Current PPA Costs Total NSPM (\$ mil)	Proposed Transaction Costs Total NSPM (\$ mil)	Difference Total NSPM (\$ mil)	Change in Revenue Requirement for MN Jur Net of I/A (\$ mil)
	[PROTECTED DATA BEGINS]		[PROTECTED DATA BEGINS]	
2018		33.17		(26.18)
2019		29.55		(29.61)
2020		28.24		(30.28)
2021		27.86		(32.50)
2022		26.38		(34.43)
2023		26.15		(35.31)
2024		24.95		(34.41)
2025		25.12		(37.19)
2026		24.82		(37.99)
2027		24.68		(30.98)
2028		21.03		(24.24)
	PROTECTED DATA ENDS]		PROTECTED DATA ENDS]	

VI. DESCRIPTION AND PURPOSE OF FILING

Xcel Energy seeks approval to terminate the current PPA with Benson Power, LLC, acquire the Benson plant and subsequently close the facility.

This filing will address the terms and benefits of the agreement the Company has negotiated to support the transaction as well as the Company's request for cost recovery through the FCA.

In the Company's 2016 – 2030 Integrated Resource Plan (Docket No. E002/RP-15-21), we did not assume any PPA currently in effect would be extended beyond its term including the PPA at issue in this filing. In addition, we note that the proposed transaction will result in only a slight reduction in our projected Renewable Energy Standard (RES) surplus and therefore has no significant impact on our projected compliance. Similarly, the Company is not required to replace the biomass energy

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from the PPA termination to fulfill the biomass mandate as confirmed by the terms of the recently amended legislation.³

The remainder of our Petition is structured as follows:

- Background
- Other Required Regulatory Approvals
- Transaction Key Terms
- Standard of Review
- Cost Recovery
- FCA Variance
- Filing Requirements

Attachments provided with this filing are listed below

- Attachment A - Minn. Stat. § 216B.2424, subd. 9
- Attachment B - Purchase and Sale Agreement with Benson Power, LLC
- Attachment C - Letter Agreement with City of Benson
- Attachment D - Benson Power/Fibrominn Model
- Attachment E - Cost Recovery Detail
- Attachment F - Proposed Journal Entries
- Attachment G - Minnesota Environmental Quality Board's (EQB) October 18, 2011 Order (Docket No. 01-09)

VII. BACKGROUND

The Benson Power biomass plant has a long history, beginning with the passage of the 1994 Prairie Island Cask Storage Authorization Act. As part of this legislation, Xcel Energy was mandated to construct and operate, or contract to construct, 125 MW of installed capacity generated by farm grown closed-loop biomass.⁴

On August 31, 2000, the Company filed a Petition for approval of a PPA with Fibrominn LLC, for 50 MW of biomass power from a facility using poultry litter as a fuel source. On May 8, 2001, the Commission issued an Order approving the PPA.⁵ In the second amendment to the PPA dated February 16, 2011, the accredited capacity was increased from 50 to 55 MW, and as a result, NSPM received ownership

³ Minn. Stat. S. 216B.2424 subd. 9.

⁴ The initial mandate was for 125 MW but subsequently reduced to 110 MW (MN. Stat. 216B.2424 (Subd. 5.a.)). The Company met this requirement with PPAs with Benson (55 MW), Laurentian (35 MW), and St. Paul Cogen (25 MW).

⁵ In August 2015, Benson Power assumed full ownership of Fibrominn as approved by the Federal Energy Regulatory Commission.

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of all of the Renewable Energy Credits (RECs). When it was originally built, it was the first power plant in the country designed to burn poultry litter as a source of fuel. The fuel stock currently consists of a mix of poultry litter and wood.

The original term for the Benson Power PPA was September 11, 2007 to September 10, 2028. The estimated contract price of **[PROTECTED DATA BEGINS PROTECTED DATA ENDS]** (in 2018) consists of an energy payment (with annual escalation), plus fuel transportation costs in excess of a baseline amount, property taxes and any shortfall in sales of ash for fertilizer. This results in an estimated levelized cost to customers of **[PROTECTED DATA BEGINS PROTECTED DATA ENDS]** over the remaining PPA term.

Benson Power LLC, a Delaware limited liability company, owns the Benson Power biomass plant. The Benson Power biomass plant was previously owned by Fibrominn, LLC, and the land it occupies was previously owned by PowerMinn 9090, LLC. All workers at the facility are employed by the NAES Corporation, which is an independent services company with experience in operating and maintaining power plants throughout the United States.

VIII. OTHER REQUIRED REGULATORY APPROVALS

The Company will be filing for Federal Energy Regulatory Commission (FERC) approval of the Benson Power transaction under Section 203 of the Federal Power Act.⁶

The Company will also be filing an Advanced Determination of Prudence in North Dakota.

In addition, upon receiving Commission approval and the Company taking ownership of the plant, the Company will file Attachment Y (Notification of Generation Resource/SCU/Pseudo-tied Out Generator Change of Status) with MISO regarding the proposed closure of the Benson Power plant. MISO's process requires the owner of a Generation Resource to submit an Attachment Y Notice at least 26 weeks prior to retiring the plant, so our costs and assumptions (discussed in greater detail below) assume a seven month period where the plant would need to continue to run—albeit at a minimal level—before we could begin the demolition process.

⁶ 16 U.S.C. §824b as amended by the Energy Policy Act of 2005, Pub. L. No. 109-58, § 1289, 119 Stats. 594, 982 (August 8, 2005). The Federal Power Act requires FERC approval for asset transactions involving \$10 million or more. The Commission will be served a copy of the FERC Section 203 application, as required by FERC rules.

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As part of its review process, MISO will consider whether the Benson facility is a System Support Resource (SSR), a unit that is required to maintain the reliability of the transmission system. While possible, we understand the likelihood of the Benson facility being categorized as an SSR is remote.

As part of its process, MISO will also consider how the closure of Benson may impact its planning year—which runs from June 1 through May 31. If we submit the Attachment Y notification after December 1, we may be obligated to utilize the facility to meet our planning reserve requirements or offer the facility into the planning resource auction for the next planning year. Again, we understand that this scenario is unlikely due to the excess of capacity in MISO's Zone 1.

IX. TRANSACTION KEY TERMS

The Company proposes to terminate the PPA with Benson Power, LLC, acquire the Benson Power biomass plant, and subsequently close the facility once we have approval from MISO.

In 2014, due in part to a lack of available poultry litter, the facility entered receivership. When the facility exited the receivership process in August of 2015 the prior debt holders who had financed the facility became the new owners. The Benson transaction is structured to include an asset sale in addition to the PPA termination because when we entered into discussions with the owners, it was clear that they wanted to sell the facility outright and had already taken steps in that direction. Because our analysis demonstrated that negotiating a near term PPA termination including an asset purchase with the current owners would yield significant savings for our customers, we continued with negotiations—which were ultimately successful.

The financial terms of the agreement provide that NSPM will pay Benson Power, LLC \$95 million in exchange for the facility and termination of the PPA. As discussed later in this Petition, we seek to recover these transaction costs and others necessary to facilitate an orderly shutdown of the plant through the FCA.

Separately, legislation was also approved during this most recent session that directs \$20 million (\$4 million in 2018, \$6.5 million in 2019 and 2020, and \$3 million in 2021) from the RDF to the City of Benson for the purposes of economic development. This RDF payment is contingent upon Commission approval of the proposed transaction.⁷

⁷ Minn. Stat. S 116C.779, subdivision 1 (f)

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There are three agreements that support the proposed transaction. Each is discussed below.

A. Purchase and Sale Agreement with Benson Power, LLC

The Asset Purchase and Sale Agreement between Benson Power, LLC and NSPM is provided as Attachment B to this filing. The key terms are as follows:

- NSPM will purchase from Benson Power, LLC, substantially all of the assets of Benson Power facility and the PPA will be terminated for a transaction price of \$95 million.
- The transaction will close on the third day after satisfaction or waiver of all the conditions to closing (which includes regulatory approvals), or as parties agree.
- At closing, NSPM will place \$12 million of the transaction price into escrow to be held by an escrow agent for two years as security for warranties and covenants.
- Certain costs related to the termination of the contract for the sale of ash to North American Fertilizer (NAF) may be deducted from the transaction price payable to the owners of Benson Power and paid directly to NAF. NSPM will credit Benson Power, LLC for the value of the ash inventory as of the closing date to the extent it reduces the amount of these costs payable to NAF.
- Prior to closing Benson Power, LLC can only enter into contracts cancellable on 60-days' notice.
- The Jennie-O poultry litter supply contract (in renegotiation at the time of the execution of the agreement), a key contract for Benson Power, LLC, will contain 180-day termination notice provision with take or pay terms with payments estimated to be approximately \$1.1 million – \$1.7 million, depending on the length of notice provided.
- If closing has not occurred by March 31, 2018 either party may terminate.

B. Letter Agreement with City of Benson

In recognition that the Benson Power biomass plant plays an important role in the local economy, NSPM agreed to certain terms with the City of Benson in a letter agreement which is provided as Attachment C to this filing. These commitments include the following:

- NSPM to provide a site specific public safety shut down plan.
- NSPM to make two additional annual local property tax payments following removal of the facility, each based on to the payments made in the year prior to removal.

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- NSPM to reimburse the City of Benson any stranded investments related to water, waste water, and electric distribution assets.
- NSPM to make a payment, up to \$200,000, for a new water line and relocation of controls for the North American Fertilizer plant. The fertilizer plant—which neighbors the Benson biomass plant—currently obtains water from the plant.
- Upon closure of the facility, NSPM shall remove all above-ground improvements to grade, remove all foundations to a depth of four feet below grade, and remediate environmental contamination, if any, in accordance with applicable law.
- NSPM will provide the City of Benson the following written notices:
 - No later than 30-days prior to the shutdown of the facility, a shutdown notice notifying Benson of the date the facility will be shut down; and
 - No later than 30-days after completion of all removal activities at the facility, a final removal notice notifying Benson of the completion of removal.
- Upon closure of the facility, the City of Benson has an option to purchase the site per the following terms:
 - Benson must exercise this option no later than six months following NSPM's shutdown notice;
 - Benson must close on the site no later than 30-days following the date of the removal notice; and
 - The purchase price shall be equal to the appraised value of the restored site (i.e. without the Benson plant facility) as determined by an appraisal obtained by NSPM.
- Upon closure of the facility, NSPM will submit an Attachment Y to MISO.

We note that the funding for the provisions in the Letter Agreement with the City of Benson are separate from the RDF funds being provided to the City of Benson as discussed below.

C. RDF Grant Contract with City of Benson

There will also be a grant contract between NSPM and the City of Benson governing the disbursement of the \$20 million from the RDF. The contract is being negotiated, however, at a high level, the contract will provide that per Minn. Stat. § 116C.779, subd. 1(f) upon Commission approval of the purchase and closure of the Benson plant, NSPM shall provide to the city \$20 million (\$4,000,000 in fiscal year 2018; \$6,500,000 each fiscal year in 2019 and 2020; and \$3,000,000 in fiscal year 2021) for the purposes of economic development and that the money for such payments shall

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come from funds withheld from the transfer of funds to the renewable development account (RDA) as provided by Minn. Stat. § 116C.779, subd. 1(b) and (e).

X. STANDARD OF REVIEW

The Benson transaction is governed by Minn. Stat. § 216B.2424, subd. 9 which provides that a utility may file a petition with the Commission for approval of the early termination of a biomass PPA, or the purchase and closure of a biomass facility. The statute goes on to say that the Commission may approve such a request if: (1) all parties to the PPA agree to the terms and conditions of the amended/terminated PPA/ purchase and closure of a facility; and (2) the action is the best interest of the customers.

In addition Minn. Stat. § 216B.2424 subd 9(e) also provides the standard for approval of cost recovery of the transaction. Specifically, it states:

a utility may petition the Commission to approve a rate schedule that provides for the automatic adjustment of charges to recover investments, expenses and costs, and earnings on the investments associated with a new or amended power purchase agreement, the early termination of a power purchase agreement, or the purchase and closure of a facility. The commission may approve the rate schedule upon a showing that the recovery of investments, expenses and costs, and earnings on the investments is less than the costs that would have been recovered from customers had the utility continued to purchase energy under the power purchase agreement in effect before any option available under this section is approved by the commission. If approved by the commission, cost recovery under this paragraph may include all cost recovery allowed for renewable facilities under section 216B.1645, subdivisions 2 and 2a.

In sum, the governing statute authorizes the Commission to approve the proposed transaction, along with recovery of costs and earnings on the Company's investment, so long as the PPA parties support it, and the proposal is reasonable and in the best interest of customers and the public. For the reasons outlined below, we believe the proposed transaction, and the associated recovery, warrant approval.

A. Contracting Party Support

The Company has entered into the proposed contract because of the substantial savings that will be realized by our customers. Our counterparty, the owners of Benson Power, LLC, had been the prior debt holders of the facility and only became owners of the facility as the result of the receivership process. This proposal provides

consideration for both the plant owners as well as the City of Benson (pending Commission approval of the proposed transaction) that recognizes the economic impact of the facility's closure and provides a bridge for future economic development. Accordingly, there is broad support for this transaction and many stakeholders, including our customers, stand to benefit from its approval.

B. Customer and Public Interest

This proposed contract is in the best interest of customers as demonstrated by the significant cost savings that will be achieved. The cost savings and related assumptions are discussed first, followed by the discussion of the analysis methodology. The model supporting our analysis is provided as Attachment D to this filing.

1. Cost Savings

To analyze the economic impact of terminating the Benson PPA by purchasing the facility and shutting it down, we compared the projected cost of the Benson PPA for the remainder of its term (through 2028) with the sum of: (1) the cost of replacement market energy during that same period; plus (2) the cost of the buyout and subsequent shutdown of the Benson Plant.

The \$20 million in payments from the RDF have not been included in our analysis because RDF-related legislative mandates are collected from our customer through the RDF Rate Rider, and are assumed to be collected in this manner regardless of the proposed transaction.⁸ In other words, if these RDF dollars were not directed to the City of Benson, they would have been directed to other RDF-funded projects and still collected from customers through the RDF Rate Rider at some point in the future. While the new legislation does expedite the timing of the fund collection from customers, the same amount would have ultimately been collected in the future regardless of the proposed transaction.

a. Cost of Continuing the Existing Benson PPA

The cost of the Benson PPA through its 2028 termination date was calculated by taking the assumed production from the plant based on historical actual production and multiplying that by the expected cost of the PPA on a \$/MWh basis. We also

⁸ See the Commission's June 11, 2004 Order in Docket E-002/M-03-2018 establishing the RDF Rate Rider (and removing RDF expenses from the Fuel Clause) and the Commission's June 6, 2011 Order in Docket E-002/M-10-1054 approving recovery of Minnesota legislative mandates.

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took into account the other payments required under the PPA such as fuel transportation, ash revenue shortfall, and property taxes. The PVRR of that stream of payments equals \$561 million over the remaining life of the PPA.

The assumptions are provided in Table 2 below and additional details are in the model provided as Attachment D.

Table 2: Assumptions for Continuing PPA

Assumption	Support
Energy price escalation	1.1% based on 50% of the Company's most recent internal non-labor escalation factor, in line with escalation terms under the PPA and historical actuals. Energy price escalates through mid-2023, then remains flat until cumulative generation reaches 7.9 million MWhs (anticipated in 2027) at which point the energy price is based on market through the remainder of the PPA.
Pass through escalation	2.2% based on the Company's most recent internal non-labor escalation factor, in line with escalation terms under the PPA. Escalation is applied to pass through costs (e.g. fuel transportation) through the remainder of the PPA.
Heat content and heat rate	Heat content of 8.55 MMBtu/Ton and plant heat rate of 14,250 Btu/kWh per Benson Power's 2016 budget.
86% capacity factor	Based on Benson Power's last 5 months of historical performance in 2016, first 5 months in 2017 and 2 months from Benson Power's 2017 forecast.
\$62.9M 2018 energy and fuel transportation charges	PPA component; based on pricing from recent Benson Power invoices escalated for inflation per the PPA (incorporates 35%/65% poultry litter/wood biomass fuel mix, consistent with April 2017 actuals and Benson Power expectations).
[PROTECTED DATA BEGINS PROTECTED DATA ENDS] 2018 ash revenue	PPA component; based on recent Benson Power invoices escalated for inflation per the PPA.

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shortfall	
\$949K 2018 property taxes	PPA component; based on Swift County 2017 property tax statement escalated for inflation per the PPA.

b. Cost of Buyout and Shutdown of Benson Plant

In our discussion of the purchase and closure of the facility, we first discuss the cost of any replacement power that may be necessary due to the PPA termination and second discuss the costs associated with the buyout and shutdown of the plant.

1. Replacement Power

The cost of replacement power needed if the plant is shut down was calculated using a market analysis of projected energy prices through 2028. This allowed a comparison of the cost of power from the PPA against current market estimates. The estimates were based on Minnesota Hub pricing from Spring 2017 and range from about \$24/MWh to \$34/MWh during the same timeframe that the PPA levelized cost is estimated to be **[PROTECTED DATA BEGINS PROTECTED DATA ENDS]**.

Our analysis used a market pricing stream that excluded replacing capacity due primarily to the small size of the plant and the fact that the NSPM system forecasts sufficient capacity through most of the remainder of the contract. This resource provides 39.2 MW of creditable capacity to the NSPM system, therefore termination of the PPA is not expected to have a material impact on capacity needs in the mid-2020s.

The cost of replacement energy is a conservative assumption as there will be many hours during the year that market replacement energy is not needed because the NSPM system generation production is sufficient to meet load needs. The NSPM system is generally long on energy today and in many cases this increment of energy would not need to be replaced, at least not before major baseload retirements.

Replacement costs for the energy provided by the Benson plant over the life of the PPA are expected to total \$128 million (nominal). To the extent the Company does not need to buy replacement power, our customers will realize additional savings.

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2. Purchase and Shutdown Costs

The cost of terminating the PPA and purchasing and shutting down the Benson Plant contains several components.

First, there are approximately \$106.8 million in costs that are necessary to terminate the PPA and acquire and shut down the plant. These costs represent several contractual obligations such as the PPA termination and asset purchase price, contract termination fees, stranded investment costs for the City of Benson, and payment to the fertilizer plant. In addition, this also includes demolition and remediation costs. The Company used a third party consultant to estimate demolition costs. And, while the letter agreement with the City of Benson provides a requirement to remove all foundations to four feet below grade, the Minnesota Pollution Control Agency (MPCA) currently requires complete removal of all foundations unless specifically allowed with a site specific permit. In order to qualify for a site specific permit a site must meet specific criteria. We will be pursuing a site specific permit, however, it is not known if we will receive it. Accordingly, our cost estimate includes assumptions for complete foundation removal. Our estimate also includes \$400,000 in salvage credit that we expect to receive from the sale of equipment. This salvage credit assumes the sale of some motors, transformers, air compressors, the generator, and recycling of copper and steel. The Company will work to maximize the value of the materials and salvage value and to the extent we realize more value than currently estimated, the recovery amounts would be reduced accordingly and the expected customer benefits from the transaction would increase.

Next, there are approximately \$14 million of expenses necessary to wind down operations and shut down the facility including operation and maintenance costs, property taxes, fuel, and fuel transportation. The estimate includes anticipated costs to run the plant at full capacity for a period of two months after the transaction closes and a small amount of expenses to operate the plant during the subsequent four month shutdown phase in the event the plant is called on to run, plus one more month to remove all hazardous material from the site prior to the start of demolition efforts. The estimated seventh-month timeframe is based on the six month Attachment Y filing process to retire the unit plus one additional shut down month.

The NPV of the costs to buy, shut down, and replace any necessary energy are approximately \$216 million. Table 3 below summarizes the underlying assumptions for the plant purchase and closure and there are additional details in the model provided as Attachment D.

Table 3: Assumptions for Plant Purchase and Closure

Assumption	Support
\$95M PPA termination and asset purchase price	Arms-length negotiation for termination of the PPA and purchase of the power plant (to the extent there are costs payable to North American Fertilizer (NAF) estimated to be approximately \$2M, such costs will be deducted from the purchase price and paid to NAF).
\$1.5M contract termination fees	Jennie-O litter contract termination.
\$1.5M legal, miscellaneous fees and insurance	Title insurance, escrow agent fee, antitrust filing fee, and legal.
\$8.8M demolition, remediation and certain other costs per the May 1, 2017 Letter Agreement with the City of Benson	<p>We consulted with a third party to provide an initial estimate of the demolition scope and costs. For purposes of this estimate, we assumed a salvage value of \$400,000 with the expectation that we will offset demolition costs to the extent practical by actively managing the salvage process. While our plan includes removal of all underground foundations, wire, and piping to the maximum feasible depth we will work with the MPCA to determine specific site requirements during the permitting process. In no case will removals be less than the minimum of four feet below grade per agreement letter with the City of Benson.</p> <p>Per agreement with the City of Benson the transaction would reimburse approximately \$600K of stranded investment by the city, and up to \$200K for a new water line and relocation of controls for NAF.</p>
\$1M fuel and \$5M transportation	Assumes plant runs two months at 86% capacity factor and 35%/65% litter/wood mix with no inventory on hand at closing; assumes two 16 hour burns thereafter for emergency run only, using 100% wood, until plant is shut down.
\$3K ash disposal to landfill	Assumes ash disposal to landfill will only be needed for the two 16 hour burns using 100% wood biomass fuel. Cost is based on approximately 59 tons of ash at \$55/ton
\$4.9M operating contracts,	This includes the costs necessary to run the plan for

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Assumption	Support
materials, & supplies	<p>seven months. Includes labor, supplies, parts, services, utilities, and professional fees. Assumes plant runs at full capacity for up to two months to use the existing fuel inventory and honor fuel contracts during cancelation process, then changes to “emergency run only” for months three through six which reduces labor and employees by 50% and supplies, parts and services by 75%, and in month seven, reduces labor and employee related O&M by 86% (includes two maintenance mechanics, two instrumentation and electrical techs, one instrumentation and control tech, and one operations person for isolations, equipment layup, hazardous material removal, etc.). These costs do not include labor for Xcel Energy on site Manager or Xcel Energy support organization assistance.</p> <p>Also includes costs to honor the Backup Station Power Agreement per the May 1, 2017 Letter Agreement with the City of Benson (1MW @ \$8.25/kW-mo through April 2027).</p>
\$3.5M property taxes	<p>Property taxes continue until the facility has been removed. For a period of two years following removal, the Company will make two final annual payments consisting only of local county, city and school property taxes per the May 1, 2017 Letter Agreement with the City of Benson. Forecasted amounts are based on the Swift County 2017 property tax statement escalated for inflation with the two additional annual payments each reduced \$200k to reflect our obligation under the Letter Agreement with the City of Benson which only include local, county, city, and school property taxes- not state taxes.</p>
Deferred taxes	<p>The Company expects that the purchase and shut down of the facility will be characterized as a cancellation of contract for tax purposes, resulting in an ordinary tax expense immediately deductible. However, given NSPM’s current NOL position,</p>

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Assumption	Support
	this deduction must be deferred until NSPM has taxable income, or this investment generates enough taxable income, to use it. Our model defers this tax deduction and includes the related deferred tax asset (DTA) as a regulatory asset with reversal of the DTA as taxable income is generated from this investment. This unused tax deduction adds to NSP's existing NOL position, there is no need to create a new deferral.

In sum, the NPV of the cost of continuing the existing Benson PPA is \$561 million and the cost to terminate the PPA, buy and shut down the plant, and replace any necessary energy are approximately \$216 million. Accordingly, our analysis shows significant customer savings of approximately \$345 million on a NPV basis by purchasing and shutting down the facility and buying replacement energy as opposed to continuing the terms of the PPA.⁹

2. Analysis Methodology

In analyzing whether, and to what extent, the proposed action would benefit customers; we utilized Microsoft Excel as opposed to Strategist for five reasons.

First, the contracted capacity of the resource in question totals 55 MW which is small relative to the total nameplate capacity on our system which is about 10,000 MW.

Second, the contract at issue is a “must take” contract and is not dispatchable, which means the volume is generally stable and predictable on an annual basis. Accordingly, because production levels stay relatively flat, the analysis did not require a full system model to simulate the dispatch of this resource relative to others.

Third, the NSPM system is currently projected to have sufficient capacity until the mid-2020s. As a result, eliminating this contract has a limited impact on our capacity position and does not change our expansion plan.

Fourth, because the proposed transaction only impact energy/fuel—as opposed to capacity—a simple comparison to the Minnesota Hub forward curve provides a reasonable alternative to a full Strategist run.

⁹ As discussed further in the cost recovery section, our analysis demonstrating significant customer benefits included modeling the \$106.8 million as a regulatory asset assuming recovery of, and return on, investment.

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Fifth and finally, our analysis assumes all avoided contract MWh are replaced with market energy purchases. This is likely a conservative assumption as there are many hours in which the system is long on energy and eliminating the contract is not only avoiding the purchase costs associated with the existing PPA contracts but also potentially reducing the amount of energy that we are selling at low LMP market prices into the MISO market. In other words, eliminating the energy from this contract potentially reduces the amount of excess energy we have to sell off of other NSPM resources in low load hours and thereby reduces our exposure to market prices. Strategist could have provided some insight into the impacts on market sales; however, we felt the benefits were compelling without including any additional savings.

As discussed below—and even with our conservative assumption related to markets—our analysis shows significant customer savings.

We note that for modeling purposes, we assumed these changes would take effect as of January 1, 2018.

XI. COST RECOVERY

The Benson PPA costs are currently recovered through the FCA, and we are requesting to recover the costs associated with this transaction in the same manner. We recognize that a rule variance is required for these costs to flow through the FCA, and our request for a variance can be found in the next section of this Petition. As discussed below, we believe both the variance and the transaction itself are squarely in the public interest, are consistent with the amendments to Minn. Stat. § 216B.2424, and will result in hundreds of millions of dollars in savings for our customers.

Our request for cost recovery takes two forms: (1) a regulatory asset that includes the costs necessary to terminate the PPA, acquire the plant, and shut it down; and (2) O&M costs necessary to run the plant as we proceed toward an orderly shutdown, which would run through the FCA as the costs are incurred. Tables 4 and 5 below provide a breakdown of our cost recovery proposal and Attachment E provides more detailed support for the proposed cost recovery. The costs estimated in this Petition and provided below will be adjusted as necessary and only the actual costs incurred will be passed on to customers.

Table 4: Regulatory Asset through FCA

Purchase	
PPA Termination and Asset Purchase Price & NAF Termination	\$95,000,000
Jennie-O contract termination	\$1,500,000
Title insurance	\$65,000
Escrow agent fee	\$3,500
HSR filing fee	\$37,500
Legal & other	\$1,394,000
Demolition and Remediation	\$8,000,000
NAF water line relocation	\$200,000
City of Benson stranded investment	\$606,823
Total	\$106,806,823

Table 5: O&M through FCA

Total Fuel Transportation Cost	\$5,035,989
Total Fuel Cost	\$1,073,302
Total Cost to Landfill Ash	\$3,227
Property Tax	\$3,523,727
O&M	\$3,972,877
Backup Power Agreement	\$924,000
Total	\$14,533,122

With respect to the regulatory asset, we propose to amortize and earn our cost of capital on the \$106.8 million asset over the remaining eleven years of the PPA. By doing so, the Company will remain whole as a part this transaction, which we believe is critical to incentivizing utilities to seek out similar cost-saving opportunities for customers in the future. Additionally, amortizing the expense moderates and smoothes the customer rate impact over several years as opposed to pushing the recovery through in a single year. Finally, our analysis for the Benson transaction—including the \$345 million in NPV benefits for customers—accounts for this recovery method and uses the capital structure and equity return from the Stipulation of Settlement in our recently approved rate case.¹⁰

With respect to ongoing O&M costs, we propose to recover approximately \$14.5 million in costs through the FCA as they are incurred by the Company while plant

¹⁰ Per the Settlement approved in Docket No. E002/GR-15-826. The short-term and long-term debt returns represent current market rates.

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operations are winding down. These operational costs are currently being recovered through the FCA under the terms of the PPA, and they are necessary to bring the plant to an orderly closure and to achieve the substantial customer savings discussed above.

We believe our proposal is consistent with Minn. Stat. § 216B.2424, subd. 9(e), which explicitly provides for the automatic adjustment of charges to recover the costs of transactions like this one. It states in relevant part:

A utility may petition the commission to approve a rate schedule that provides for the automatic adjustment of charges to recover investments, expenses and costs, and earnings on the investments associated with a new or amended power purchase agreement, the early termination of a power purchase agreement, or the purchase and closure of a facility.

Here, we are proposing to recover our costs to purchase the Benson facility as well as ongoing costs to wind down operations and close the facility. We believe these are exactly the kinds of costs contemplated by the legislature in drafting Minn. Stat. § 216B.2424, subd. 9(e), and are therefore eligible for recovery through an automatic adjustment. Further, because the Benson PPA costs are currently recovered through the FCA and because we are effectively stepping into the shoes of the current plant owner while we work toward an orderly shutdown, we are proposing to recover the costs of this transaction in the same manner, through a variance to the Commission's FCA rules.

Minn. Stat. § 216B.2424, subd. 9(e) then goes on to provides the standard to be used in determining whether eligible costs actually merit recovery. It states:

The Commission may approve the rate schedule upon a showing that the recovery of investments, expenses and costs, and earnings on the investments is less than the costs that would have been recovered from customers had the utility continued to purchase energy under the power purchase agreement in effect before any option available under this section is approved by the Commission.

Our proposal plainly satisfies this standard. Indeed, we expect NSPM customers will see a Net Present Value (NPV) savings of approximately \$345 million (\$480 million nominally) over the remaining life of the PPA.¹¹ This roughly translates

¹¹ As discussed in more detail later in the Petition, recent legislation provides that if the Commission approves this transaction, the City of Benson will receive \$20 million from the Renewable Development Fund (RDF) to support economic development. These funds have not been included in the expected customer savings because RDF-related

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from an existing Levelized Cost of Energy (LCOE) of [PROTECTED DATA
BEGINS PROTECTED DATA ENDS] over the remaining life
of the existing PPA to a new LCOE of [PROTECTED DATA BEGINS
PROTECTED DATA ENDS] under the terminated PPA.

Further, we note that the revised statute acknowledges that a plant need not be used and useful to merit recovery, as it explicitly allows for recovery of costs necessary to shut down uneconomic plants. We therefore believe our costs merit recovery under Minn. Stat. § 216B.2424; that our costs are prudent and will result in just and reasonable rates for customers; and that our proposed transaction is decidedly within the public interest as a result of the customer savings and other benefits already described in this petition.

XII. FCA VARIANCE

While we recognize that our request to recover O&M and a return on a regulatory asset through the FCA may be unfamiliar, we note that customers are already paying for all of these costs—and much more—through the FCA as a result of the existing (and expensive) PPA. We further believe that recovery through the FCA is the most efficient means of effectuating the transaction in light of our recently approved multi-year rate plan and, thus, achieving the customer savings discussed above. We therefore request a variance to two of the Commission's FCA rules and address the Commission's standard for granting such a variance below.

Minn. R. 7825.2500 states in part:

Provisions for the automatic adjustment of charges must encompass:

A. Changes in cost resulting from changes in the federal regulated wholesale rate for energy purchased and changes in the cost of fuel consumed in the generation of electricity. This provision is entitled electric energy adjustment

Minn. R. 7825.2600, subp. 2 states in part:

The adjustment per kWh is the sum of the current period cost of energy purchased and cost of fuel consumed per kWh less the base electric cost per kWh.

legislative mandates are collected from our customer through the RDF Rate Rider and are assumed to be collected regardless of the proposed transaction.

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Given the above, a variance would be required to allow the Company to recover the costs associated with the Benson transaction through the FCA since we are not actually purchasing energy or fuel in this agreement as described in Minn. R. 7825.2500 or 7825.2600, subp. 2.

The costs for which we seek recovery will span over eleven years. Accordingly, we request a five-year variance at this time with a commitment that we will either: (a) return to the Commission within five years to request an additional extension for the remaining costs; or (b) if we file an electric rate case before that time, in an attempt to minimize the FCA variance term, we would propose to roll the remaining recovery at that time into base rates.¹²

Minn. R. 7829.3200 allows the Commission to vary its rules if it finds:

- a) Enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- b) Granting the variance would not adversely affect the public interest; and
- c) Granting the variance would not conflict with standards imposed by law.

We address these requirements below.

a) Excessive Burden

Enforcement of this rule would impose an excessive burden upon our customers. As discussed above, if the Commission does not approve a variance for collection of these costs, the Company will be unable to proceed with the proposed transaction; and, as a result, customers will lose the chance to save more than \$345 million (NPV).

b) Public Interest

Granting the requested variance is in the public interest due to the anticipated cost savings for customers and the Company. In addition, all parties to the PPA support the proposed transaction and have a demonstrable interest beyond the customer cost savings.

¹² Per the Settlement approved in Docket No. E002/GR-15-826, the earliest we would file the next electric rate case would be for rates effective January 1, 2020.

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c) No Conflict with Standards Imposed by Law

Granting the variance would not violate any standards imposed by law, the Commission has the authority to establish a regulatory asset as well as grant a variance to the fuel clause.

XIII. FILING REQUIRMENTS

The proposed agreement with Benson Power, LLC is subject to Minn. Stat. § 216B.50, and Minn. R. 7825.1800 and 7850.5000.

A. Minn. Stat. § 216B.50

Minn. Stat. § 216B.50 governs the transfer of utility assets exceeding \$100,000:

No public utility shall sell, acquire, lease, or rent any plant as an operating unit or system in this state for a total consideration in excess of \$100,000 ... without first being authorized so to do by the commission.... If the commission finds that the proposed action is consistent with the public interest, it shall give its consent and approval.... In reaching its determination, the commission shall take into consideration the reasonable value of the property, plant, or securities to be acquired or disposed of, or merged and consolidated....

We respectfully request that the Commission find that our proposed Benson facility acquisition is in the public interest and thus complies with Minn. Stat. § 216B.50. We confirm that the Company does not intend to issue, sell, or transfer any stock in connection with this project. And, as discussed throughout this Petition, our proposed Benson facility acquisition is in the public interest because it results in significant benefits to our customers and places them in a better position than they would be had we continued the PPA for the original contract term.

In addition, the terms of the proposal ensure that the City of Benson will be compensated in order to help offset the plant and the economic study of the facility closure will be reported to the legislature in 2018.

B. Minn. R. 7825.1800

Minn. R. 7825.1800 also addresses property transfers. Minn. R. 7825.1800, subps. B, C and D state that petitions to acquire property shall contain the following:

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B. Petitions for approval of a transfer of property shall be accompanied by the following: all information as required in part 7825.1400, items A to J; the agreed upon purchase price and the terms for payment and other considerations.

C. A description of the property involved in the transaction including any franchises, permits, or operative rights, and the original cost of such property, individually or by class, the depreciation and amortization reserves applicable to such property, individually or by class. If the original cost is unknown, an estimate shall be made of such cost. A detailed description of the method and all supporting documents used in such estimate shall be submitted.

D. Other pertinent facts or additional information that the commission may require.

In this section we discuss compliance with this rule and respectfully request that the Commission waive application of Minn. R. 7825.1800, subp. B.

Minn. R. 7825.1800, subp. B- Variance Request:

Minn. R. 7825.1800, subp. B requires detailed information (items A through J) set forth in Minn. Rule 7825.1400. However, Minn. R. 7825.1400—entitled, Filing Requirements for Capital Structure Approval—concerns capital structure filings and is geared toward investigating the issuance of securities, which is not at issue here.

Accordingly, we respectfully request that the Commission waive application of Minn. R. 7825.1800, subp. B. The Commission has previously granted a variance to the requirements to provide the information outlined under Minn. R. 7825.1400 (A)-(J) in proposed acquisition of property transactions.¹³ The Commission has found that Minn. R. 7825.1400 is applicable to capital structure filings and, therefore, the information identified does not pertain to petitions to acquire property.¹⁴ The Company respectfully requests a similar variance in this case pursuant to Minn. R. 7829.3200.

Minn. R. 7829.3200 allows the Commission to vary its rules if it finds:

- a) Enforcement of the rule would impose an excessive burden upon the applicant or others affected by the rule;
- b) Granting the variance would not adversely affect the public interest; and
- c) Granting the variance would not conflict with standards imposed by law.

¹³ In the Matter of Northern States Power Company and ITC Midwest LLC for Approval of a Transfer of Transmission Assets and Route Permit, Docket No. E002 PA-10-685, Order Approving Sale as Conditioned, Granting Variance and Requiring Filing (December 28, 2010).

¹⁴ In the Matter of Xcel Energy's Petition for Approval of a Transfer and Exchange of Transmission Assets with Great River Energy and Member Cooperatives, Docket No. E002/PA-06-932, Order (October 16, 2006).

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The Company can satisfy all three elements. We take each in turn. First, as noted above, the proposed transaction does not implicate the information sought by Minn. R. 7825.1400 (A)-(J) and, thus, its provision would impose an excessive burden on the Company. Second, and again, because the proposed transaction does not involve the issuance of securities, granting a variance does not conflict with the public interest. And, finally, as evidenced by previous Commission precedent where it waived these requirements under similar circumstances, a waiver will not violate any standards imposed by law.

With regard to Minn. R. 7825.1800, subps. C and D, we provide the information below.

1. Minn. R. 7825.1800, subp. C- Property Description and Cost

As detailed in in the Asset Purchase and Sale Agreement (provided as Attachment B) section 2.1, the proposed acquisition includes all the assets used in connection with the ownership and operation of the Benson Power facility. Specifically, this includes all buildings, machinery, equipment (including a Foster Wheeler stoker boiler and a Fuji steam turbine), personal property, computer hardware, tools, work equipment, supplies, inventory, other tangible assets used at the facility, all fuel inventory, all spare parts inventory, all of the acquired contracts, all permits, and all business information (including company books, customer lists, records, files etc.).

The cost of the assets to Benson Power is \$61.9 million as of December 31, 2015 based on the Audited Financial Statements provided by Benson Power. Accumulated depreciation at December 31, 2015 was \$1.8 million. Assuming continuing depreciation expense, computed on a straight line basis over the remaining 12-year estimated useful life of the assets, estimated accumulated depreciation at June 30, 2017 is \$9.2 million, resulting in an estimated net book value at June 30, 2017 of \$52.8 million.

The asset costs as recorded by Benson Power represent the allocation of the purchase price to assets acquired and liabilities assumed when Benson Power acquired the assets from Fibrominn, LLC as a result of the receivership process.

We have provided proposed journal entries as Attachment F to this filing.

2. Minn. R. 7825.1800, subp. D - Other Pertinent Facts

Other pertinent facts are found within this Petition.

C. Minn. R. 7850.5000

Site permit transfers are governed by Minn. R. 7850.5000. However, the State of Minnesota Environmental Quality Board (EQB) granted the Benson Power biomass plant and the City of Benson an exemption from the requirements of the Minnesota Power Plant Siting Act (Minn. Stat. § 116c.51-69) noting that the proposed project would “not create significant human or environmental impact” in any of the categories of impact examined under the terms of Minn. R. 4400.1310.

Accordingly, there is no site permit to transfer to Xcel Energy. A copy of the EQB’s October 18, 2011 Order (MEQB Docket No. 01-09-Exem-Fibrominn) is provided as Attachment G.

CONCLUSION

We are excited to bring forward a proposal that not only enjoys broad support among the PPA parties but also provides our customers the opportunity to realize truly significant savings. For these and all the other reasons outlined above, we respectfully request that the Commission take the following actions:

- Approve our proposal to early terminate the PPA with Benson Power, LLC, acquire the Benson plant, and subsequently close the facility;
- Approve cost recovery through the FCA of the investments, expenses and costs, and earnings associated with the transactions;
- Approve the creation of a regulatory asset for the costs associated with the Benson transaction—to include a cost of capital return on that asset;
- Approve an FCA variance; and
- Waive application of Minn. R. 7825.1800, subp. B.

Dated: June 30, 2017

Northern States Power Company

STATE OF MINNESOTA
BEFORE THE
MINNESOTA PUBLIC UTILITIES COMMISSION

Nancy Lange	Chair
Dan Lipschultz	Commissioner
Matthew Schuerger	Commissioner
Katie Sieben	Commissioner
John A. Tuma	Commissioner

IN THE MATTER OF THE PETITION OF
NORTHERN STATES POWER COMPANY
FOR APPROVAL TO TERMINATE THE
POWER PURCHASE AGREEMENT WITH
BENSON POWER, LLC, ACQUIRE THE
BENSON POWER BIOMASS PLANT, AND
SUBSEQUENTLY CLOSE THE FACILITY

DOCKET NO. E002/M-17-_____

PETITION

SUMMARY OF FILING

Please take notice that on June 30, 2017, Northern States Power Company, doing business as Xcel Energy, filed with the Minnesota Public Utilities Commission a Petition for approval to terminate the Power Purchase Agreement (PPA) with Benson Power, LLC, acquire the Benson Power biomass plant, and subsequently close the facility. The Company also sought recovery of the costs that are necessary to support this transaction and bring the plant to closure through the Fuel Clause Adjustment (FCA).

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EFFECTIVE DATE. This section is effective July 1, 2017.

Sec. 20. Minnesota Statutes 2016, section 216B.2424, is amended by adding a subdivision to read:

Subd. 9. Adjustment of biomass fuel requirement. (a) Notwithstanding any provision in this section, the public utility subject to this section may, with respect to a facility approved under this section, file a petition with the commission for approval of:

- (1) a new or amended power purchase agreement;
- (2) the early termination of a power purchase agreement; or
- (3) the purchase and closure of the facility.

(b) The commission may approve a new or amended power purchase agreement under this subdivision, notwithstanding the fuel requirements of this section, if the commission determines that:

- (1) all parties to the original power purchase agreement, or their successors or assigns, as applicable, agree to the terms and conditions of the new or amended power purchase agreement; and
- (2) the new or amended power purchase agreement is in the best interest of the customers of the public utility subject to this section, taking into consideration any savings realized by customers in the new or amended power purchase agreement and any costs imposed on customers under paragraph (e). A new or amended power purchase agreement approved under this paragraph may be for any term agreed to by the parties and may govern the purchase of any amount of energy.

(c) The commission may approve the early termination of a power purchase agreement or the purchase and closure of a facility under this subdivision if it determines that:

- (1) all parties to the power purchase agreement, or their successors or assigns, as applicable, agree to the early termination of the power purchase agreement or the purchase and closure of the facility; and
- (2) the early termination of the power purchase agreement or the purchase and closure of the facility is in the best interest of the customers of the public utility subject to this section, taking into consideration any savings realized by customers as a result of the early termination of the power purchase agreement or the purchase and closure of the facility and any costs imposed on the customers under paragraph (e).

(d) The commission's approval of a new or amended power purchase agreement under paragraph (b) or of the termination of a power purchase agreement or the purchase and closure of a facility under paragraph (c), shall not require the public utility subject to this section to purchase replacement amounts of biomass energy to fulfill the requirements of this section.

(e) A utility may petition the commission to approve a rate schedule that provides for the automatic adjustment of charges to recover investments, expenses and costs, and earnings on the investments associated with a new or amended power purchase agreement, the early termination of a power purchase agreement, or the purchase and closure of a facility. The commission may approve the rate schedule upon a showing that the recovery of investments, expenses and costs, and earnings on the investments is less than the costs that would have been recovered from customers had the utility continued to purchase energy under the power purchase agreement in effect before any option available under this section is approved by the commission. If approved by the commission, cost recovery under this paragraph may include all cost recovery allowed for renewable facilities under section 216B.1645, subdivisions 2 and 2a.

(f) This subdivision does not apply to a St. Paul district heating and cooling system cogeneration facility, and nothing in this subdivision precludes a public utility that operates a nuclear-power electric generating plant from filing a petition with the

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commission for approval of a new or amended power purchase agreement with such a facility.

(g) For the purposes of this subdivision, "facility" means a biomass facility previously approved by the commission to satisfy a portion of the biomass mandate in this section.

Northern States Power Company

ASSET PURCHASE AND SALE AGREEMENT

BETWEEN

BENSON POWER, LLC

AND

NORTHERN STATES POWER COMPANY

SIGNING VOLUME

FEBRUARY 3, 2017

Northern States Power Company

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Northern States Power Company

Execution Version

ASSET PURCHASE AND SALE AGREEMENT
BETWEEN
BENSON POWER, LLC
AND
NORTHERN STATES POWER COMPANY

February 3, 2017

Northern States Power Company

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EXHIBITS AND SCHEDULES

EXHIBITS

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ASSET PURCHASE AND SALE AGREEMENT

This ASSET PURCHASE AND SALE AGREEMENT (this “**Agreement**”) between Northern States Power Company, a Minnesota corporation (the “**Buyer**”), and Benson Power, LLC, a Delaware limited liability company (the “**Company**”) takes effect on February 3, 2017. The Buyer and the Company are each referred to individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

- A. The Company owns the Benson Power Biomass Plant, a poultry litter and other biomass fired electrical generating facility with a nominal capacity of 55 MW, located in Benson, Minnesota (the “**Facility**”).
- B. The Facility was previously owned by Fibrominn LLC, and the land it occupies was previously owned by PowerMinn 9090, LLC (collectively, the “**Prior Owners**”).
- C. The Prior Owners defaulted on note agreements secured by the Facility and the land it occupies, leading to the filing of a receivership and mortgage foreclosure proceeding on January 29, 2015, in Swift County District Court, Minnesota, by the secured noteholders. The court appointed a general receiver to oversee the Facility’s operations during the receivership.
- D. An asset management company and an operations and management (O&M) company were retained by the Prior Owners at the initiation of the receivership, as of February 6, 2015. On March 25, 2015, the District Court for the Eighth Judicial District, Swift County, Minnesota, entered that certain Order Authorizing and Approving (i) Sale of Assets Free and Clear of All Liens and (ii) Assignment and Delegation of Executory Contracts in Connection Therewith (the “**Sale Order**”). The Company subsequently purchased the Facility and related assets out of the receivership on August 20, 2015 (the “**Assumption Date**”), and assumed the Asset Management Agreement (as defined below) and O&M Agreement (as defined below).
- E. The Company has no employees; all workers at the Facility are employed by NAES (as defined below).
- F. This Agreement contemplates a transaction in which (i) the Buyer will purchase from the Company, and the Company will sell to the Buyer, substantially all of the assets of the Company, and (ii) the Buyer will assume from the Company, and the Company will transfer to the Buyer, certain liabilities of the Company, in each case on the terms and subject to the conditions set forth in this Agreement.

G.

REDACTED

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AGREEMENT

In consideration of the above recitals and the promises set forth in this Agreement, the Parties agree as follows:

1 **Definitions.**

“**Acquired Assets**” has the meaning set forth in Section 2.1(a) of this Agreement.

“**Acquired Contracts**” means (a) those Contracts listed on Section 4.15 of the Disclosure Schedule (as updated through the Closing Date pursuant to Section 12.15), other than those Contracts expressly identified as Excluded Assets, (b) any other Contracts used in connection with the ownership and operation of the Facility in effect as of the Closing Date, other than those Contracts expressly identified as Excluded Assets; (c) Contracts entered into in accordance with this Agreement, including Section 5.1(c); and (d) Contracts approved or deemed approved by the Buyer in accordance with Section 5.1(d). Notwithstanding the foregoing, the Buyer shall have the option to assume as an Acquired Contract or reject as an Excluded Asset (i) any Contract to which the Company is a party that was in effect on the Execution Date and should have been listed on Schedule 4.15 of the Disclosure Schedule but was not listed thereon as of the Execution Date, exercisable within thirty (30) days follow receipt of notification of such Contract (provided that in the event the Buyer does not assume or reject the Contract within such thirty (30) day period, the Buyer will be deemed to have assumed the Contract as an Acquired Contract), or (ii) as permitted under Section 5.1(d) of this Agreement.

“**Adjustment Objection Notice**” has the meaning set forth in Section 2.4 of this Agreement.

“**Adverse Consequences**” means all actions, suits, proceedings, hearings, charges, claims, demands, injunctions, judgments, orders, decrees, rulings, damages, dues, penalties, fines, costs, liabilities, Taxes, liens, losses, expenses and fees of whatever kind, including court costs and reasonable attorneys’ fees and expenses.

“**Affiliate**” has the meaning set forth in Rule 12b-2 of the regulations promulgated under the Securities Exchange Act of 1934, as amended.

“**Agreed Amount**” has the meaning set forth in Section 10.6 of this Agreement.

“**Agreement**” has the meaning set forth in the preface above.

“**Allocation Objection Notice**” has the meaning set forth in Section 11.4 of this Agreement.

“**Ash Contract Price**” means “Contract Price” as defined in the Ash Sales Agreement or such equivalent term in the New Ash Sales Agreement, as applicable.

“**Ash Sales Agreement**” means the Ash Sales Agreement between the Company (as successor to Fibrominn LLC) and NAF, dated November 30, 2006, as amended.

“**Ash Sales Capital Charges**” means, at any time, (a) the aggregate amount of the remaining Capital Charge and the On-Site Warehousing Capital Charge pursuant to Section 5.5(a) of the

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Ash Sales Agreement, or (b) if the New Ash Sales Agreement is entered into prior to Closing, (i) the aggregate amount referred to in clause (a) that remains owed by the Company under the New Ash Sales Agreement, if any, plus (ii) any additional equivalent amounts owed by the Company under the New Ash Sales Agreement, if any.

“Ash Sales Deficit Amount” means, at any time, (a) the aggregate amount, if any, that is available pursuant to Section 5.5(c) of the Ash Sales Agreement (including any interest accrued thereon) to be deducted from future payments of the Ash Contract Price owed to the Company (including any offset for the value of the ash inventory to the extent set forth in the Ash Sales Invoice or otherwise set forth in a written notice delivered by NAF in connection with the Ash Sales Invoice, acknowledging that such offset decreases the deficit owed to NAF as set forth in the Ash Sales Invoice), or (b) if the New Ash Sales Agreement is entered into prior to Closing, (i) the aggregate amount referred to in clause (a) that remains deductible from the Ash Contract Price under the New Ash Sales Agreement, if any, plus (ii) any additional equivalent amount arising under the New Ash Sales Agreement that is deductible from the Ash Contract Price, if any.

“Ash Sales Invoice” means the invoice setting forth the “Ash Sales Price Calculation” as defined in the Ash Sales Agreement or such equivalent term in the New Ash Sales Agreement, as applicable.

“Ash Sales Reduction Amount” means the aggregate amount equal to the Ash Sales Deficit Amount plus the Ash Sales Capital Charges, in each case as set forth in the Ash Sales Invoice for the last Semi-Annual Period ending prior to the Closing Date.

“Asset Management Agreement” means the Asset Management Agreement between Fibrominn LLC and Competitive Power Ventures, Inc., dated January 28, 2015, and assigned from Fibrominn, LLC, to the Company on August 20, 2015.

“Assignment and Assumption Agreement” has the meaning set forth in Section 7.1(e).

“Assumed Liabilities” has the meaning set forth in Section 2.1(c) of this Agreement.

“Assumption Date” has the meaning set forth in the Recitals above.

“Bill of Sale” has the meaning set forth in Section 7.1(c).

“Buyer” has the meaning set forth in the preface above.

“Capital Charge” means “Capital Charge” as defined in the Ash Sales Agreement or such equivalent term in the New Ash Sales Agreement, as applicable.

“Cash and Cash Equivalents” means the sum of all of the Company’s cash and cash equivalents including marketable securities and deposits in transit.

“Claimed Amount” has the meaning set forth in Section 10.6 of this Agreement.

“Closing” has the meaning set forth in Section 2.3(a) of this Agreement.

“Closing Date” has the meaning set forth in Section 2.3(a) of this Agreement.

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“**Closing Date Statement**” has the meaning set forth in Section 2.4(b) of this Agreement.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Company**” has the meaning set forth in the preface above.

“**Company IP**” means all Intellectual Property Rights owned or exclusively licensed by the Company.

“**Confidential Information**” means any information concerning the business and affairs of the Company (to the extent included in Acquired Assets) that (a) is not already generally available to the public as of the date hereof, (b) does not become generally available to the public after the date hereof solely from a source other than the Company, or (c) is not generally known in the Company’s industry.

“**Confidentiality Agreement**” has the meaning set forth in Section 5.7.

“**Contract**” means any contract, lease, license, evidence of Indebtedness, mortgage, indenture, purchase order, binding bid, letter of credit, security agreement or other binding arrangement, whether oral or written, but excludes Permits.

“**December 2017 Invoice**” means the Ash Sales Invoice for the Semi-Annual Period ending December 31, 2017, as finally determined pursuant to Article 5 of the Ash Sales Agreement.

“**Deductible**” has the meaning set forth in Section 10.3(a).

“**Deed**” has the meaning set forth in Section 7.1(h) of this Agreement.

“**Direct Claim**” has the meaning set forth in Section 10.6 of this Agreement.

“**Disapproved Exception**” has the meaning set forth in Section 5.3(d).

“**Disclosure Schedule**” has the meaning set forth in Section 3.1 of this Agreement.

“**Draft Closing Date Statement**” has the meaning set forth in Section 2.4(a).

“**Environmental Laws**” means any applicable Law, Permit or order of any Governmental Authority relating to (a) the protection, preservation or restoration of the environment (including air, surface water, groundwater, drinking water supply, surface land, subsurface land, plant and animal life or any other natural resource), or (b) the exposure to or the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, production, release or disposal of Hazardous Substances, in each case as in effect at the Execution Date.

“**Environmental Permits**” means any Permits issued under Environmental Laws for the ownership or operation of the Facility

“**Escrow**” has the meaning set forth in Section 2.3(b)(i) of this Agreement.

“**Escrow Agent**” has the meaning set forth in Section 2.3(b)(i) of this Agreement.

“**Escrow Agreement**” has the meaning set forth in Section 2.3(b)(i) of this Agreement.

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“Estimated Closing Date Purchase Price” means the aggregate amount equal to (a) the Purchase Price, less (b) the Escrow, less (c) the Secured Indebtedness, less (d) the amount, if any, by which the Target Inventory Value exceeds the Estimated Inventory Value, and less (e) the Ash Sales Reduction Amount.

“Estimated Closing Date Statement” has the meaning set forth in Section 2.2(b) of this Agreement.

“Estimated Inventory Value” means the aggregate amount of the estimated Spare Parts Inventory Value plus the estimated Fuel Inventory Value as set forth in the Estimated Closing Date Statement.

“Excluded Assets” has the meaning set forth in Section 2.1(b) of this Agreement.

“Excluded Liabilities” has the meaning set forth in Section 2.1(d) of this Agreement.

“Existing Permitted Exceptions” has the meaning set forth in Section 5.3 of this Agreement.

“Execution Date” means the effective date of this Agreement, as set forth in the preface above.

“Facility” has the meaning set forth in the Recitals.

“Federal Power Act” means the Federal Power Act, as amended.

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

“Final Allocation” has the meaning set forth in Section 11.4 of this Agreement.

“Final Closing Date Purchase Price” means the aggregate amount equal to (a) the Purchase Price, less (b) the Escrow, less (c) the Secured Indebtedness, less (d) the amount, if any, by which the Target Inventory Value exceeds the Final Inventory Value, and less (e) the Ash Sales Reduction Amount.

“Final Inventory Value” means the aggregate amount of the Spare Parts Inventory Value plus the Fuel Inventory Value set forth in the Closing Date Statement as finally determined pursuant to Section 2.4(b).

“Fuel Inventory” means all poultry litter and other biomass fuels owned by the Company as of the Closing Date, whether located at the Facility or elsewhere, but excluding any fuel located in the fuel hall inside the Facility.

“Fuel Inventory Amount” means be the aggregate number of tons of Fuel Inventory (rounded to the nearest whole ton), calculated in accordance with past practices of the Company, which amount shall not exceed an amount that would be held by the Company in the Ordinary Course of Business.

“Fuel Inventory Value” means the aggregate dollar value of the Fuel Inventory, calculated for each type of fuel included in the Fuel Inventory, by multiplying (a) the Fuel Inventory Amount, by (b) the average purchase price (fuel cost and transportation cost) actually paid per ton for such type of fuel during the two calendar month period most recently ended on or prior to the Closing. A sample calculation of the Fuel Inventory Value as of date of this Agreement is attached hereto as Exhibit B.

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“**Fundamental Representation**” has the meaning set forth in Section 10.1 of this Agreement.

“**GAAP**” means United States generally accepted accounting principles as in effect as of the date hereof.

“**Good Industry Practices**” means, with respect to the Facility, any of the practices, methods and acts generally engaged in or approved by a significant portion of the litter fuel and other biomass electrical generation industry in the United States during the relevant time period that, in the exercise of the Company’s reasonable judgment in light of the facts known or that reasonably should have been known at the time the decision was made, would reasonably have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Industry Practices are intended to consist of practices, methods or acts generally accepted in the United States, and are not intended to be limited to optimum practices, methods or acts to the exclusion of all others.

“**Governmental Authority**” means any federal, state, local or foreign governmental, administrative or regulatory authority, court, agency or body, or any division or subdivision, and including any governmental or quasi-governmental or non-governmental body administering, regulating or having general oversight over electricity, power or other markets.

“**Hazardous Substance**” means any substance presently listed, defined or classified as a pollutant, contaminant, hazardous substance, toxic substance, hazardous waste, solid waste or special waste under any applicable Environmental Law.

“**HSR Act**” means the Hart-Scott Rodino Antitrust Improvements Act of 1976, as amended.

“**Income Tax**” means any federal, state, local or foreign income tax (or other Tax, such as a franchise tax, the computation of which is based upon net income).

“**Income Tax Return**” means any return, declaration, report, claim for refund, or information return or statement relating to Income Taxes, including any schedule, attachment or amendments.

“**Indebtedness**” means all obligations of the Company for borrowed money.

“**Indemnified Party**” means a party entitled to indemnification under Section 10 of this Agreement.

“**Indemnifying Party**” means party obligated to provide indemnification under Section 10 of this Agreement.

“**Independent Accountant**” means the Minnesota office of a nationally recognized accounting firm mutually acceptable to the Parties.

“**Insurance Policies**” has the meaning set forth in Section 4.20(a) of this Agreement.

“**Intellectual Property**” means all of the following in any jurisdiction throughout the world: (a) all patents, inventions, improvements, algorithms, apparatus, methods and processes; (b) all trademarks, service marks, and trade dress; (c) all copyrightable works; (d) all mask works; (e) all trade secrets and confidential business information, including ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information, and

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business and marketing plans and proposals; (f) all computer software, including all source code, object code, executable code, firmware, APIs, user interfaces, websites, applications, development tools, files, records, data, data bases and related documentation, regardless of the media on which it is recorded, and all Internet sites (and all contents of the sites); (g) all advertising and promotional materials; (h) all other forms of technology; and (i) all copies and tangible embodiments of any of the foregoing (in whatever form or medium).

“Intellectual Property Rights” means all rights of the following types, which currently exist under the laws of any jurisdiction in the world: (a) rights associated with works of authorship, including exclusive exploitation rights, copyrights, moral rights and mask works; (b) trademark and trade name rights and similar rights; (c) trade secret rights; (d) patents and industrial property rights; (e) other proprietary rights in Intellectual Property of every kind and nature; and (f) all registrations, renewals, extensions, continuations, divisions, or reissues of, and applications for, any of the rights referred to in clauses (a) through (e) above.

“Interim Period” means the period of time commencing with the Execution Date and ending on the Closing Date.

“June 2017 Invoice” means the Ash Sales Invoice for the Semi-Annual Period ending June 30, 2017, as finally determined pursuant to Article 5 of the Ash Sales Agreement.

“Knowledge” means (a) with respect to periods after the Assumption Date, the actual, present knowledge of Donald Atwood, Nicholas Wright and Dave Magill and any constructive knowledge of such persons as a reasonably prudent person in similar business or position would have obtained upon the exercise of reasonable diligence, including consultation with Gregory B. Myers, the plant manager, and (b) with respect to periods on or prior to the Assumption Date, the actual, present knowledge of Donald Atwood, Nicholas Wright and Dave Magill (not to include any constructive knowledge or knowledge that could have been gained through inquiry).

“Law” means any federal, state, local or foreign constitution, law, code, plan, statute, rule, regulation, ordinance, order, written determination or other legal requirement of any Governmental Authority, each as amended and in effect as of the Execution Date.

“Manager” means Competitive Power Ventures, Inc., in its capacity as the asset manager under the Asset Management Agreement.

“Material Adverse Effect” means any change, effect, event, occurrence or development which, individually or together with any one or more other changes, effects, events, occurrences or developments, has had or may reasonably be expected to have a material adverse effect on (a) the business, operation, conditions (financial or otherwise) and assets of the Company, when taken as a whole, or (b) the ability of the Company to consummate the transactions contemplated by this Agreement, in each case other than relating to or as a result of: (i) general business, financial or economic conditions; (ii) changes in the national, regional or state wholesale or retail markets for electric power, natural gas, other fuels or transportation; (iii) changes in the national, regional or state electric generating, transmission or distribution industries; (iv) changes in the national, regional, or state transmission or distribution systems; (v) changes in the costs, including transportation costs, or availability of commodities or supplies, including fuel (other than poultry litter); (vi) changes in the costs, including transportation costs, or availability of poultry litter; (vii) changes in Law or any judgment, order or decree, including any relating to climate change, renewable energy or the environment, whether or not directly targeted at the Company; (viii) changes to the Power Purchase Agreement or disputes or claims made by the Buyer or its

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Affiliates under or as a result of the Power Purchase Agreement; (ix) national or international political or social conditions; (x) changes in the financial, banking or securities markets; (xi) changes in GAAP; (xii) changes in Law, orders or other binding directives issued by any Governmental Authority; (xiii) the taking of any action contemplated by this Agreement and the Transaction Documents; or (xiv) the disclosure or pursuit of the transactions contemplated by this Agreement; *provided, however*, that clauses (i), (ii), (iii), (iv), (v), (vii), (ix) and (x) shall not apply to the extent such effect, change, circumstance, development or event has had a disproportionate impact on the Company compared to industry competitors.

“**Material Contract**” has the meaning set forth in Section 4.15 of this Agreement.

REDACTED

“**Members**” means all of the equity holders of record of the Company.

“**Most Recent Balance Sheet**” has the meaning set forth in Section 4.7 of this Agreement.

“**Most Recent Fiscal Quarter End**” has the meaning set forth in Section 4.7 of this Agreement.

“**Most Recent Fiscal Year End**” has the meaning set forth in Section 4.7 of this Agreement.

“**Mutual Termination and Release**” has the meaning set forth in Section 7.1(p) of this Agreement.

“**NAES**” means NAES Corporation, a Washington corporation.

“**NAF**” means North American Fertilizer LLC.

“**NERC**” means the North American Electric Reliability Corporation.

“**New Ash Sales Agreement**” means any new agreement between the Company and NAF entered into following the date hereof in order to replace the existing Ash Sales Agreement.

“**New Exceptions**” has the meaning set forth in Section 5.3(d) of this Agreement.

“**O&M Agreement**” means the O&M Services Agreement between Fibrominn LLC and NAES, dated January 28, 2015, and assigned from Fibrominn, LLC, to the Company August 20, 2015.

“**On-Site Warehousing Capital Charge**” means that portion of the On-Site Warehousing Charge attributable to the mortgage payment only.

“**On-Site Warehousing Charge**” means the “On-Site Warehousing Charge” as defined in the Ash Sales Agreement or such equivalent term in the New Ash Sales Agreement, as applicable.

“**Operator**” means NAES in its capacity as the operator under the O&M Agreement.

“**Ordinary Course of Business**” means the Company’s ordinary course of business consistent with past custom and practice (including with respect to quantity and frequency) of actions or omissions consistent with Good Industry Practices.

“**Owned Real Property**” has the meaning set forth in Section 4.12(a).

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“**Party**” and “**Parties**” have the meanings set forth in the preface above.

“**Payoff Letters**” has the meaning set forth in Section 7.1(m) of this Agreement.

“**Permit**” means any permits, authorizations, approvals, decisions, zoning orders, franchises, registrations, licenses, filings, certificates, variances or similar rights granted by or obtained from any Governmental Authority.

“**Permitted Exceptions**” has the meaning set forth in Section 5.3 of this Agreement.

“**Permitted Liens**” means (a) mechanic’s, materialmen’s and similar liens that were incurred in the Ordinary Course of Business and are being contested in good faith; (b) liens for Taxes not yet due and payable; and (c) other immaterial liens arising in the Ordinary Course of Business which do not interfere in any material respect with the Company’s ability to own or operate the Facility and are not incurred in connection with the borrowing of money.

“**Person**” means an individual, a partnership, a corporation, a limited liability company, an association, an entity, a joint stock company, a trust, a joint venture, an unincorporated organization, any other business entity or any Governmental Authority.

“**Power Purchase Agreement**” means that certain Biomass Power Purchase Agreement dated as of August 31, 2000, and amended as of June 7, 2004, and February 16, 2011, as assigned and modified by the Consent and Agreement dated as of August 20, 2015, by and between the Company and the Buyer, as may be amended from time to time.

“**Preliminary Allocation**” has the meaning set forth in Section 11.4 of this Agreement.

“**Prior Owners**” has the meaning set forth in the Recitals.

“**PUC**” means each of the Minnesota Public Utilities Commission and the North Dakota Public Service Commission.

“**PUC Approvals**” means (a) the approval of Minnesota Public Utilities Commission (i) of the transactions contemplated by this Agreement pursuant to Minn. Stat. § 216B.50 and (ii) for purposes of full cost recovery, and (b) the issuance of an Advanced Determination of Prudence from the North Dakota Public Service Commission pursuant to N.D.C.C. § 49-05-16, in the case of (a) and (b) on terms satisfactory to the Buyer in its reasonable discretion and including (w) approval to reflect the transactions contemplated by this Agreement in the applicable jurisdictional electric retail rates of the Buyer in such a manner that the Buyer may recover such electric jurisdictional costs of the transactions contemplated by this Agreement, (x) a return on the Purchase Price to be reflected in applicable electric retail rates through the inclusion of the Facility in the Buyer’s rate base or other treatment of the Buyer’s investment in the Facility as if it was to be included in rate base, (y) recovery of any material ancillary costs related to the Facility, and (z) recovery of any ongoing fixed and variable operations and maintenance expenses for the Facility.

“**Purchase Price**” has the meaning set forth in Section 2.2(a) of this Agreement.

“**Regulatory Approvals**” has the meaning set forth in Section 5.2(b) of this Agreement.

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“**Release**” means the spilling, leaking, disposing, discharging, emitting, depositing, ejecting, leaching, pumping, migrating escaping or any other release or threatened release, however defined, whether intentional or unintentional, of any Hazardous Substances.

“**Reliance Letter**” has the meaning set forth in Section 5.6 of this Agreement.

“**Restricted Acquired Contract**” means any Acquired Contract that requires the consent of a third party in order to be assigned.

“**Sale Order**” has the meaning set forth in the Recitals.

“**Secured Indebtedness**” means all Indebtedness of the Company as of the Closing Date that is secured by any of the Acquired Assets.

“**Security Interest**” means any mortgage, pledge, lien, encumbrance, charge or other security interest.

“**Semi-Annual Period**” means “Semi-Annual Period” as defined in the Ash Sales Agreement or such equivalent term in the New Ash Sales Agreement, as applicable.

“**Spare Parts Inventory**” means all spare parts held for use in the operation of the Facility and located at the Facility as of the Closing Date.

“**Spare Parts Inventory Value**” means the aggregate dollar value of the Spare Parts Inventory, calculated in accordance with GAAP, applying the same accounting treatment and methodologies as used in the Financial Statements. A sample calculation of the Spare Parts Inventory Value as of date of this Agreement is attached hereto as Exhibit C.

“**Subsidiary**” means, with respect to any Person, any corporation, partnership, limited liability company or other entity in which any Person has direct or indirect equity or other ownership interest that represents 50% or more of the aggregate equity or other ownership interest in such entity, or has the power to vote or direct the voting of sufficient securities to elect a majority of the directors, governors or persons holding similar positions.

“**Supplemental Disclosures**” has the meaning set forth in Section 12.15 of this Agreement.

“**Survey**” has the meaning set forth in Section 5.3 of this Agreement.

“**Surveyor**” has the meaning set forth in Section 5.3 of this Agreement.

“**Target Fuel Inventory Value**” means the Fuel Inventory Value based on a Fuel Inventory Amount of 17,000 tons, calculated as of the Closing Date.

“**Target Inventory Value**” means the Target Fuel Inventory Value plus the Target Spare Parts Inventory Value.

“**Target Spare Parts Inventory Value**” equals \$1,900,000.

“**Tax**” means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value

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added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty or addition thereto, whether disputed or not.

“**Tax Return**” means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule, attachment or amendment.

“**Termination Date**” has the meaning set forth in Section 9.1(d) of this Agreement.

“**Termination Invoice**” means the Ash Sales Invoice for the Semi-Annual Period ending upon termination of the Ash Sales Agreement (if terminated prior to December 31, 2017), as finally determined pursuant to Article 5 of the Ash Sales Agreement.

“**Third Party Claim**” has the meaning set forth in Section 10.5(a) of this Agreement.

“**Third Party Consents**” means the third party consents required to assign the Restricted Acquired Contracts, including such third party consents set forth on Schedule 4.3 to this Agreement (as updated through the Closing Date pursuant to Section 12.15).

“**Title Commitment**” has the meaning set forth in Section 5.3 of this Agreement.

“**Title Company**” has the meaning set forth in Section 5.3 of this Agreement.

“**Title Evidence**” has the meaning set forth in Section 5.3 of this Agreement.

“**Title Objection Letter**” has the meaning set forth in Section 5.3 of this Agreement.

“**Title Policy**” has the meaning set forth in Section 5.3 of this Agreement.

“**Title Report Update**” has the meaning set forth in Section 5.3(d) of this Agreement.

“**Transaction Documents**” means all documents and agreements to be entered into by one or more of the Parties in connection with the transactions contemplated by this Agreement.

“**Updated Phase I Report**” has the meaning set forth in Section 5.6 of this Agreement.

2 **Purchase and Sale of the Acquired Assets; Assumption of Assumed Liabilities.**

2.1. **Basic Transaction.**

(a) On the terms and subject to the conditions of this Agreement, the Company shall cause to be sold, assigned, transferred, conveyed and delivered to the Buyer, at the Closing, good and valid title to the Acquired Assets, free of any Security Interests (other than Permitted Liens). For purposes of this Agreement, “**Acquired Assets**” means the Facility and all of the properties, rights, interests and other tangible and intangible assets of the Company (other than Excluded Assets) used in connection with the ownership and operation of the Facility as of the Closing Date, including:

(i) all buildings, machinery, equipment, vehicles, personal property, computer hardware, tools, work equipment, supplies, inventory and other tangible assets of the Company held by the Company for use at the Facility;

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- (ii) all Fuel Inventory and all Spare Parts Inventory;
 - (iii) all of the Acquired Contracts, and the rights of the Company thereunder;
 - (iv) all Permits relating to the Facility, to the extent transferrable;
 - (v) all business information with respect to the Facility in the possession of the Company as of the Closing, including the Company books, customer lists, records, files and data;
 - (vi) the Owned Real Property;
 - (vii) all insurance benefits of the Company under the Insurance Policies, including all rights to applicable refunds, claims and proceeds thereunder, arising from or relating to the Acquired Assets or the Assumed Liabilities;
 - (viii) all claims and causes of action of the Company against other Persons (regardless of whether or not such claims and causes of action have been asserted by the Company), and all rights of indemnity, warranty rights, rights of contribution, rights to refunds, rights of reimbursement and other rights of recovery possessed by the Company (regardless of whether such rights are currently exercisable), in each case to the extent related to the Acquired Assets or the Assumed Liabilities;
 - (ix) the rights and obligations of the Company under the O&M Agreement following the termination of the O&M Agreement pursuant to Section 7.1(q) hereof, including the rights and obligations under Section 8.6 thereof; and
 - (x) all Intellectual Property Rights relating to the Facility.
- (b) The Buyer expressly understands and agrees that it is not purchasing or acquiring, and the Company is not selling or assigning, any Excluded Assets, and all such Excluded Assets are excluded from the definition of Acquired Assets. For purposes of this Agreement, “**Excluded Assets**” means the following assets and properties of the Company:
- (i) all Cash and Cash Equivalents;
 - (ii) all accounts receivable, notes receivable and other receivables of the Company as of the Closing Date (including, without limitation, receivables arising under the Power Purchase Agreement that are due or to become due from the Buyer after Closing related to periods prior to the Closing Date);
 - (iii) all bank accounts and securities of the Company;
 - (iv) all company seals, organizational documents, minute books, stock books, Tax Returns, Tax records, financial statements and records, books of account or other records having to do with the corporate organization of

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the Company, and any other books and records which the Company is prohibited from disclosing or transferring to the Buyer under applicable Law;

- (v) subject to Section 2.1(a)(vii), all insurance policies of the Company, including the Insurance Policies, and all rights to applicable refunds, claims and proceeds thereunder;
 - (vi) all Tax assets (including duty and Tax refunds and prepayments) of the Company, and all other prepaid assets;
 - (vii) all claims and causes of action of the Company against other Persons (regardless of whether or not such claims and causes of action have been asserted by the Company), and all rights of indemnity, warranty rights, rights of contribution, rights to refunds, rights of reimbursement and other rights of recovery possessed by the Company (regardless of whether such rights are currently exercisable), in each case to the extent related to the Excluded Assets or the Excluded Liabilities;
 - (viii) any Contracts set forth on the attached Schedule 2.1(b)(viii) or for which the Buyer has exercised its option to reject pursuant to the definition of Acquired Contracts;
 - (ix) the rights of the Company under this Agreement or any of the Transaction Documents;
 - (x) the Asset Management Agreement;
 - (xi) subject to Section 2.1(a)(ix), the O&M Agreement;
 - (xii) the Company's market based rate, qualifying facility and exempt wholesale generator tariffs and filings; and
 - (xiii) the other assets identified on the attached Schedule 2.1(b)(xiii).
- (c) Subject to the terms and conditions set forth herein, the Buyer will assume and agree to pay, perform and discharge when due only the following liabilities and obligations of the Company, (collectively, the "**Assumed Liabilities**"), and no other liabilities or obligations:
- (i) all liabilities and obligations of the Company arising under the Acquired Contracts from and after the Closing Date, but excluding liabilities for breaches or nonperformance which occurred prior to the Closing Date; *provided, however*, that, with respect to any Restricted Acquired Contract, such Restricted Acquired Contract shall not be deemed assigned and it shall not constitute an Assumed Liability unless and until such time as such third party consents in writing to the assignment hereunder;
 - (ii) all liabilities and obligations under the O&M Agreement owed to the Operator for work performed for the Buyer following the Closing Date

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pursuant to Section 8.6 of the O&M Agreement, but excluding liabilities for breaches or nonperformance which occurred prior to the Closing Date and excluding any liability for any payments required under Section 7.7 and Section 8.4 of the O&M Agreement;

- (iii) **REDACTED** and
- (iv) all other liabilities or obligation arising out of or relating to the Buyer's ownership or operation of the Facility or other Acquired Assets on or after the Closing.
- (d) Other than the Assumed Liabilities, the Buyer will not assume and will not be responsible to pay, perform or discharge any liabilities or obligations of the Company of any kind, whether or not related to the operation of the Facility (all such liabilities and obligations other than the Assumed Liabilities, collectively, the "**Excluded Liabilities**"). For avoidance of doubt, it is understood that the Buyer is not assuming:
 - (i) any accounts payable or Indebtedness of the Company existing or incurred at or prior to the Closing Date;
 - (ii) any liabilities for Taxes (A) of the Company for any taxable period, and (B) with respect to the Acquired Assets for any taxable period (or portion thereof) ending on or before the Closing Date, including any obligation to assume or succeed to the Tax liability of any other Person;
 - (iii) any Secured Indebtedness;
 - (iv) subject to Section 2.1(c)(ii), all liabilities and obligations arising under the O&M Agreement, including any amounts owed to the Operator as a result of the termination of the O&M Agreement;
 - (v) **REDACTED**; or
 - (vi) any liabilities related to the Facility under Environmental Laws arising on or prior to the Closing.

2.2. Purchase Price.

- (a) The aggregate consideration for the Acquired Assets equals \$95,000,000 (the "**Purchase Price**"), as adjusted in accordance with this Section 2.2 and Sections 2.4 and 2.5 of this Agreement, plus the assumption of the Assumed Liabilities. At the Closing, the Buyer shall pay the Purchase Price and shall assume and agree to pay, perform and discharge when due any and all Assumed Liabilities.
- (b) At least three business days prior to the Closing Date, the Company shall prepare in good faith and provide to the Buyer a statement (the "**Estimated Closing Date Statement**") including (i) the amount of the Secured Indebtedness, (ii) an estimate of the Spare Parts Inventory Value as of 11:59 p.m. on the day

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immediately preceding the Closing Date, (iii) an estimate of the Fuel Inventory Value as of 11:59 p.m. on the day immediately preceding the Closing Date, (iv) the **REDACTED**, and (v) the amount and calculation of the Estimated Closing Date Purchase Price, together with the work papers, back-up materials and other supporting documentation used in preparing such estimate, including books and records, reports, summaries, receipts, inventory lists and any additional information reasonably requested by the Buyer related thereto. The Spare Parts Inventory Value and the Fuel Inventory Value shall be calculated in accordance with the same accounting policies and procedures used to calculate the Target Spare Parts Inventory Value and the Target Fuel Inventory Value, respectively.

- (c) If the Estimated Inventory Value is less than the Target Inventory Value, then the Purchase Price shall be reduced by the amount of such shortfall. There shall be no adjustment to the Purchase Price at the Closing if the Estimated Inventory Value is greater than the Target Inventory Value.

2.3. The Closing.

- (a) The closing of the transactions contemplated by this Agreement (the “**Closing**”) will take place at the offices of Gray, Plant, Mooty, Mooty & Bennett, P.A. in Minneapolis, Minnesota or remotely by exchange of electronic documents, at 9:00 a.m., on the third day after the satisfaction or waiver of all of the conditions to Closing set forth in Section 8, or any other manner or time and date as the Parties may agree (the “**Closing Date**”). The transactions contemplated by this Agreement will be deemed effective as of 11:59:59 p.m. on the Closing Date.
- (b) At the Closing, the Buyer will
 - (i) deposit with Wells Fargo Bank N.A., as escrow agent (the “**Escrow Agent**”), \$12,000,000 of the Purchase Price (the “**Escrow**”), which, together with any accrued interest, will be held for a period of 24 months to serve as (A) partial security for satisfaction of any adjustment to the Purchase Price in favor of the Buyer pursuant to Section 2.4 of this Agreement, (B) exclusive security for any indemnification obligations of the Company under Sections 10.2(a) and 10.2(b) of this Agreement and (C) partial security for any indemnification obligations of the Company under Sections 10.2(c) and 10.2(d) of this Agreement. The Escrow will be subject to the terms of an Escrow Agreement substantially in the form of the attached Exhibit D (the “**Escrow Agreement**”);
 - (ii) pay all Secured Indebtedness in accordance with the Payoff Letters; and
 - (iii) pay the Estimated Closing Date Purchase Price to the Company by wire transfer of immediately available funds.

2.4. Post-Closing Purchase Price Adjustments and Payments.

- (a) Within 90 days after the Closing Date, the Buyer will prepare and deliver to the Company a draft closing date statement (the “**Draft Closing Date Statement**”) setting forth (i) the Fuel Inventory Value as of the effective time of the Closing,

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(ii) the Spare Parts Inventory Value as of the effective time of the Closing, and
(iii) the amount and calculation of the Final Closing Date Purchase Price. The Buyer will prepare the Draft Closing Date Statement in accordance with the accounting policies and procedures used in preparing the Estimated Closing Date Statement. The Buyer will make available to the Company and its accountants the work papers, back-up materials and other information used in preparing the Draft Closing Date Statement.

- (b) If the Company has any objections to the Draft Closing Date Statement, then it must deliver a statement describing its objections (the “**Adjustment Objection Notice**”) in reasonable detail to the Buyer within 30 days after receiving the Draft Closing Date Statement. Any determination set forth in the Draft Closing Date Statement that is not objected to by the Company in the Adjustment Objection Notice shall be deemed acceptable and shall be final and binding upon the Company and the Buyer. The Buyer and the Company will use commercially reasonable efforts to resolve any such objections included in the Adjustment Objection Notice themselves through good faith negotiation. If the Parties do not obtain a final resolution within 30 days after the Buyer has received the Adjustment Objection Notice, however, the Buyer and the Company will submit the disputed portion of the Adjustment Objection Notice to the Independent Accountant to resolve such remaining objections included in the Adjustment Objection Notice within 30 days following such submission. The scope of the disputes to be resolved by the Independent Accountant shall be limited to the items in dispute that were properly included in the Adjustment Objection Notice. The Independent Accountant’s decision shall be based solely on written submissions by the Buyer and the Company and their respective representatives and not by independent review. The Independent Accountant shall not hold any hearings, hear any oral testimony or otherwise seek or require any other evidence. The Independent Accountant shall address only those items in dispute and may not assign a value greater than the greatest value for such item claimed by either Party or smaller than the smallest value for such item claimed by either Party. The resolution of disputed items by the Independent Accountant shall constitute an arbitral award that is final, binding and non-appealable and upon which a judgment may be entered by a court having jurisdiction thereover. The Independent Accountant shall also determine, as part of such dispute resolution, the respective liability of the Buyer and the Company as to payment of the costs and expenses of such Independent Accountant, based on the following formula: the Buyer and the Company shall each pay the percentage of the costs and expenses of the Independent Accountant in settling the disputed matters set forth in the Adjustment Objection Notice equal to (i) the aggregate amount of such disputed matters (as determined by reference to the potential impact of such disputed matters on the Purchase Price) submitted to the Independent Accountant that are unsuccessfully disputed by such Party (as finally determined by the Independent Accountant) divided by (ii) the aggregate amount of all such disputed matters (as determined by reference to the potential impact of such disputed matters on the Purchase Price) submitted to the Independent Accountant. For example, if the Company challenges the calculation of the Fuel Inventory Value by an amount of \$100,000, but the Independent Accountant determines that the Company has a valid claim for only \$40,000, the Buyer shall bear 40% of the fees and expenses of the Independent Accountant and the Company shall bear the other 60% of such fees and expenses. The Parties shall

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cooperate with each other and the Independent Accountant regarding the resolution of any disagreement with respect to the Draft Closing Date Statement, such cooperation to include reasonable access to books, records, facilities and personnel. This provision shall constitute the exclusive remedy of the parties with respect to determination of the Closing Date Statement. The “**Closing Date Statement**” means the Draft Closing Date Statement together with any revisions or additions made pursuant to this Section 2.4(b).

- (c) If the Final Closing Date Purchase Price is less than the Estimated Closing Date Purchase Price, then within 5 days after the final determination of the Closing Date Statement, at the Buyer’s option (i) the Company and the Buyer shall issue a joint notice to the Escrow Agent instructing the Escrow Agent to release to the Buyer an amount equal to such shortfall, or (ii) the Company shall pay the amount of such shortfall to the Buyer in cash or other immediately available funds. If the Buyer elects to be paid from the Escrow and the amount of funds in the Escrow is insufficient to fully satisfy such payment obligation, then the Company shall, in addition to any disbursement from the Escrow in respect of such payment, pay the amount of such deficiency to the Buyer in cash or other immediately available funds.
- (d) If the Final Closing Date Purchase Price is greater than the Estimated Closing Date Purchase Price, then within 5 days after the final determination of the Closing Date Statement the Buyer shall pay to the Company (or, at the Company’s direction, to its Members) an amount equal to such excess; *provided*, that in no event shall the Purchase Price as adjusted pursuant to Section 2.4 exceed \$95,000,000, and the Buyer shall have no obligation to pay to the Company any amount in excess of \$95,000,000 as a result of the purchase price adjustments set forth in this Section 2.4.

2.5. Ash Sales Deficit Amount.

■ **REDACTED**

■ [REDACTED]

■ [REDACTED]

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REDACTED

- 3 **Representations and Warranties of the Buyer.** The Buyer represents and warrants to the Company as follows, as of the date of this Agreement and as of the Closing Date.
- 3.1. **Organization of the Buyer.** The Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Minnesota.
- 3.2. **Authorization of Transaction.** The Buyer has full corporate power and authority to execute and deliver this Agreement and the Transaction Documents to which it is a party, and to perform its obligations under this Agreement and the Transaction Documents to which it is a party. This Agreement and the Transaction Documents to which it is a party constitute the valid and legally binding obligations of the Buyer, enforceable in accordance with their respective terms and conditions, except as the same may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditor's rights generally, and (b) general principles of equity. The Buyer has duly authorized the execution, delivery and performance of this Agreement and the Transaction Documents to which it is a party.
- 3.3. **Noncontravention.** Neither the execution and the delivery of this Agreement or the Transaction Documents to which the Buyer is a party, nor the consummation of the contemplated transactions, will (a) violate any Law to which the Buyer is subject; (b) violate any provision of the Buyer's certificate of incorporation or bylaws; or (c) conflict with, result in a violation or breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice under any Contract to which the Buyer is a party or by which it is bound or to which any of its assets is subject. Other than the Regulatory Approvals and the Third Party Consents, the Buyer does not need to give any notice to, make any filing with, or obtain any authorization, consent or approval of any Governmental Authority or third party in order for the Parties to consummate the transactions contemplated by this Agreement, and the Buyer has no actual knowledge of any reason that any such required authorization, consent or approval cannot be obtained prior to the Termination Date.
- 3.4. **Brokers' Fees.** The Buyer has no liability to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which the Company or either of the Members could become liable or obligated.
- 3.5. **Funds Available.** The Buyer has sufficient funds available to enable it to pay the Purchase Price and otherwise to consummate the transactions contemplated by this Agreement and the Transaction Documents.
- 3.6. **Litigation.** The Buyer (a) is not currently party to, nor has it been threatened with, any injunction, judgment, order, restraining order, decree, ruling, inquiry, unfair labor charge or government charge, and (b) is not currently party to, nor has it been threatened with, any action, claim, suit, litigation, proceeding, arbitral action, governmental audit, hearing,

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criminal prosecution or investigation of, in or before any Governmental Authority or before any arbitrator, in either case which would have a Material Adverse Effect on the Buyer's ability to consummate the transactions contemplated by this Agreement.

- 4 **Representations and Warranties Concerning the Company.** The Company represents and warrants to the Buyer as follows, as of the date of this Agreement and as of the Closing Date; *provided*, that the representations and warranties shall be qualified by the Disclosure Schedule, which will be arranged in paragraphs corresponding to the sections contained in this Section 4, and a disclosure in any section of the Disclosure Schedule shall be deemed to qualify each representation and warranty set forth in this Section 4, should the existence of such disclosure be relevant to any other subsection of this Section 4 (i) that is specifically identified (by cross-reference or otherwise) in the Disclosure Schedule as being qualified by such exception or (ii) with respect to which the relevance of such disclosure would be reasonably apparent on its face to apply to such representation and warranty.
- 4.1. **Organization, Qualification and Power.** The Company is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware. Except as indicated in Section 4.1 of the Disclosure Schedule, the Company is duly licensed or qualified as a foreign limited liability company and is in good standing under the Laws of each jurisdiction where the Company currently conducts business that requires such licensing or qualification is required. The Company has full company power and authority necessary to carry on the business as being conducted as of the date hereof, and to own, lease and operate the properties owned, leased and operated by it as of the date hereof. The charter, bylaws or other governing documents of the Company, copies of which have previously been made available to the Buyer, are true and correct copies of such documents as in effect as of the date of this Agreement, and the Company is not in default under or in violation of any provision of such documents.
- 4.2. **Authorization of Transaction.** The Company has full power and authority (including full company power and authority) to execute and deliver this Agreement and the Transaction Documents to which it is a party, and to perform its obligations under this Agreement and the Transaction Documents to which it is a party. This Agreement and the Transaction Documents to which the Company is a party have been or will be duly and validly executed and delivered by the Company. This Agreement and the Transaction Documents to which it is a party constitute the valid and legally binding obligations of the Company, enforceable in accordance with their respective terms and conditions, except as the same may be limited by (a) bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditor's rights generally, and (b) general principles of equity. The Company has duly authorized the execution, delivery and performance of this Agreement and the Transaction Documents to which it is a party.
- 4.3. **Noncontravention; Consents and Approvals.** Assuming that the approvals specified herein are obtained on or before the Closing, neither the execution and the delivery of this Agreement or the Transaction Documents, nor the consummation of the contemplated transactions, will (a) violate any Law to which the Company is subject; (b) violate or breach any provision of the articles, bylaws, operating agreement, or other organizational documents of the Company; or (c) except as indicated in Section 4.3 of the Disclosure Schedule, conflict with, result in a violation or breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice or consent under any Material Contract to which the

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Company is a party or by which it is bound, or any Contract to which any of the Acquired Assets are subject (or result in the imposition of any Security Interest (other than Permitted Liens) upon the Acquired Assets). Except for the Regulatory Approvals or as indicated in Section 4.3 of the Disclosure Schedule, the Company does not need to give any notice to, make any filing with, or obtain any authorization, consent or approval of any Governmental Authority or third party in order for the Parties to consummate the transactions contemplated by this Agreement, and the Company is not aware of any reason that any such required authorization, consent or approval cannot be obtained prior to the Termination Date.

- 4.4. **Brokers' Fees; Payments on Sale.** Except as set forth in Section 4.4 of the Disclosure Schedule, the Company does not have (a) any liability to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which the Buyer could become liable or obligated, or (b) any liability to pay any fees, bonuses, or other payments to any third party as a result of the transactions contemplated by this Agreement.
- 4.5. **Title to Acquired Assets.** Except as set forth on Section 4.5 of the Disclosure Schedule, the Company (a) has good and marketable title to, or a valid leasehold interest in, all of the non-real estate Acquired Assets, and (b) owns the Acquired Assets free and clear of all Security Interests other than Permitted Liens.
- 4.6. **Subsidiaries.** The Company has no Subsidiaries and does not otherwise control, own directly or indirectly, or have any equity participation directly or indirectly in any corporation, limited liability company, partnership, joint venture, trust or other business association.
- 4.7. **Financial Statements; Books and Records.**
- (a) Attached to Section 4.7 of the Disclosure Schedule are the following financial statements (collectively, the "**Financial Statements**"): (a) audited balance sheets and statements of income, changes in Member's equity, and cash flow as of and for the period begun on the Assumption Date and ending December 31, 2015 (the "**Most Recent Fiscal Year End**"), for the Company; and (b) unaudited balance sheets and statements of income, changes in Members' equity and cash flow as of and for the quarter ended September 30, 2016 (the "**Most Recent Fiscal Quarter End**"), for the Company (such balance sheet as of the Most Recent Fiscal Quarter End, the "**Most Recent Balance Sheet**"). Except as indicated in Section 4.7 of the Disclosure Schedule, the Financial Statements present fairly in all material respects the financial condition and the results of operations of the Company for those periods, in each case in accordance with GAAP consistently applied during the periods involved (except in the case of unaudited Financial Statements for the absence of footnotes and normal year-end adjustments), and are correct and complete in all material respects.
- (b) All accounts, books and ledgers related to the business of the Company are properly and accurately kept and are complete in all material respects, and, to the Company's Knowledge, there are no material inaccuracies or discrepancies of any kind contained or reflected therein.

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- 4.8. **Absence of Undisclosed Liabilities.** The Company has no liabilities or obligations (whether accrued, absolute, contingent, unliquidated or otherwise, whether due or to become due, whether known or unknown, and regardless of when asserted), individually or in the aggregate, of the nature required to be disclosed in a balance sheet prepared in accordance with GAAP, except (a) those which are adequately reflected or reserved against in the Financial Statements, (b) those which have been incurred in the Ordinary Course of Business consistent with past practice since the date of this Most Recent Balance Sheet, (c) liabilities disclosed in Section 4.8 of the Disclosure Schedule, or (d) obligations required to be performed by the Company pursuant to the Agreement or the transaction contemplated hereby.
- 4.9. **Subsequent Events.** Since September 30, 2016, the Company has conducted its business in the Ordinary Course of Business, and there have been no changes, effects, events, occurrences or developments that (a) are outside of the Ordinary Course of Business or (b) have had, or could have, individually or in the aggregate, a Material Adverse Effect. Without limiting the foregoing, except as indicated in Section 4.9 of the Disclosure Schedule, since September 30, 2016:
- (a) the Company has not sold, leased, transferred or assigned any of its assets, tangible or intangible, other than in the Ordinary Course of Business;
 - (b) the Company has not entered into any Contract (or series of related Contracts) either involving more than \$50,000 or outside the Ordinary Course of Business;
 - (c) no party (including the Company) has accelerated, terminated, materially modified or cancelled any Contract (or series of related Contracts) involving more than \$50,000 to which the Company is a party or by which it is bound;
 - (d) the Company has not waived any rights of material value or suffered any material losses, whether or not in the Ordinary Course of Business;
 - (e) the Company has not imposed, or to the Company's Knowledge had imposed against it, any Security Interest (other than Permitted Liens) upon any of the Acquired Assets, tangible or intangible;
 - (f) the Company has not discharged or satisfied any Security Interest or paid any liability, in each case with a value in excess of \$50,000, other than current liabilities paid in the Ordinary Course of Business;
 - (g) the Company has not issued any note, bond or other debt security, or created, incurred, assumed or guaranteed any Indebtedness for borrowed money or capitalized lease obligation either involving more than \$50,000 singly or \$100,000 in the aggregate;
 - (h) the Company has not declared, set aside or paid any dividends or other distributions with respect to any shares of the capital stock or other securities of the Company;
 - (i) the Company has not entered into any transaction with any Affiliate;

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- (j) the Company has not experienced any theft, damage, destruction or loss (whether or not covered by insurance) to its real or personal property in an amount greater than \$100,000;
- (k) the Company has not entered into any employment Contract or collective bargaining agreement, written or oral, or modified the terms of any such existing Contract, nor permitted NAES to enter into any such Contract that would apply to any of the Facility's workers or other personnel;
- (l) the Company has not made any change in any Tax or financial accounting methods, principles, practice or elections from those utilized in the preparation of the latest Financial Statements except as required by GAAP or the statutory accounting principles and practices prescribed or permitted by the domiciliary state of the relevant Person; or
- (m) the Company has not entered into any commitment (written or oral, contingent or otherwise) to do any of the items described in this Section 4.9.

4.10. **Legal Compliance.** Except as indicated in Section 4.10 of the Disclosure Schedule, (a) the Company has complied since the Assumption Date, and is now in compliance, with all applicable Laws in all material respects, and (b) the Facility has conformed since the Assumption Date and, to the Company's Knowledge, prior to the Assumption Date, and is now in conformance, with all applicable Laws in all material respects. No action, suit, proceeding, hearing, investigation, charge, complaint, claim, demand or notice has been filed or commenced, or to the Company's Knowledge threatened to be commenced, against the Company.

4.11. **Tax Matters.** Except as indicated in Section 4.11 of the Disclosure Schedule:

- (a) The Company has timely filed all required Tax Returns. All such Tax Returns were correct and complete in all material respects. All Taxes owed by the Company (whether or not shown on any Tax Return) have been timely paid. The Company is not currently the beneficiary of any extension of time within which to file any Tax Return. The Company has not received written notice that it is or may be subject to taxation by a jurisdiction where it does not file Tax Returns. No assets of the Company are subject to a Security Interest (other than Permitted Liens) that arose in connection with any failure (or alleged failure) to pay any Tax.
- (b) The Company has withheld and paid all Taxes required to have been withheld and paid in connection with amounts owing to any employee, independent contractor, creditor, Member or other third party.
- (c) No deficiency for any Taxes has been proposed, asserted or assessed against the Company that has not been resolved and paid in full. There is no pending Tax audit or other administrative proceeding or court proceeding with regard to any Taxes or Tax Returns of the Company, nor has there been any written notice to the Company by any taxing authority regarding any such audit or other proceeding, nor is any such Tax audit or other proceeding threatened in writing or, to the Company's Knowledge, otherwise with regard to any Taxes or Tax Returns of the Company.

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- (d) Section 4.11(d) of the Disclosure Schedule lists all Income Tax Returns filed by the Company for taxable periods beginning on or after the Assumption Date, indicates those Income Tax Returns that have been audited, and indicates those Income Tax Returns that currently are the subject of audit. The Company has made available to the Buyer correct and complete copies of all Income Tax Returns, examination reports and statements of deficiencies assessed against or agreed to by the Company for taxable periods beginning on or after the Assumption Date.
- (e) No waiver or comparable consent given by the Company regarding the application of the statute of limitations with respect to any Taxes is outstanding, nor is any request for any such waiver or consent pending.
- (f) The unpaid Taxes of the Company did not, as of the date of the Most Recent Balance Sheet, exceed the reserve for Tax liability (excluding any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the Most Recent Balance Sheet. Since the date of the Most Recent Balance Sheet, the Company has not incurred any liability for Taxes outside the Ordinary Course of Business (except in connection with the transactions contemplated by this Agreement) or otherwise inconsistent with past custom and practice.
- (g) The Company does not have any liability for the Taxes of any other Person (i) as a transferee or successor, (ii) by Contract or (iii) otherwise, other than (x) commercially reasonable Contracts providing for the allocation or payment of real property Taxes attributable to real property leased or occupied by the Company; and (y) commercially reasonable Contracts for the allocation or payment of personal property Taxes, sales or use Taxes or value added taxes with respect to personal property leased, used, owned or sold in the Ordinary Course of Business.

4.12. **Real Property.**

- (a) Section 4.12(a) of the Disclosure Schedule lists and describes briefly all real property owned by the Company (the “**Owned Real Property**”). With respect to each parcel of Owned Real Property listed in Section 4.12 (a) of the Disclosure Schedule, except as listed on Section 4.12(a) of the Disclosure Schedule:
 - (i) the identified owner listed in Section 4.12(a) of the Disclosure Schedule has fee simple title to the identified parcel of Owned Real Property, subject only to the Existing Permitted Exceptions;
 - (ii) the Company (A) has received no written notice of any condemnation proceedings, any lawsuits or administrative actions, or any violations of any federal, state or local laws, rules or regulations relating to the Owned Real Property and (B) the Company has no Knowledge of any condemnation proceedings, any lawsuits or administrative actions, or any violations of any federal, state or local laws, rules or regulations relating to the Owned Real Property prior to the Assumption Date;

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- (iii) there are no outstanding options or rights of first refusal to purchase all or any portion of the Owned Real Property;
- (iv) there are no leases or possessory right of others regarding the Owned Real Property except to the extent as such possessory rights may exist under the Asset Management Agreement and O&M Agreement for the provisions of services under such Asset Management Agreement and O&M Agreement;
- (v) the Company has received no written notice of actual or threatened special assessments or reassessments of the Owned Real Property other than as may be set forth in the Title Commitment, and the Company has no Knowledge of any actual or threatened special assessments or reassessments of the Owned Real Property prior to the Assumption Date;
- (vi) the buildings, structures and improvements included within the Owned Real Property are in good repair and condition, and all mechanical, electrical, heating, air conditioning, drainage, sewer, water and plumbing systems are in working order;
- (vii) the Company is not a “foreign person”, “foreign partnership”, “foreign trust” or “foreign estate” as those terms are defined in Section 1445 of the Internal Revenue Code;
- (viii) there is no “subsurface sewage treatment system” on or serving the Owned Real Property within the meaning of Minn. Stat. Section 115.55;
- (ix) to the Company’s Knowledge, there are no wells on the Owned Real Property within the meaning of Minn. Stat. Chapter 103I;
- (x) to the Company’s Knowledge, no aboveground or underground tanks are located in or about the Owned Real Property, or have been located under, in or about the Owned Real Property or have subsequently been removed or filled, that had a Release for which no corrective action was taken; and the Company has filed all required affidavits pursuant to Minn. Stat. §116.48; and
- (xi) methamphetamine production has not occurred on the Owned Real Property since the Assumption Date or, to the Company’s Knowledge, prior to the Assumption Date.

(b) The Company does not lease any real property.

- 4.13. **Intellectual Property.** Except as listed on Section 4.13(a) of the Disclosure Schedule and licenses for off-the-shelf software from commercial software providers, the Company does not own or license any Intellectual Property material to the operation of the Facility. Except as indicated in Section 4.13(b) of the Disclosure Schedule, to the Company’s Knowledge, the Company has not, and no Company IP has, interfered with, infringed upon (directly, contributorily, by inducement, or otherwise), misappropriated, violated or otherwise come into conflict with any Intellectual Property Rights of any third party. The Company has not received any written claim, demand or notice alleging any such

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interference, infringement, misappropriation, violation or conflict, and to the Company's Knowledge, no such claim is pending or threatened against the Company.

- 4.14. **Tangible Assets.** Except as set forth in Section 4.14 of the Disclosure Schedule, (a) the Acquired Assets constitute all of the rights and interests in and to the material tangible assets and the Intellectual Property that the Company has used to operate the Facility following the Assumption Date, and (b) the Facility is operational in all material respects.
- 4.15. **Contracts.** Section 4.15 of the Disclosure Schedule lists the following Contracts to which the Company is a party or by which it is bound (each a "**Material Contract**"):
 - (a) any Contract (or group of related Contracts) for the lease of personal property to or from any Person providing for lease payments in excess of \$50,000 per year;
 - (b) any Contract (or group of related Contracts) for the purchase or sale of raw materials, commodities, supplies, products or other personal property, or for the furnishing or receipt of services, the performance of which will extend over a period of more than one year, or involve consideration in excess of \$50,000;
 - (c) any Contract that require the Company to purchase or sell a stated portion of the requirements or outputs of the business or that contain "take or pay" provisions;
 - (d) any Contract concerning a partnership, joint venture or consulting relationship;
 - (e) any Contract (or group of related Contracts) under which it has created, incurred, assumed or guaranteed any Indebtedness for borrowed money, or any capitalized lease obligation, or under which it has imposed a Security Interest (other than a Permitted Lien) on any of its assets, tangible or intangible, excluding Indebtedness that will be paid off at or prior to Closing;
 - (f) any Contract containing an exclusivity, nonsolicitation or noncompetition, or other covenant prohibiting or restricting the Company's ability to compete with, or participate in, any line of business or in any market or prohibiting or restricting the solicitation of the employees or contractors of any other entity;
 - (g) any Contract involving any of the Members and their Affiliates (other than the Company);
 - (h) any profit sharing, stock option, stock purchase, stock appreciation, deferred compensation, severance or other material plan or arrangement for the benefit of its current or former directors, officers and employees;
 - (i) any collective bargaining agreement;
 - (j) any written Contract for the employment of any individual on a full-time, part-time, consulting or other basis providing annual compensation in excess of \$50,000 or providing severance benefits;
 - (k) any Contract under which it has advanced or loaned any amount to any Person (including its directors, officers and employees outside the Ordinary Course of Business);

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- (l) any Contract granting any power of attorney with respect to the affairs of the Company;
- (m) any indemnity agreement, suretyship Contract, performance bond, working capital maintenance or other form of guaranty agreement;
- (n) any agreement to indemnify, hold harmless or defend any Person;
- (o) any Contract with any Governmental Authority;
- (p) any Contract for the sale of any of the Acquired Assets or for the grant to any Person of any option, right of first refusal or preferential or similar right to purchase any of the Acquired Assets (other than this Agreement); and
- (q) any other Contract (or group of related Contracts) the performance of which involves consideration in excess of \$100,000.

The Company has made available to the Buyer a correct and complete copy of each written Material Contract (as amended to date) and a written summary setting forth all material terms and conditions of each oral Material Contract. With respect to each such Material Contract: (A) the Contract is legal, valid, binding, enforceable against the Company (except as the same may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or similar Laws now or hereafter in effect relating to creditor rights generally and (ii) general principles of equity); (B) neither the Company nor, to the Company's Knowledge, any other party to the Contract is in material breach or default thereunder, and, to the Company's Knowledge, no event has occurred that, with notice or lapse of time, would constitute a material breach or default, or permit termination, modification, or acceleration, under the Contract; (C) the Company has not received notice of termination or nonrenewal of the Contract from any other party; and (D) no party has repudiated any material provision of the Contract.

4.16. **Permits.** Section 4.16 of the Disclosure Schedule lists all material Permits issued to and held by the Company. Except as disclosed on Section 4.16 of the Disclosure Schedule, each of such Permits is in full force and effect, and the Company is in material compliance with its obligations with respect to such Permits. All fees and charges invoiced to the Company with respect to such Permits invoiced and due as of the date hereof have been paid in full. Except as disclosed on Section 4.16 of the Disclosure Schedule, to the Company's Knowledge, no event has occurred that allows, or upon the giving of notice or the lapse of time or otherwise would allow, revocation, suspension, lapse, limitation or termination of any such Permits. Except as disclosed on Section 4.16 of the Disclosure Schedule, the Company has not been advised by any Governmental Authority of any actual or potential change in the status or terms and conditions of any such Permits. The Permits listed in Section 4.16 of the Disclosure Schedule constitute all material Permits necessary in order for the Company to carry on its business as presently conducted. The Company has made available to the Buyer correct and complete copies of each of the Permits listed in Section 4.16 of the Disclosure Schedule.

4.17. **Litigation.** Except as set forth on Section 4.17 of the Disclosure Schedule, the Company has not, since the Assumption Date, (a) been subject to or, to the Company's Knowledge, been threatened with, any injunction, judgment, order, restraining order, decree, ruling, inquiry, unfair labor practice charge or government charge, or (b) been a party or, to the

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Company's Knowledge, been threatened to be made a party to any action, claim, suit, litigation, proceeding, arbitral action, governmental audit, hearing, criminal prosecution or investigation of, in or before any Governmental Authority or before any arbitrator.

- 4.18. **Employment Matters; Employee Benefits.** The Company has no current or former employees, and maintains no employee benefit plans. All workers at the Facility are employed by NAES, and operate the Facility under NAES supervision pursuant to the O&M Agreement.
- 4.19. **Environmental Matters.** Except as disclosed on Section 4.19 of the Disclosure Schedule, since the Assumption Date, (a) none of the Company, the Facility or the Owned Real Property are in material violation of any Environmental Law, (b) there are no material suits, notices, demands, claims, hearings or proceedings pending or, to the Company's Knowledge, threatened against the Company or the Facility relating to any material violation of any applicable material Environmental Law, (c) no Hazardous Substance has been disposed of at the Facility or in, on or under the Owned Real Property by the Company or, to the Company's Knowledge, any other Person, other than in compliance in all material respects with applicable Environmental Laws, (d) the Company holds all material Environmental Permits required under Environmental Law to own or operate the Facility; (e) the Company is not subject to any material corrective actions or remedial obligations relating to any settlement, court order, administrative order, or judgment asserted or arising under any Environmental Law; (f) to the Company's Knowledge, there has been no Release of any Hazardous Substances at, on, under, over, at, or from the Facility; and (g) the Company has not transported or arranged for the transportation for storage, treatment, or disposal of any Hazardous Substances from or related to the operations of the Owned Real Property, including the Facility, to any location which is: (i) listed on the U.S. Environmental Protection Agency's National Priorities List of Hazardous Waste Sites; (ii) listed on the Comprehensive Environmental Response, Compensation, Liability Information System or on any similar listed site under any Environmental Laws; or (iii) the subject of any cleanup or response action. Except as disclosed on Section 4.19 of the Disclosure Schedule, to the Knowledge of the Company, prior to the Assumption Date, (A) no Hazardous Substances were disposed of at the Facility or in, on or under the Owned Real Property other than in compliance in all material respects with applicable Environmental Laws, (B) there was no Release of any Hazardous Substances at, on, under, over or from the Facility, and (C) the Company's predecessors did not transport or arrange for the transportation for storage, treatment, or disposal of any Hazardous Substances from or related to the operations of the Owned Real Property, including the Facility to any location which is: (i) listed on the U.S. Environmental Protection Agency's National Priorities List of Hazardous Waste Sites; (ii) listed on the Comprehensive Environmental Response, Compensation, Liability Information System or on any similar listed site under any Environmental Laws; or (iii) the subject of any cleanup or response action. The representations and warranties contained in Sections 4.12(a)(viii), 4.12(a)(ix), 4.12(a)(x), 4.16 and 4.19 are the sole representations and warranties in this Agreement relating to Environmental Laws, Hazardous Substances and Environmental Permits. The Company has not been notified by the Operator or the Manager that such party is in violation of applicable covenants in the O&M Agreement or the Asset Management Agreement relating to transportation or disposal of Hazardous Substances.

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4.20. Insurance.

- (a) Section 4.20(a) of the Disclosure Schedule sets forth (i) a true and complete list of all current policies or binders of fire, liability, product liability, umbrella liability, real and personal property, workers' compensation, vehicular, fiduciary liability and other casualty and property insurance maintained by the Company and relating to the Facility, the Acquired Assets or the Assumed Liabilities (collectively, the “**Insurance Policies**”); and (ii) with respect to the Facility, the Acquired Assets or the Assumed Liabilities, a list of all pending claims and the claims history for the Company since the Assumption Date.
- (b) Except as set forth on Section 4.20(b) of the Disclosure Schedule, there are no claims related to the Facility, the Acquired Assets or the Assumed Liabilities pending under any such Insurance Policies as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights. The Company has not received any written notice of cancellation of, premium increase with respect to, or alteration of coverage under, any of such Insurance Policies. All premiums due on such Insurance Policies have either been paid or, if not yet due, accrued. All such Insurance Policies (i) are in full force and effect and enforceable in accordance with their terms; and (ii) have not been subject to any lapse in coverage. The Company is not in default under, or has otherwise failed to comply with, in any material respect, any provision contained in any such Insurance Policy. The Insurance Policies are of the type and in the amounts consistent with Good Industry Practice and are sufficient for compliance with all applicable Laws and Contracts to which the Company is a party or by which it is bound. True and complete copies of the Insurance Policies have been made available to the Buyer.

- 4.21. **No Implied Representations or Warranties.** The Company is not making any representation or warranty whatsoever, express or implied, except those representations and warranties of the Company explicitly set forth in this Agreement or in the Disclosure Schedule. EXCEPT AS EXPLICITLY SET FORTH HEREIN, THE COMPANY HAS NOT MADE, NOR IS IT MAKING, ANY REPRESENTATION, EXPRESS OR IMPLIED, AS TO THE VALUE OF THE FACILITY OR ANY ACQUIRED ASSET, OR ANY WARRANTY OF MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR QUALITY WITH RESPECT TO THE FACILITY OR ANY OF THE ACQUIRED ASSETS, OR AS TO THE CONDITION OR WORKMANSHIP THEREOF, OR AS TO THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT.

- 5 **Pre-Closing Covenants.** The Parties agree as follows with respect to the Interim Period.

5.1. Interim Operating Covenants.

- (a) During the Interim Period, the Company shall:
 - (i) operate and maintain the Facility (A) in the Ordinary Course of Business and (B) in compliance in all material respects with applicable Laws;
 - (ii) use commercially reasonable efforts to preserve intact the business organization and goodwill of the Company, to keep available the services

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provided under the O&M Agreement and the Asset Management Agreement, and to maintain satisfactory relationships with customers, suppliers and others having business relationships therewith;

- (iii) confer on a regular and frequent basis with representatives of the Buyer to report operational matters and the general status of ongoing operations of the business of the Company; and
 - (iv) promptly notify the Buyer of (A) any emergency regarding the Facility and (B) any material complaints, investigations or hearings (or communications indicating that the same may be contemplated) of any Governmental Authority regarding the Facility.
- (b) During the Interim Period, the Company shall not take or agree to take any of the following actions without prior consent of the Buyer, which consent shall not be unreasonably withheld, delayed, or conditioned:
- (i) sell, transfer, convey, pledge, encumber or otherwise dispose of any portion of, or interest in, any Owned Real Property, or grant, join in or consent to any easement, right-of-way agreement, license, lease, sublease, occupancy agreement, or like instrument burdening any portion of, or interest in, the Owned Real Property except for Permitted Liens;
 - (ii) with respect to Acquired Assets other than Owned Real Property, sell, lease, license, transfer, convey, pledge, encumber or otherwise dispose of any of such Acquired Assets, except for Permitted Liens, other than in the Ordinary Course of Business;
 - (iii) incur, create, assume or otherwise become liable for any Indebtedness other than (A) trade or account payables incurred in the Ordinary Course of Business, (B) Indebtedness that will not be assumed by the Buyer, or (C) Indebtedness that will be discharged at or prior to Closing;
 - (iv) fail to maintain its existence, merge or consolidate with any other Person, acquire all or substantially all of the assets of any other Person or create any Subsidiary to hold any of the Acquired Assets;
 - (v) modify any of its charter, bylaws or other governing documents in a manner that would have an adverse effect on the Acquired Assets or the Company's obligations under this Agreement;
 - (vi) engage in any business other than the ownership, operation and maintenance of the Facility;
 - (vii) make any change in its accounting or Tax reporting methods or policies, except as required by GAAP or changes in applicable accounting rules or Law;
 - (viii) make any material change in the levels of inventory maintained at the Facility for the applicable time of year, except for such changes as are in the Ordinary Course of Business;

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- (ix) enter into, amend, modify, cancel, terminate or grant any waiver under any Contract, except as provided in Section 5.1(c) below;
 - (x) make any loans or advances to any Person, except for expenses incurred in the Ordinary Course of Business;
 - (xi) cancel or terminate any insurance coverage or cause any of the insurance coverage to lapse, unless simultaneously with such termination, cancellation or lapse, replacement policies providing coverage equal to or greater than the coverage under the canceled, terminated or lapsed policies are in full force and effect;
 - (xii) conclude or agree to any material corrective action plans, consent decrees, actions or orders under any Laws;
 - (xiii) settle, compromise or waive any material rights relating to any litigation or arbitration matters;
 - (xiv) enter into any employment, severance or similar Contract;
 - (xv) enter into any collective bargaining agreements;
 - (xvi) intentionally take any action which would render, or which reasonably may be expected to render, any representation or warranty made by the Company in this Agreement untrue or inaccurate at the Closing; or
 - (xvii) enter into any transaction with an Affiliate for which the Buyer would have any liability.
- (c) The Parties agree that, notwithstanding the restrictions set forth in Section 5.1(b), in no event will the Company be required to obtain the Buyer's consent:
- (i) to conduct any business activities required under applicable Law or pursuant to (A) any Contract existing as of the Execution Date or entered into during the Interim Period in accordance with this Section 5.1 or (B) any Permit applicable to the Facility;
 - (ii) to exercise any remedies, including the right of termination, under any Contract existing as of the Execution Date or entered into during the Interim Period in accordance with this Section 5.1 to which the Company is a party upon a breach, default or repudiation of any material term by the other party thereto;
 - (iii) except as provided in clause (iv) below, to enter into, amend, modify, cancel, terminate or grant any waiver under any Contract: (A) that is terminable by the Company (or following the Closing, the Buyer) without penalty upon less than 61 days' notice; (B) that does not contain a minimum purchase or sale obligation extending beyond 60 days; (C) for which the Company's payment obligations are less than \$50,000 individually and \$250,000 in the aggregate for all such Contracts; (D) that will be performed in full prior to the Closing (in which case, such

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Contract shall not be an Acquired Contract); or (E) that is between the Company or any of its Affiliates on the one hand and the Buyer or any of its Affiliates on the other hand, including without limitation the Power Purchase Agreement; or

(iv)

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- (d) In the event that the Company is seeking the Buyer's consent to any of the actions prohibited by Section 5.1(b), the Company will deliver a written notification to the Buyer setting forth in reasonable detail the proposed action, which notification will include a copy of any proposed Contracts. The Buyer shall have 15 days following receipt of such notification to grant or deny its consent. In the event the Buyer does not grant or deny its consent within such 15 day period, then the Buyer will be deemed to have consented to such action, and the Company may proceed on such basis. Notwithstanding the provisions of Section 5.1(b), the Company may enter into any Contract that would otherwise require the Buyer's consent under Section 5.1(b) (and is not subject to an exception under Section 5.1(c)) without obtaining such consent, but the Buyer shall have the option, exercisable within thirty (30) days following receipt of notification of such Contract, to assume as an Acquired Contract or reject as an Excluded Asset any such Contract (provided that in the event the Buyer does not assume or reject the Contract within such thirty (30) day period, the Buyer will be deemed to have assumed the Contract as an Acquired Contract).
- (e) Notwithstanding the foregoing, nothing in this Agreement is intended to provide the Buyer, directly or indirectly, with the right to control or direct the business or operations of the Company at any time prior to the Closing Date. Prior to the Closing Date, the Company shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its own business and operations.

5.2. Agreement to Cooperate; Regulatory Approval.

- (a) Except as otherwise provided in this Agreement, each of the Parties will use its reasonable best efforts to take all action and to do all things necessary, proper or advisable in order to consummate and make effective the transactions contemplated by this Agreement (including satisfaction, but not waiver, of the Closing conditions set forth in Section 8 of this Agreement). The Company shall use its reasonable best efforts to obtain the Third Party Consents, and the Buyer shall provide any assistance reasonably required in order to assist the Company in obtaining the Third Party Consents; *provided, however*, that the Company

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shall not contact any third parties with respect to the Third Party Consents prior to the date of the filing of the PUC Approvals. Upon obtaining such consent or approval, the Company and the Buyer shall execute such further instruments of conveyance as may be necessary to assign and transfer any such Restricted Acquired Contract to the Buyer at the Closing.

- (b) Subject to the terms and conditions of this Agreement and applicable Law, each Party shall use its commercially reasonable efforts to take, or cause to be taken, all actions and do, or cause to be done, all things necessary, proper or advisable to obtain as promptly as reasonably practicable all necessary or appropriate waivers, consents, approvals or authorizations of Governmental Authorities in order to consummate the transactions contemplated by this Agreement (all such approvals, including those required by the HSR Act, FERC, the PUC Approvals and the other regulatory approvals listed on the attached Schedule 5.2, the “**Regulatory Approvals**”).
- (c) The Buyer and the Company shall each file all applications for all Regulatory Approvals (other than the PUC Approvals) no earlier than the date of the filing of the PUC Approvals and no later than 90 days following such date. For all Regulatory Approvals other than the PUC Approvals, each of the Parties (i) shall request expedited treatment of the filings for such Regulatory Approval, if available, (ii) shall respond as promptly as practicable to any inquiries or requests received from any Governmental Authority, (iii) shall provide, prior to filing, the other Party with a copy of any proposed filing, or amendment or supplement thereto, with any Governmental Authority concerning this Agreement or the transactions contemplated hereby for their review, except any such filing, amendment or supplement that will not become a matter of public record, (iv) shall not submit any filings except with the prior consent of the other Party (which shall not be unreasonably withheld, delayed or conditioned), (v) shall provide status updates to the other Party in respect of any filings, investigation or inquiry concerning this Agreement or the transactions contemplated hereby, as may be reasonably requested by the other Party from time to time, and (vi) shall consult with the other Party in advance of its participation in any in-person, substantive meeting with any Governmental Authority in respect of any filings, investigation or inquiry concerning this Agreement or the transactions contemplated hereby. Without limiting the foregoing, the Parties shall cooperate in the preparation of, and have the joint right to approve, any such application, form or report that must be submitted jointly by the Buyer and the Company prior to filing.
- (d) The Buyer shall file all applications for all PUC Approvals no later than June 30, 2017. Prior to filing any application, form or report required by either PUC with respect to the transactions contemplated by this Agreement, the Buyer shall provide the Company with a copy of such proposed filing for its review (except any such proposed filing that will not become a matter of public record); *provided, however*, that the Company shall not have a right to consent to or approve the application, form or report required by either PUC (the contents of such PUC Approval application, form or report being subject to the sole discretion of the Buyer). With respect to the PUC Approvals, the Buyer shall (i) respond as promptly as practicable to any inquiries or requests received from any Governmental Authority, and (ii) provide status updates to the Company in

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respect of any filings, investigation or inquiry concerning this Agreement or the transactions contemplated hereby.

- (e) The Buyer shall be responsible for all filing and other fees associated with any filings made pursuant to this Section 5.2, including all filing fees with respect to filings made pursuant to the HSR Act or with either PUC; *provided, however*, that the Company shall pay one half of the filing fee with respect to filings made pursuant to the HSR Act.

5.3. Title Evidence.

- (a) The Company has, at its expense, caused to be issued and delivered to the Buyer a title commitment for the Owned Real Property issued by Chicago Title Insurance Company (the “**Title Company**”) dated effective as of March 16, 2016, amended by that 2nd Amended 1/13/2017 Commitment for Title Insurance with order number 238326 (collectively, the “**Title Commitment**”). The Company has also provided the Buyer with an ALTA survey of the Owned Real Property dated August 11, 2016, last revised January 12, 2017, prepared by Nyberg Engineering (“**Surveyor**”) as Job No. 9098 (the “**Survey**” and, together with the Title Commitment, the “**Title Evidence**”).
- (b) The Buyer acknowledges and agrees that it has reviewed the Title Evidence prior to signing this Agreement and that it accepts those matters, documents and exceptions identified in the Title Evidence and set forth on Schedule B of the proforma title policy attached hereto as Schedule 5.3 (the “**Proforma Title Policy**”). Those matters, documents, and exceptions set forth on Schedule B of the Proforma Title Policy shall be permitted exceptions (the “**Existing Permitted Exceptions**”); provided, however, the Company shall use commercially reasonable efforts to relocate (i) the neighboring sign disclosed by Exception 18(c) on the Proforma Title Policy and (ii) the sign disclosed by Exception 18(k) on the Proforma Title Policy. At the Closing, the Company shall deliver to the Title Company any documents, affidavits, amounts or other items in order to satisfy the requirements set forth on Schedule B – Section 1 of the Title Commitment, including a standard owner’s affidavit and copies of the Company’s organizational documents and authorizing resolutions as required under the Title Commitment, and deliver, or cause to be delivered, to the Title Company such releases or satisfactions reasonably necessary to release or satisfy any mortgage liens and UCC financing statements set forth in the Title Commitment in order for the Title Company to issue the Title Policy (as defined below) in the form of the Proforma Title Policy.
- (c) “**Permitted Exceptions**” means: (i) the Existing Permitted Exceptions; (ii) all presently existing and future liens for unpaid real estate taxes and water and sewer charges not due and payable as of the Closing Date, subject to adjustment as provided herein; (iii) all present and future zoning, building, environmental and other Laws, ordinances, codes, restrictions and regulations of all Governmental Authorities having jurisdiction with respect to the Owned Real Property; provided, however, that any actions taken by the Company to change, modify or vary such zoning, building, environmental and other Laws, ordinances, codes, restrictions and regulations shall not be Permitted Exceptions; (iv) any item on the Title Report Update (other than the Existing Permitted Exceptions)

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not objected to, or deemed waived, by the Buyer; and (x) any lien or encumbrance arising out of the acts or omissions of the Buyer.

- (d) Notwithstanding Section 5.3(b), the Buyer reserves the right to object to the Existing Permitted Exceptions based upon its review of the Updated Title Evidence, any changes in Laws and the requirements of any Permits but only to the extent such Updated Title Evidence, changes in Laws and/or requirements of Permits has a material effect on the Existing Permitted Exception(s). The Company shall cause the Title Company to either issue a new title commitment for the Owned Real Property or to update the Title Commitment at least sixty (60) days prior to the Closing (in either case, the **“Title Report Update”**) and to provide legible copies of all documents identified on the Title Report Update. The Buyer may obtain an update to the Survey prior to the Closing reflecting the Title Commitment and any Title Report Update (collectively with the Title Report Update, the **“Updated Title Evidence”**). If the Updated Title Evidence shows any new title exceptions, documents or other matters not included in the Existing Permitted Exceptions and/or any items not disclosed on the Survey (collectively, the **“New Exceptions”**), then the Buyer shall have the right to approve or reasonably disapprove such New Exceptions by written notice to the Company within ten (10) business days following the date of receipt by the Buyer of all Updated Title Evidence if such New Exception is material. If the Buyer does not object in writing to any New Exceptions within the foregoing ten (10) business day period, then such New Exceptions, if any, shall be deemed waived and approved by the Buyer. If any New Exception is not approved by the Buyer within such ten (10) business day period (**“Disapproved Exception”**), in the Buyer’s reasonable discretion, then the Company shall use reasonable efforts to cure any Disapproved Exception within ten (10) business days after the Buyer’s disapproval thereof. If any Disapproved Exception is not cured within such ten (10) business day period, then the Buyer may provide written notice to the Company of its intent to terminate this Agreement pursuant to Section 9.1(f) of this Agreement or waive the Disapproved Exception and proceed to Closing. If necessary, the Closing shall be extended to accommodate the Company’s removal thereof or to allow Title Company to insure over such New Exception to the reasonable satisfaction of the Buyer. Prior to the Closing, each Disapproved Exception, shall have been eliminated as an exception to the Title Policy, committed to be insured over by the Title Company in the Title Policy in form and substance reasonably acceptable to the Buyer, or otherwise cured to the Buyer’s reasonable satisfaction. For the purposes of this Section 5.3(d), “material” shall mean the Existing Permitted Exceptions or New Exceptions, as applicable, presents a risk of sale or forfeiture of the Owned Real Property or materially interferes with the operation and maintenance of the Facility.
- (e) At the Closing, the Company will cause the Title Company to issue to the Buyer a 2006 ALTA Owner’s Title Insurance Policy for the Owned Real Property in the form of the Proforma Title Policy with full extended coverage, deleting standard exceptions, including but not limited those general standard exceptions based on (i) mechanics or materialmen’s liens, (ii) matters affecting title that may be disclosed by an accurate survey, and (iii) the rights of parties in possession except tenants in possession, subject to the Permitted Exceptions, and including endorsements for zoning, survey, owner’s comprehensive, non-imputation, access, deletion of mandatory arbitration, subdivision, contiguity, tax parcel,

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environmental and any other endorsements reasonably requested by the Buyer and such additional affirmative coverage as the Buyer may reasonably request (the “**Title Policy**”). The Title Policy shall insure title subject to the Permitted Exceptions and in the amount of the Purchase Price allocated to the Owned Real Property. The Buyer shall pay the cost of the premium of the Title Policy.

- (f) Unpaid liens for taxes, water charges, sewer rents and assessments which are the obligation of the Company to satisfy and discharge shall not be Permitted Exceptions or New Exceptions, but the amount thereof, plus interest and penalties thereon, shall be satisfied at the Closing from the Purchase Price.

5.4. **Access to Information.**

- (a) During the Interim Period, the Company shall provide the Buyer and its authorized representatives with reasonable access to the Facility for purpose of facilitating the transition of ownership and inspecting and testing the Facility and Owned Real Property, in such a manner so as not to unreasonably interfere with the business or operations of the Company; *provided, however*, that the Company shall have the right to (i) have a representative present for any communication with employees, officers or contractors of the Company, and (ii) impose reasonable restrictions and requirements for safety or operational purposes; *provided, further* that neither the Buyer nor its representatives shall collect or analyze any environmental samples (including building materials, indoor and outdoor air, surface and ground water, and surface and subsurface soils). Notwithstanding the foregoing, the Company shall not be required to provide any information or allow any inspection which it reasonably believes it may not provide to the Buyer or allow by reason of applicable Law, which constitutes or allows access to information protected by attorney/client privilege. In addition, the Company shall cooperate with the Buyer to enable the Buyer to contact the Company’s vendors, customers or suppliers, or any Governmental Authorities, during the Interim Period, regarding the Company or the Facility, without receiving prior written authorization from the Company; *provided*, that the Buyer shall give the Company advance notice of not less than 48 hours and the Company shall have the right to have a representative on its behalf present for any communication with such persons; *provided, further* that the foregoing is not intended to prohibit the Buyer from contacting those Governmental Authorities from whom it must obtain regulatory approval regarding the transactions contemplated by this Agreement.
- (b) The Buyer shall indemnify, defend and hold harmless the Company and its representatives from and against all Adverse Consequences incurred by the Company or its representatives or any other Person arising out of the access rights under Section 5.4(a), including any claims by any of the Buyer’s representatives for any Adverse Consequences while present at the Facility, to the extent that such Adverse Consequences do not result from or arise out of the gross negligence or willful misconduct of the Company or its representatives.

- 5.5. **Permits.** During the Interim Period, the Company shall cooperate with the Buyer to obtain, at the Buyer’s costs, all consents or approvals needed to assign and transfer to the Buyer at the Closing all Permits necessary to operate the Facility as currently operated and in accordance with Good Industry Practice. To the extent that any such Permit

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cannot be assigned to the Buyer, then the Company shall cooperate with the Buyer's application to obtain a new Permit as of the Closing Date.

- 5.6. **Environmental Report.** During the Interim Period, the Company shall obtain, at its expense, (a) an updated Phase I environmental site assessment prepared in general accordance with ASTM Standard E1527-13, with respect to the Facility (the “**Updated Phase I Report**”), which shall be completed with a copy provided to Buyer no later than July 1, 2017, and prepared for reliance by the Buyer, and (b) a reliance letter acceptable to the Buyer for the Updated Phase I Report from its author allowing the Buyer to rely on the Updated Phase I Report to the same extent as the Company (the “**Reliance Letter**”).
- 5.7. **Confidentiality.** The terms and conditions of this Agreement and all information provided by the Company in connection with the transactions contemplated hereby, including without limitation all information posted in the electronic data room, shall be subject to the existing confidentiality requirements set forth in that certain Non-Disclosure Agreement between the Buyer and the Company, dated October 27, 2015, which is incorporated into this Agreement by reference (the “**Confidentiality Agreement**”). Without limiting the foregoing, the Buyer agrees that any information disclosed to the Buyer in connection with this Agreement, the Disclosure Schedules, the Schedules and Exhibits, in the electronic data room or otherwise may not be shared with persons at the Buyer or its Affiliates involved in the administration of, auditing under, or any dispute relating to, the Power Purchase Agreement and may not be disclosed to any Person for use in any audit or dispute relating to the Power Purchase Agreement. Notwithstanding the foregoing, any actions taken by the Parties in compliance with the requirements set forth in Section 5.2 shall not be deemed to be a breach of this Section 5.7 or the terms of the Confidentiality Agreement, including any preliminary discussions between the Buyer and any Governmental Authority with respect to the PUC Approvals.
6. **Post-Closing Covenants.** The Parties agree as follows with respect to the period following the Closing.
 - 6.1. **Further Assurances.** If after the Closing any further action is necessary or desirable to carry out this Agreement, the Transaction Documents and the contemplated transactions, each of the Parties will take such further action (including the execution and delivery of such further instruments and documents) as any other Party reasonably may request, and the requesting Party will pay all reasonable out-of-pocket costs and expenses of the requested Party (unless the requesting Party is entitled to indemnification for the requested action under Section 8 of this Agreement). The Buyer agrees to preserve all documents, books, records, agreements and financial data included as Acquired Assets for at least six years and will provide reasonable access to (with a right to copy) such information to the Company and its agents, representatives, and successors in interest to the extent required in connection with any issues arising under this Agreement.
 - 6.2. **Confidentiality.** The Company will treat and hold as such all of the Confidential Information and refrain from using any of the Confidential Information except in connection with this Agreement or on behalf of the Buyer or its Affiliates. At the request of the Buyer, the Company will deliver promptly to the Buyer or destroy all tangible embodiments (and all copies) of the Confidential Information that are in its possession, except as may be reasonably required for its own routine record-keeping and reporting purposes. In the event that the Company is requested or required (by oral question or

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request for information or documents in any legal proceeding, interrogatory, subpoena, civil investigative demand or similar process) to disclose any Confidential Information, the Company will notify the Buyer promptly of the request or requirement so that the Buyer may seek an appropriate protective order or waive compliance with the provisions of this Section 6.2. If, in the absence of a protective order or the receipt of a waiver, the Company is, on the advice of counsel, compelled to disclose any Confidential Information to the tribunal or else stand liable for contempt, the Company may disclose the Confidential Information to the tribunal. Notwithstanding the foregoing, the Company shall have the right to retain, access and utilize the Confidential Information for internal purposes only, without disclosing to any third parties, as is reasonably necessary for its ordinary business purposes, and the Buyer shall reasonably cooperate with such retention and access.

- 6.3. **Assumption of Contracts.** To the extent that any consent needed to assign or transfer any Restricted Acquired Contract to the Buyer has not been obtained on or prior to the Closing Date, this Agreement shall not constitute an assignment or transfer or attempted assignment or transfer thereof if such assignment or transfer or attempted assignment or transfer would constitute a breach or violation of any agreement or applicable Law. Following the Closing, the Company shall use commercially reasonable efforts in good faith to obtain the necessary consent or approval needed to assign and transfer any Restricted Acquired Contract to the Buyer not yet assigned, and upon obtaining such consent or approval, the Company and the Buyer shall execute such further instruments of conveyance as may be necessary to assign and transfer any such Restricted Acquired Contract to the Buyer. From and after the Closing until the assignment of each such Restricted Acquired Contract, if the Buyer performs and fulfills, on a subcontractor basis, the obligations of the Company to be performed under each such Restricted Acquired Contract, then the Company shall promptly remit to the Buyer all payments received by it under each such Restricted Acquired Contract for services performed thereunder.

7 Closing Deliverables.

- 7.1. **Company Deliverables.** At the Closing, the Company will deliver to the Buyer the following, duly executed by the appropriate parties:
- (a) a certified copy of company resolutions authorizing the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement;
 - (b) a certified copy of Member resolutions authorizing the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement;
 - (c) a bill of sale in the form of Exhibit E hereto (the “**Bill of Sale**”), transferring the Acquired Assets to the Buyer;
 - (d) the Escrow Agreement;
 - (e) an assignment and assumption agreement in the form of Exhibit F hereto (the “**Assignment and Assumption Agreement**”), effecting the assignment to and assumption by the Buyer of the Acquired Assets and the Assumed Liabilities;

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- (f) a certificate, dated the Closing Date and signed by a duly authorized officer of the Company, that each of the conditions set forth in Section 8.2(a) and Section 8.2(b) have been satisfied;
- (g) a certificate of non-foreign status in compliance with the Treasury Regulations under Code Section 1445;
- (h) a limited warranty deed (“**Deed**”) conveying the Owned Real Property subject only to the Permitted Exceptions;
- (i) if the Owned Real Property contains or contained a storage tank, an affidavit with respect thereto, as required by Minn. Stat. § 116.48;
- (j) the Company’s title affidavit, in form reasonably acceptable to the Company, the Company’s counsel and the Title Company;
- (k) such affidavits of the Company, Certificates of Value or other documents as may be reasonably required by the Title Company in order to record the Deed and issue the Title Policy;
- (l) a closing statement with respect to the Owned Real Property;
- (m) **REDACTED**
- (n) fully executed payoff letters from each of the holders of Secured Indebtedness, indicating in each such payoff letter that, upon payment of a specified amount, the amount of such Secured Indebtedness owed or owing to such holder of Secured Indebtedness shall be fully paid and discharged, with no further obligations or liabilities of the Company in respect thereof, and that all encumbrances in respect of such Secured Indebtedness shall be released upon payment of the amount set forth in such payoff letter (the “**Payoff Letters**”);
- (o) the Updated Phase I Report and the Reliance Letter;
- (p) a duly executed copy of a mutual termination of, and comprehensive release of any disputes or liabilities arising under or with respect to, the Power Purchase Agreement as of the Closing Date, on behalf of the Company and its Affiliates, in the form of Exhibit G hereto (the “**Mutual Termination and Release**”);
- (q) a termination of the O&M Agreement pursuant to Section 8.2(f) of the O&M Agreement, duly executed by the Company and the Operator, including an agreement by the Operator to continue to perform services for the Buyer for a period of up to six (6) months following the Closing Date, pursuant to Section 8.6 of the O&M Agreement; and
- (r) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to the Buyer, as may be required to give effect to this Agreement.

7.2. **The Buyer Deliverables.** At the Closing, the Buyer will deliver to the Company the following, duly executed by the appropriate parties:

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- (a) a certified copy of corporate resolutions authorizing the execution and delivery of this Agreement and the consummation of the transactions contemplated by this Agreement;
- (b) a certificate, dated the Closing Date and signed by a duly authorized officer of the Company, that each of the conditions set forth in Section 8.3(a) and Section 8.3(b) have been satisfied;
- (c) the Escrow Agreement;
- (d) the Assignment and Assumption Agreement;
- (e) a closing statement with respect to the Owned Real Property;
- (f) a duly executed copy of the Mutual Termination and Release;
- (g) the Estimated Closing Date Purchase Price, paid in accordance with Section 2.3(b)(iii); and
- (h) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to the Company, as may be required to give effect to this Agreement.

8 Closing Conditions.

8.1. **Conditions to the Obligations of Each Party.** The obligation of each of the Parties to proceed with the Closing are subject to the satisfaction on or prior to the date of the Closing of all of the following conditions, any one or more of which may be waived in writing, in whole or in part, as to a Party by such Party:

- (a) no permanent judgment, injunction, order or decree of a court or other Governmental Authority of competent jurisdiction shall be in effect which has the effect of making the transactions contemplated by this Agreement illegal or otherwise restraining or prohibiting the consummation of the transactions contemplated by this Agreement (each Party agreeing to use its commercially reasonable efforts, including appeals to higher courts, to have any judgment, injunction, order or decree lifted);
- (b) the Parties shall have obtained an order from FERC that, without any material limitation or qualification, authorizes the purchase and sale of the Acquired Assets and the assumption of the Assumed Liabilities pursuant to Section 203 of the Federal Power Act, and does not subject any Party to any conditions or restrictions that would be materially more burdensome than those proposed in the respective applications for such order;
- (c) all required waiting periods applicable to this Agreement and the transactions contemplated hereby under the HSR Act shall have expired or been terminated;
- (d) all other Regulatory Approvals, if any, shall have been obtained.

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- 8.2. **Conditions to the Obligations of the Buyer.** The obligation of the Buyer to proceed with the Closing is subject to the satisfaction on or prior to the Closing Date of the following further conditions, any one or more of which may be waived, in whole or in part, by the Buyer:
- (a) (i) the representations and warranties of the Company (other than Fundamental Representations) contained in this Agreement shall be true and correct as of the Closing Date (except to the extent such representations and warranties expressly relate to an earlier date, in which case as of such earlier date) in all material respects, except (solely for purposes of this Section 8.2(a)) for failures of the representations and warranties to be true and correct that, in the aggregate, would not be reasonably expected to result in Adverse Consequences (when combined with Adverse Consequences under Section 8.2(b)) in excess of \$5,000,000, and (ii) the Fundamental Representations shall be true and correct as of the Closing Date (except to the extent such representations and warranties expressly relate to an earlier date, in which case as of such earlier date) in all respects;
 - (b) the Company shall have performed all of its obligations under this Agreement in all material respects, except (solely for purposes of this Section 8.2(b)) where the failure to perform would not be reasonably expected to result in Adverse Consequences (when combined with Adverse Consequences under Section 8.2(a)) in excess of \$5,000,000 (for the avoidance of doubt, any Contracts deemed to be Excluded Assets by operation of Section 5.1(d) shall not count towards such \$5,000,000 threshold);
 - (c) the Buyer shall have received the deliveries to be made by the Company under Section 7.1;
 - (d) no event shall have occurred since the Execution Date which constituted a Material Adverse Effect;
 - (e) the Company shall have caused the Title Company to deliver a Title Policy;
 - (f) the Buyer shall have received PUC Approvals on terms satisfactory to it in its reasonable discretion;
 - (g) all Security Interests on the Acquired Assets (other than Permitted Liens) shall have been released;
 - (h) all of the Third Party Consents set forth on the attached Schedule 8.2(h) shall have been obtained; and
 - (i) the Company shall have satisfied the NERC compliance requirements set forth on the attached Schedule 8.2(i).
- 8.3. **Conditions to the Obligations of the Company.** The obligation of the Company to proceed with the Closing is subject to the satisfaction on or prior to the Closing Date of the following further conditions, any one or more of which may be waived, in whole or in part, by the Company:

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- (a) the representations and warranties of the Buyer contained in this Agreement shall be true and correct as of the Closing Date (except to the extent such representations and warranties expressly relate to an earlier date, in which case as of such earlier date) in all material respects;
- (b) the Buyer shall have performed all of its obligations under this Agreement in all material respects; and
- (c) the Company shall have received the deliveries to made by the Buyer under Section 6.2.

9 **Termination.**

9.1. **Termination.** This Agreement may be terminated and the consummation of the transactions contemplated hereby may be abandoned at any time prior to the Closing, by the designated Party giving notice of such termination to the other Party, solely upon the following occurrences:

- (a) by mutual written consent of the Company and the Buyer;
- (b) by either Party: if (i) the Closing has not occurred on or before the date that is the later of (A) one hundred and eighty (180) days after the earlier of the date of the public filing of the last PUC Approval and the date of the public filing with FERC of the application for approval of the transactions contemplated hereby, in accordance with Section 5.2(c), or (B) March 31, 2018 (the “**Termination Date**”); or (ii) a Government Authority (A) informs either Party in writing that it will file a lawsuit to challenge any of the transactions contemplated by this Agreement under applicable antitrust regulations or (B) files such a lawsuit;
- (c) by the Buyer if (i) there have been breaches by the Company of any representation, warranty, covenant or agreement contained in this Agreement (A) which would result in a failure of a condition set forth in Section 8.2, and (B) has not been cured within 30 days of notice thereof, (ii) there has been a Material Adverse Effect that the Buyer and the Company reasonably agree cannot be cured prior to the Termination Date, or (iii) there is a bankruptcy, reorganization or other similar proceeding of the Company;
- (d) by the Company if (i) there have been breaches by the Buyer of any representation, warranty, covenant or agreement contained in this Agreement (A) which would result in a failure of a condition set forth in Section 8.3, and (B) has not been cured within 30 days of notice thereof, or (ii) there is a bankruptcy, reorganization or other similar proceeding of the Buyer;
- (e) by the Company if the Buyer has not filed all applications for the PUC Approvals by June 30, 2017 and such failure is not the result of the gross negligence or willful misconduct of the Company; *provided* that such termination right shall be deemed waived by the Company if not exercised by the later of (i) the date of the filing of the last of the applications for the PUC Approvals or (ii) July 8, 2017;
- (f) by the Buyer as set forth in Section 5.3 of this Agreement; or

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- (g) by either Party if there is any action, claim, suit, litigation, or proceeding by any Person pending or threatened in writing to (i) enjoin, prohibit, or impose any limitations, damages or conditions on, the Buyer's ability to acquire, hold, or exercise full rights of ownership over, the Acquired Assets or (ii) otherwise prohibit, restrict, prevent or materially delay the transactions contemplated by this Agreement.

- 9.2. **Effect of Termination.** In the event of termination of this Agreement by the Company or the Buyer prior to a Closing pursuant to Section 8.1, there shall be no liability or further obligation on the part of either Party or their respective officers, managers or directors (except as set forth in this Section 9.2 or Sections 5.4 (Access to Information), 5.7 (Confidentiality), and 12 (Miscellaneous), all of which shall survive the termination hereof), provided that nothing in this Section 9.2 shall relieve either Party from liability for any breach of this Agreement by such Party prior to termination of this Agreement.

10 Remedies for Breaches of this Agreement.

- 10.1. **Survival of Representations, Warranties and Covenants.** Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and shall remain in full force and effect until the date that is twenty-four (24) months from the Closing Date; *provided, however*, that the representations and warranties and the rights to indemnity for any breach thereof with respect to Sections 4.1 (Organization, Qualification and Power) 4.2 (Authorization of Transaction), 4.4 (Brokers' Fees; Payments on Sale), 4.5 (Title to Acquired Assets), and 4.11 (Tax Matters) (collectively, the "**Fundamental Representations**") shall survive the Closing and remain in full force and effect until expiration of the statute of limitations applicable to the subject matter thereof (or, if there is no applicable statute of limitations, until the sixth (6th) anniversary of the Closing Date). None of the covenants or other agreements contained in this Agreement (including, without limitation, the pre-Closing covenants contained in Section 5 of this Agreement) shall survive the Closing Date other than the covenants in Section 6, which shall survive until such obligations are fully performed; *provided, however*, that, notwithstanding the foregoing, following the Closing Date, an Indemnified Party shall continue to be entitled to bring a claim for indemnification pursuant to Section 10.2(b) or Section 10.4(a), as applicable, based on a pre-Closing breach of any covenant of the Company or the Buyer, as applicable, whether or not such covenant is required to be performed prior to the Closing.
- 10.2. **Indemnification Provisions for Benefit of the Buyer.** Subject to the limitations otherwise set forth in this Section 10, and provided that the Buyer makes a written claim against the Company within the survival period set forth in Section 10.1, the Company shall indemnify the Buyer and its Affiliates, officers, directors, employees, agents and shareholders (collectively, the "**Buyer Indemnitees**" and each a "**Buyer Indemnitee**") with respect to and hold the Buyer Indemnitees harmless from and against the entirety of any Adverse Consequences incurred by reason of or resulting from, arising out of, based upon or caused by:
- (a) any breach or inaccuracy in any of the Company's representations and warranties contained in this Agreement (other than the Fundamental Representations);
 - (b) any breach of or noncompliance with any of the Company's covenants contained in this Agreement;

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- (c) any breach of or inaccuracy in any Fundamental Representations; or
- (d) any Excluded Liabilities.

10.3. **Limitations on Liability of the Company.**

- (a) The Company will not have any obligation to indemnify the Buyer Indemnitees pursuant to Section 10.2(a) until the Buyer Indemnitees have suffered Adverse Consequences by reason of all such breaches in excess of a threshold amount equal to REDACTED (the “**Deductible**”) (at which point the Company will be obligated to indemnify the Buyer Indemnitees solely for Adverse Consequences in excess of the Deductible). In addition, no individual claim may be brought against the Company unless it is valued at REDACTED or greater, nor will any claim count towards the Deductible unless it is valued at REDACTED or greater.
- (b) The Escrow and any accrued interest thereon will be the sole and exclusive source of recovery by the Buyer Indemnitees for the indemnification obligations pursuant to Sections 10.2(a) and 10.2(b), and the Company will not have any liability to indemnify the Buyer Indemnitees in excess of the Escrow and any accrued interest thereon with respect to claims under Sections 10.2(a) or 10.2(b).
- (c) In no event will the Company have any obligation to indemnify the Buyer Indemnitees pursuant to Section 10.2(c) or 10.2(d) in an aggregate amount in excess of (i) the Purchase Price, less (ii) the aggregate amounts recovered by the Buyer Indemnitees pursuant to Sections 10.2(a) and 10.2(b), including by means of draws on the Escrow.

10.4. **Indemnification Provisions for Benefit of the Company.** Subject to the limitations otherwise set forth in this Section 10, and provided that the Company makes a written claim against the Buyer within the survival period set forth in Section 10.1, the Buyer shall indemnify the Company and its Affiliates, officers, directors, employees, agents and members (collectively, the “**Company Indemnitees**” and each a “**Company Indemnitee**”) with respect to and hold the Company Indemnitees harmless from and against the entirety of any Adverse Consequences incurred by reason of or resulting from, arising out of, based upon or caused by:

- (a) any breach of or inaccuracy in any of the Buyer’s representations or warranties or any breach of or noncompliance with any of the Buyer’s covenants contained in this Agreement; or
- (b) any Assumed Liability or any Acquired Asset.

10.5. **Matters Involving Third Parties.**

- (a) If any third party shall notify any Party with respect to any matter (a “**Third Party Claim**”) that may give rise to a claim for indemnification against any other Party under this Section 10, then the Indemnified Party shall promptly notify each Indemnifying Party in writing within 20 days after the Indemnified Party has received the Third Party Claim; *provided*, that a failure to provide such notification within 20 days shall not obviate or otherwise affect the Indemnified

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Parties' rights to indemnification unless (and then solely to the extent) the Indemnifying Party is prejudiced thereby.

- (b) Any Indemnifying Party will have the right to participate in and control the defense or settlement of any Third Party Claim with counsel of its choice reasonably satisfactory to the Indemnified Party so long as (i) the Indemnifying Party notifies the Indemnified Party in writing within 15 days after the Indemnified Party has given notice of the Third Party Claim that the Indemnifying Party elects to control such defense, (ii) the Third Party Claim involves only money damages and does not seek an injunction or other equitable relief, (iii) the Indemnifying Party conducts the defense of the Third Party Claim actively and diligently, and (iv) the Indemnified Party has not determined in good faith that a material divergence of interests exists between the Indemnified Parties and the Indemnifying Party in the outcome of the Third Party Claim. The Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim, or agree to extend any applicable statute of limitations without the prior written consent of the Indemnified Party, such consent not to be unreasonably withheld, conditioned or delayed.
- (c) So long as the Indemnifying Party is conducting the defense of the Third Party Claim in accordance with Section 10.5(b), the Indemnified Party may retain separate co-counsel at its sole cost and expense and participate in the defense of the Third Party Claim.
- (d) If any of the conditions in Section 10.5(b) is not or is no longer satisfied, (i) the Indemnified Party shall have the right but not the obligation to defend against such Third Party Claim and to have the sole power to direct and control such defense, including consent to the entry of any judgment or enter into any settlement with respect to such claim, in any manner it reasonably may deem appropriate, (ii) the Indemnifying Parties will reimburse the Indemnified Party promptly and periodically for the costs of defending against the Third Party Claim (including reasonable attorney fees and expenses), and (iii) the Indemnifying Parties will remain responsible for any Adverse Consequences the Indemnified Parties suffer, incur or to which they may otherwise become subject resulting from, arising out of, relating to, in the nature of, or caused by the Third Party Claim to the fullest extent provided in this Section 10.
- (e) Nothing in this Section 10.5 shall limit the Indemnifying Party's right to assert that the Indemnified Party is not entitled to indemnification under this Agreement.

10.6. **Direct Claims Procedure.** In the event the Indemnified Party should have a claim for indemnification hereunder that does not involve a Third Party Claim (a "**Direct Claim**"), the Indemnified Party shall, as promptly as practicable, deliver to the Indemnifying Party a written notice that contains (a) a description and the amount (the "**Claimed Amount**") of any Adverse Consequences incurred or suffered by the Indemnified Party or to which the Indemnified Party is subject, (b) a statement that the Indemnified Party is entitled to indemnification under this Section 10 and a reasonably detailed explanation of the basis therefor, (c) a demand for payment by the Indemnifying Party, and (d) copies of all supporting documentation relating to the Direct Claim. Within 30 days after delivery of

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such written notice, the Indemnifying Party shall deliver to the Indemnified Party a written response in which the Indemnifying Party shall (i) agree that the Indemnified Party is entitled to receive all of the Claimed Amount (in which case such response shall be accompanied by a payment by the Indemnifying Party of the Claimed Amount), (ii) agree that the Indemnified Party is entitled to receive part, but not all, of the Claimed Amount (the “**Agreed Amount**”) (in which case such response shall be accompanied by payment by the Indemnifying Party of the Agreed Amount), or (iii) contest that the Indemnified Party is entitled to receive any of the Claimed Amount. If the Indemnifying Party contests the payment of all or part of the Claimed Amount, the Indemnifying Party and the Indemnified Party shall use good faith efforts to resolve such dispute as promptly as practicable. If such dispute is not resolved within 30 days following the delivery by the Indemnifying Party of such response, the Indemnified Party and the Indemnifying Party shall each have the right to submit such dispute in accordance with the provisions of Section 12.16.

10.7. Other Indemnification Provisions.

- (a) In no event shall the Company be liable for loss of profits, diminution in value, punitive or consequential damages (to the extent such consequential damages are not foreseeable) incurred by the Buyer; *provided*, that the Company shall be liable (subject to the other limitations on liability set forth in this Section 10) for loss of profits, diminution in value, punitive or consequential damages that are incurred or suffered by a third party and that form part of a Third Party Claim of such third party.
- (b) The amount of any Adverse Consequences shall be computed net of any insurance proceeds and any Tax benefits actually received by the Indemnified Party in connection therewith in the taxable year of the Adverse Consequence and for the immediately succeeding taxable year, less the costs of any such recovery, including increases in premiums as a result of such recovery.
- (c) Any Indemnified Party shall use commercially reasonable efforts to mitigate any Adverse Consequences with respect to any matters for which such party seeks indemnification under this Section 10.
- (d) For purposes of calculating the amount of Adverse Consequences resulting from, arising out of or caused by breaches of or inaccuracies in representations and warranties contained in this Agreement (but not for purposes of determining whether there has been a breach or inaccuracy), each representation and warranty contained in this Agreement shall be read without regard for and without giving effect to the words “material” or “materially” or the phrase “Material Adverse Effect” or any similar words or phrases.

- 10.8. Exclusive Remedy.** After the Closing, subject to Section 2.4, and Section 12.17, the Parties’ sole and exclusive recourse against each other for any Adverse Consequences arising out of or relating to this Agreement and the Transaction Documents, other than in the case of fraud, shall be expressly limited to this Section 10, regardless of the legal theory under which such liability or obligation may be sought to be imposed, whether sounding in contract or tort, or whether at law or in equity, or otherwise, and the Parties hereby agree that the Indemnified Parties shall have no remedy or recourse with respect to any of the foregoing other than pursuant to, and subject to the terms and conditions of,

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this Section 10. The Parties acknowledge and agree that, subject to the exceptions set forth in the immediately preceding sentence, the Indemnified Parties may not avoid such limitation on liability by (a) seeking damages for breach of contract, tort or pursuant to any other theory of liability, all of which are hereby waived or (b) asserting or threatening any claim against any Person that is not a party hereto (or a successor to a party hereto) for breaches of the representations, warranties and covenants contained in this Agreement. The Parties agree that the provisions in this Agreement relating to indemnification, and the limits imposed on Indemnified Parties' remedies with respect to this Agreement and the transactions contemplated hereby were specifically bargained for between sophisticated parties and were specifically taken into account in the determination of the amounts to be paid to the Company hereunder. Subject to this Section 10.8, Section 2.4, Section 12.17 and the additional procedures for bringing or resolving disputes as specifically provided in Sections 10.5 and 10.6, to the maximum extent permitted by applicable Law, the Parties hereby waive all other rights and remedies with respect to any Adverse Consequences in any way arising from or relating to this Agreement or the transactions contemplated hereby, whether under any laws at common law, in equity or otherwise.

- 10.9. **Escrow.** In the event a Buyer Indemnitee is entitled to indemnification pursuant to this Section 10, the Buyer Indemnitee shall first seek payment from the Escrow to the extent of funds available thereunder. **REDACTED**

11 **Tax and Other Matters.**

11.1. **Cooperation on Tax Matters.**

- (a) The Parties will cooperate fully, as and to the extent reasonably requested by the other Party, in connection with the filing of Tax Returns and any audit, litigation or other proceeding with respect to Taxes. Such cooperation will include the retention and (upon the other Party's request) the provision of records and information that are reasonably relevant to any such audit, litigation or other proceeding and making employees available at no cost on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. The Company agrees (i) to retain all books and records with respect to Tax matters pertinent to the Company relating to any taxable period beginning before the Closing Date until the expiration of the statute of limitations (and, to the extent notified by the Buyer, any extensions thereof) of the respective taxable periods, and to abide by all record retention agreements entered into with any taxing authority, and (ii) to give the Buyer reasonable written notice prior to transferring, destroying or discarding any such books and records and, if the other party so requests, the Company will allow the Buyer to take possession of such books and records.
- (b) The Parties further agree, upon request, to use commercially reasonable efforts to obtain any certificate or other document from any Governmental Authority or any other Person as may be necessary to mitigate, reduce or eliminate any Tax that could be imposed with respect to the transactions contemplated by this Agreement.

Northern States Power Company

11.2. **Certain Taxes.** Except as provided in Section 11.3, all transfer, deed, documentary, sales, use, stamp, registration and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and the contemplated transactions will be paid half by the Company and half by the Buyer, and the Buyer will, at its own expense, file, or cause to be filed, all necessary Tax Returns and other documentation with respect to all such Taxes and fees, and, if required by applicable Law, the Company will join in the execution of any such Tax Returns and other documentation.

11.3. **Owned Real Property.** With respect to the closing of the Owned Real Property:

- (a) Real estate taxes and personal property taxes shall be prorated on a per diem basis for those taxes which are due and payable during the calendar or other fiscal Tax year in which the Closing Date occurs. All certified, pending and levied special assessments shall be paid for by the Company.
- (b) The Company and the Buyer will each pay one-half of any reasonable and customary closing fee or charge imposed by any closing agent designated by the Title Company.
- (c) The Company shall pay all state deed tax regarding the Deed to be delivered by the Company under this Agreement.
- (d) The Company will pay the cost of recording of any other documents necessary to remove, resolve, or cause to be insured over, any matters of record that are not Permitted Exceptions. The Buyer will pay the cost of recording all other documents.
- (e) Gas, water, electricity, heat, fuel, sewer and other utilities charges, and the governmental licenses, permits and inspection fees and operating expenses relating to the Owned Real Property, shall be prorated on a per diem basis as of the Closing Date.
- (f) All prorations and payments to be made under the foregoing provisions shall be made on the basis of a written statement or statements agreed upon by Company and the Buyer or in accordance with the closing statement for the Owned Real Property executed and delivered at Closing.

11.4. **Allocation of Purchase Price.** The Parties agree that the Purchase Price and the Assumed Liabilities will be allocated to the Acquired Assets in a manner consistent with Section 1060 of the Code and the Treasury Regulations promulgated thereunder and the methodology set forth on the attached Schedule 11.4. As soon as practicable after the Closing Date (but no later than 15 days after the Closing Date Statement becomes final pursuant to Section 2.4(b)), the Buyer will deliver to the Company its proposed allocation consistent with this Section 11.4, (the “**Preliminary Allocation**”). Promptly following receipt of the Preliminary Allocation, the Company shall review the same and, within 20 business days after the Company’s receipt of such Preliminary Allocation, may deliver to the Buyer a written notice setting forth objections to the Preliminary Allocation (an “**Allocation Objection Notice**”), together with a summary of the reasons therefore and calculations which, in the Company’s view, are necessary to eliminate such objections. If the Company does not deliver an Allocation Objection Notice within such 20-business-day period, the Preliminary Allocation shall be the final allocation of the Purchase Price

Northern States Power Company

among the Company's assets in connection with the sale of the Company's assets (the "**Final Allocation**"). If the Company delivers an Allocation Objection Notice within such 20-business-day period, the Buyer and the Company shall use reasonable efforts to resolve by written agreement any differences identified in the Allocation Objection Notice within the succeeding 5 business days and, if they are able to resolve all such differences, the allocation agreed to shall be the Final Allocation. If any objections raised by the Company in the Allocation Objection Notice are not resolved within such 5-business-day period, then the Buyer and the Company shall submit the objections that are then unresolved (together with any agreed adjustments) to the Independent Accountant, who shall be directed by the Buyer and the Company to resolve the unresolved objections consistent with this Section 11.4 within the next 10 business days and to deliver written notice to each of the Buyer and the Company setting forth its resolution of the disputed matters. The allocation resulting from the decision of the Independent Accountant shall be the Final Allocation. The fees for the Independent Accountant shall be paid half by the Buyer and half by the Company. The Final Allocation will be used in the preparation of the Income Tax Return for the Company for the Tax period ending on the Closing Date (including, without limitation, to Internal Revenue Service Form 8594) and will be binding on the Company and the Buyer for all Tax purposes, and each will use reasonable efforts to sustain such allocation in any subsequent Tax audit or similar proceeding. If any taxing authority disputes the Final Allocation, the Party receiving notice of the dispute will promptly notify the other Parties of such dispute. The Parties agree that the Estimated Closing Date Purchase Price and the Assumed Liabilities shall be treated as purchase price for and allocated first to the Acquired Assets constituting tangible personal property (including inventory) and any intangible asset for which tax amortization has been claimed, up to the amount allocated to such items in the Final Allocation. Notwithstanding the foregoing, if the Buyer notifies the Company that the Buyer is not obligated to file Internal Revenue Service Form 8594, then the Parties will disregard this Section 11.4 and Company may allocate the Purchase Price for its taxes as it sees fit.

12 Miscellaneous.

- 12.1. **Press Releases and Public Announcements.** No Party will issue any press release or make any public announcement relating to the subject matter of this Agreement without the prior written approval of the Buyer and the Company. Any Party, however, may make any public disclosure it believes in good faith is required by applicable Law or any listing or trading agreement concerning its publicly-traded securities (in which case the disclosing Party will use its reasonable best efforts to advise the other Parties prior to making the disclosure).
- 12.2. **No Third-Party Beneficiaries.** This Agreement will not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns and the Buyer Indemnitees pursuant to Section 10 and the Company Indemnitees pursuant to Section 10.
- 12.3. **Entire Agreement.** This Agreement (including the documents referred to in this Agreement) and the Transaction Documents constitute the entire agreement among the Parties and supersede any prior understandings, agreements or representations by or among the Parties, written or oral, to the extent they related in any way to the subject matter of this Agreement. For the avoidance of doubt, and notwithstanding anything to the contrary contained in this Agreement, nothing herein shall be deemed to alter, amend

Northern States Power Company

or otherwise affect the Sale Order, the Power Purchase Agreement, or the Consent and Agreement dated as of August 20, 2015, by and between the Company and the Buyer, or any other agreement between the Buyer and the Company, all of which remain in full force and effect in accordance with their respective terms.

- 12.4. **Succession and Assignment.** This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. No Party may assign either this Agreement or any of such Party's rights, interests or obligations under this Agreement without the prior written approval of the other Party.
- 12.5. **Counterparts and Facsimile Signatures.** This Agreement may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument, and by facsimile.
- 12.6. **Headings.** The section headings contained in this Agreement are inserted for convenience only and will not affect in any way the meaning or interpretation of this Agreement.
- 12.7. **Notices.** All notices, requests, demands, claims and other communications under this Agreement will be in writing. Any notice, request, demand, claim or other communication under this Agreement will be deemed duly given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); or (c) 2 business days after it is sent by registered or certified mail, return receipt requested, postage prepaid and addressed to the intended recipient as set forth below.

If to the Company:

Benson Power, LLC
c/o Competitive Power Ventures, Inc.
50 Braintree Hill Office Park
Suite 300
Braintree, MA 02184
Attn: Donald Atwood
Fax: 781-848-5804

with a copy, which does not constitute notice, to:

Gray, Plant, Mooty, Mooty & Bennett, P.A.
500 IDS Center
80 South 8th Street
Minneapolis, MN 55402
Attn: Mark D. Williamson, Esq.
Fax: 612-632-4379

If to the Buyer:

Northern States Power Company, a Minnesota corporation
414 Nicollet Mall, 401-04
Minneapolis, MN 55401-1927

Northern States Power Company

Attention: George E. Tyson II, Senior Vice President, Corporate
Development
Facsimile: (612) 215-4575

with a copy to, which does not constitute notice, to:

Northern States Power Company, a Minnesota corporation
414 Nicollet Mall, 401-09
Minneapolis, MN 55401-1927
Attention: Scott Wilensky, Executive Vice President and General
Counsel
Facsimile: (612) 215-9025

and a copy to, which does not constitute notice, to:

Dorsey & Whitney LLP
Suite 1500
50 South Sixth Street
Minneapolis, MN 55402
Attention: John L. Seymour
Facsimile: (612) 340-2868

Any Party may send any notice, request, demand, claim or other communication to the intended recipient at the address set forth above using any other means (including personal delivery, expedited courier, messenger service, telecopy, telex, ordinary mail or electronic mail), but no such notice, request, demand, claim or other communication will be deemed to have been duly given unless and until it actually is received by the intended recipient. Any Party may change the address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other Party notice in the manner set forth in this Agreement.

- 12.8. **Governing Law.** This Agreement has been negotiated under and will be governed by and construed in accordance with the domestic laws of the State of Minnesota without giving effect to any choice or conflict of law provision or rule (whether of the State of Minnesota or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Minnesota.
- 12.9. **Amendments and Waivers.** No amendment of any provision of this Agreement will be valid unless the same is in writing and signed by both of the Parties. No waiver by either Party of any provision of this Agreement or any default, misrepresentation or breach of warranty or covenant under this Agreement, whether intentional or not, will be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant under this Agreement or affect in any way any rights arising by virtue of any prior or subsequent such default, misrepresentation or breach of warranty or covenant.
- 12.10. **Severability.** Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction will not affect the validity or enforceability of the remaining terms and provisions of this Agreement or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

Northern States Power Company

- 12.11. **Expenses.** Except as otherwise provided in this Agreement, each Party will bear its own costs and expenses (including legal fees and expenses) incurred in connection with this Agreement and the contemplated transactions.
- 12.12. **Construction.** The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement must be construed as if drafted jointly by the Parties, and no presumption or burden of proof will arise favoring or disfavoring either Party by virtue of the authorship of any of the provisions of this Agreement.
- 12.13. **Interpretation.** When a reference is made to an Exhibit, Article, Section or Schedule, such reference shall be to an Exhibit, Article, Section or Schedule of or to this Agreement unless otherwise indicated. Whenever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.” The word “Agreement,” means this Agreement as amended or supplemented, together with all Exhibits and Schedules attached or incorporated by reference, and the words “hereof,” “herein,” “hereto,” “hereunder” and other words of similar import shall refer to this Agreement. The references to “\$” shall be to United States dollars. A statement in Section 4 indicating that the Company has “made available” a particular document or other item to the Buyer means that the Company has, prior to the date of this Agreement, posted such document or other item in the electronic date room established by the Company in connection with the transactions contemplated by this Agreement for the purpose of providing diligence materials to the Buyer or otherwise has provided to the Buyer in written or electronic format.
- 12.14. **Incorporation of Exhibits and Schedules.** The Schedules identified in this Agreement are incorporated in this Agreement by reference and are made a part of this Agreement. No disclosure in the Disclosure Schedule relating to any possible breach or violation of any agreement, Law or regulation shall be construed as an admission or indication that any such breach or violation exists or has actually occurred.
- 12.15. **Supplements to Schedules.** With respect to any fact, matter, condition, event or circumstance that occurs after the date of this Agreement, the Company and the Buyer shall each have the right, from time to time, by written notice to the other Party to disclose such fact, matter, condition, event or circumstance to the extent it would render the existing Disclosure Schedules incomplete or inaccurate, or the disclosing Party unable to satisfy its condition precedent under Section 8.2(a) or Section 8.3(a), as applicable, without amending its Schedules (each such disclosure a “**Supplemental Disclosures**”); *provided*, that each such Supplemental Disclosure must be delivered no later than the date that is ten (10) days prior to the Closing Date, other than with respect to any fact, matter, condition, event or circumstance that occurs after such date. In the event the receiving Party does not terminate this Agreement pursuant to Section 9.1(c) or Section 9.1(d), as and if applicable, following delivery of a Supplemental Disclosure by the other Party, the Supplemental Disclosure shall be deemed to have been disclosed as of the Execution Date for the purposes of determining whether or not the conditions to Closing set forth in Section 8 have been satisfied; *provided, however*, that if the Closing occurs, any Supplemental Disclosures shall not be deemed to have cured any breach of any representation, warranty, covenant or agreement relating to the matters set forth in the Supplemental Disclosure for the purposes of indemnification pursuant to Section 10, *unless* such Supplemental Disclosures relate to matters in the Ordinary Course of Business or relate to activities that the Company may take without the Buyer’s consent

Northern States Power Company

under Section 5.1(b) or (c) of this Agreement or for which the Buyer provided its consent.

12.16. Submission to Jurisdiction; Waiver of Jury.

- (a) Each of the Parties submits to the jurisdiction of any state or federal court sitting in Hennepin County, Minnesota, in any action or proceeding arising out of or relating to this Agreement or any of the Transaction Documents and agrees that all claims in respect of the action or proceeding shall be heard and determined there. Each Party also agrees not to bring any action or proceeding arising out of or relating to this Agreement or any of the Transaction Documents in any other court. Each Party waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety or other security that might be required of any other Party. Each Party agrees that a final judgment in any action or proceeding so brought will be conclusive and may be enforced by suit on the judgment or in any other manner provided by Law or in equity.
- (b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY.
- (c) EACH PARTY CERTIFIES AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE WAIVER IN SECTION 12.16(b), (ii) SUCH PARTY UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF SUCH WAIVER, (iii) SUCH PARTY MAKES SUCH WAIVER VOLUNTARILY AND (iv) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS, AGREEMENTS AND CERTIFICATIONS IN SECTION 12.16(b) AND THIS SECTION 12.16(c).

- 12.17. Specific Performance.** The Parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that each Party shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.


[THE REMAINDER OF THIS PAGE IS BLANK. SIGNATURE PAGE FOLLOWS.]

Northern States Power Company

The Parties have executed this Agreement as of the date first above written.

BUYER:

NORTHERN STATES POWER COMPANY


Name: Christopher Clark
Title: President

COMPANY:

BENSON POWER, LLC

Name: _____
Title: _____

Northern States Power Company

The Parties have executed this Agreement as of the date first above written.

BUYER:

NORTHERN STATES POWER COMPANY

Name: _____
Title: _____

COMPANY:

BENSON POWER, LLC

Name: Donald G. Atwood
Title: President

Northern States Power Company

**DISCLOSURE SCHEDULES
to the
ASSET PURCHASE AND SALE AGREEMENT
BETWEEN
BENSON POWER, LLC
AND
NORTHERN STATES POWER COMPANY**

February 3, 2017

These Disclosure Schedules (the “**Schedules**”) are being delivered by Benson Power, LLC, a Delaware limited liability company (the “**Company**”), in connection with the Asset Purchase and Sale Agreement dated February 3, 2017 (the “**Agreement**”) between the Company and Northern States Power Company, a Minnesota corporation (“**Buyer**”). Capitalized terms used but not defined in these Schedules will have the meanings ascribed to such terms in the Agreement.

No reference to or disclosure of any item or other matter in these Schedules shall be construed as an admission or indication that such item or other matter is material. No disclosure in these Schedules relating to any possible breach or violation of any agreement, law or regulation shall be construed as an admission or indication that any such breach or violation exists or has actually occurred.

The headings contained in these Schedules are included for convenience only, and are not intended to limit the effect of the disclosures contained in these Schedules or to expand the scope of the information required to be disclosed in these Schedules.

These Schedules are arranged in numbered sections corresponding to the subsections contained in Section 4 of the Agreement, and a disclosure in any section of these Schedules shall be deemed to qualify each representation and warranty set forth in Section 4 of the Agreement, should the existence of such disclosure be relevant to any other subsection of Section 4 of the Agreement (i) that is specifically identified (by cross-reference or otherwise) in these Schedules as being qualified by such exception or (ii) with respect to which the relevance of such disclosure would be reasonably apparent on its face to apply to such representation and warranty.

Northern States Power Company

Schedule 4.1

Organization, Qualification and Power

None.

Northern States Power Company

Schedule 4.3

Noncontravention; Consents and Approvals

The following Contracts require consent to assignment:

1. Engagement Letter between the Company and PricewaterhouseCoopers LLP, dated November 16, 2016.
2. Novaspect Service Support Plan between the Company and Novaspect, Inc., dated September 22, 2016.
3. Product and Services Agreement between Fibrominn, LLC and Marco, Inc., dated February 16, 2015.
4. Mapcon Software Support Agreement between the Company and Mapcon Technologies, Inc., dated September 22, 2015.
5. O&M Services Agreement between Fibrominn LLC and NAES Corporation, dated January 28, 2015.
6. Amended and Restated Generator Interconnection Agreement between Fibrominn LLC, Great River Energy, and Midwest Independent Transmission System Operator, Inc., dated October 13, 2011.
7. Amended and Restated Generator Interconnection Agreement between Fibrominn LLC, Great River Energy, and Midcontinent Independent System Operator, Inc., dated January 13, 2014.
8. Biomass Fuel Supply Agreement between the Company and Wiener Custom Craft, dated March 1, 2016.
9. Biomass Fuel Supply Agreement between the Company and Shawn Fletcher Trucking, Inc., dated December 15, 2015.
10. Biomass Fuel Supply Agreement between the Company and Sawyer Natural Resources, LLC, dated December 15, 2015.
11. Biomass Fuel Supply Agreement between the Company and Precision Landscape & Tree Inc., dated March 1, 2016.
12. Biomass Fuel Supply Agreement between the Company and Harbo Mulch, Inc., dated March 1, 2016.
13. Biomass Fuel Supply Agreement between the Company and Enberg Logging Supply, Inc., dated December 15, 2015.
14. Biomass Fuel Supply Agreement between the Company and Dick Walsh Forest Products, LLP, dated December 23, 2015.
15. Biomass Fuel Supply Agreement between the Company and Dukek Logging, Inc., dated December 15, 2015.

Northern States Power Company

16. Biomass Fuel Supply Agreement between the Company and D&D Ventures, Inc., dated March 1, 2016.
17. Biomass Fuel Supply Agreement between the Company and Carlson Timber Products, dated December 15, 2015.
18. Biomass Fuel Supply Agreement between the Company and Banick Logging, Inc., dated March 1, 2016.
19. Biomass Fuel Transportation and Handling Agreement between the Company and Wiener Custom Craft, dated March 1, 2016.
20. Biomass Fuel Transportation and Handling Agreement between the Company and Shawn Fletcher Trucking, Inc., dated December 15, 2015.
21. Biomass Fuel Transportation and Handling Agreement between the Company and Sawyer Timber, LLP, dated December 15, 2015.
22. Biomass Fuel Transportation and Handling Agreement between the Company and Precision Landscape & Tree Inc., dated March 1, 2016.
23. Biomass Fuel Transportation and Handling Agreement between the Company and Harbo Mulch, Inc., dated March 1, 2016.
24. Biomass Fuel Transportation and Handling Agreement between the Company and Enberg Logging Supply, Inc., dated December 15, 2015.
25. Biomass Fuel Transportation and Handling Agreement between the Company and Dick Walsh Forest Products, LLP, dated December 23, 2015.
26. Biomass Fuel Transportation and Handling Agreement between the Company and Dukek Trucking, Inc., dated December 15, 2015.
27. Biomass Fuel Transportation and Handling Agreement between the Company and D&D Ventures, Inc., dated March 1, 2016.
28. Biomass Fuel Transportation and Handling Agreement between the Company and Carlson Timber Products, dated December 15, 2015.
29. Biomass Fuel Transportation and Handling Agreement between the Company and Banick Logging, Inc., dated March 1, 2016.
30. Poultry Litter Disposal Agreement between Fibrominn LLC and Taves Turkey Farm, dated December 7, 2001.
31. Poultry Litter Disposal Agreement between Fibrominn LLC and New Life Farmers, dated March 19, 2001.
32. Poultry Litter Disposal Agreement between Fibrominn LLC and Mickelson Family Farms of Frazee LLP, dated May 22, 2001.

Northern States Power Company

33. Eastern Division Long-Term Disposal Agreement between Fibrominn LLC and Jennie-O Turkey Store, Inc., dated November 1, 2001.
34. Western Division Long-Term Disposal Agreement between Fibrominn LLC and Jennie-O Turkey Store, Inc., dated November 1, 2001.
35. Poultry Litter Disposal Agreement between Fibrominn LLC and Dean Mace, dated February 12, 200_.
36. Poultry Litter Disposal Agreement between Fibrominn LLC and Dennis Mace and Colleen Mace, dated February 12, 2001.
37. Transportation Agreement between Fibrominn LLC and Pflipsen Trucking LLC, dated December 16, 2012, as amended by the Second Amendment to the Transportation Agreement dated February, 2014, and the Third Amendment to Transportation Agreement dated September 2, 2014.
38. Transportation Agreement between Fibrominn LLC and Pflipsen Trucking LLC, dated February 12, 2007, as amended by the First Amendment to the Transportation Agreement, dated October 14, 2008, and the Second Amendment to the Transportation Agreement, dated September 2, 2014.
39. Transportation Agreement between Fibrominn LLC and Pflipsen Trucking LLC, dated December 16, 2012, as amended by the Second Amendment to the Transportation Agreement dated February, 2014, and the Third Amendment to Transportation Agreement dated September 2, 2014.
40. Poultry Litter Transportation and Handling Agreement between the Company and Huls Bros. Trucking, Inc., dated February 1, 2016.
41. Amended and Restated Water Supply Agreement between Fibrominn LLC and the City of Benson, Minnesota, dated December 1, 2004.
42. Amended and Restated Improvements Agreement between Fibrominn LLC and the City of Benson, Minnesota, dated December 1, 2004.
43. Power Purchase Agreement between Fibrominn LLC and Northern States Power Company, dated August 31, 2000, as amended by the Amendment, dated June 7, 2004, and the Second Amendment to Biomass Power Purchase Agreement dated February 16, 2011, and the Consent and Assignment dated as of August 20, 2015, between Northern States Power Company, and the Company and The Bank of New York Mellon, as Collateral Agent.
44. Agreement for Backup Service between Fibrominn LLC and the City of Benson, Minnesota, dated April 12, 2004.
45. Print Management Agreement between the Company and Bennett Office Technologies, Inc., dated September 21, 2015, as amended by Addendum A to Print Management Agreement dated April 20, 2016.
46. Lease Agreement between the Company and Williams Scotsman, Inc., dated December 2, 2015.

Northern States Power Company

47. Ash Sale Agreement between Fibrominn LLC and North American Fertilizer LLC, dated November 30, 2006, as amended by the First Amendment to Ash Sale Agreement, dated 2010, and the Second Amendment to Ash Sale Agreement, dated 2010.
48. Phosphate Supplement Agreement between Fibrominn LLC and North American Fertilizer, Inc., dated June 2013.
49. MicroGADS GOLD / WebGADS Software System License Agreement between the Company and Navigant Consulting, Inc., dated September 10, 2015.
50. MAPCON Software License Agreement between the Company and Mapcon Technologies, Inc., dated September 22, 2015.
51. Pitney Bowes Lease Agreement between Fibrominn LLC and Pitney Bowes Inc., dated August 5, 2014.
52. Transportation Agreement between Fibrominn LLC and Beaver Creek Transport, Inc., dated April 2007, as amended by the First Amendment to the Transport Agreement dated November 5, 2014.
53. Propane Supply Agreement between the Company and Dooley's Petroleum, Inc., dated September 6, 2016.
54. Uniform and Material Services Agreement between Company and GK Services, Inc., dated November 9, 2015.

Northern States Power Company

Schedule 4.4

Brokers' Fees; Payments on Sales

None.

Northern States Power Company

Schedule 4.5

Title to Acquired Assets

None.

Northern States Power Company

Schedule 4.7

Financial Statements; Books and Records

(a)

Most Recent Fiscal Year End

Benson Power, LLC
(A Delaware limited liability company)
Financial Statements
December 31, 2015

Northern States Power Company

Benson Power, LLC
(A Delaware limited liability company)
Index
December 31, 2015

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Northern States Power Company

**Independent Auditor's Report**

To Board of Managers of Benson Power, LLC

We have audited the accompanying financial statements of Benson Power, LLC which comprise the Statement of Financial Position as of December 31, 2015, and the related Statement of Operations, Statements of Members' Equity, and Statement of Cash Flows for the period from August 19, 2015 through December 31, 2015.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on the financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on our judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, we consider internal control relevant to the Company's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Benson Power, LLC as of December 31, 2015, and the results of its operations and its cash flows for the period from August 19, 2015 through December 31, 2015 in accordance with accounting principles generally accepted in the United States of America.

PricewaterhouseCoopers LLP

April 29, 2016

PricewaterhouseCoopers LLP, 100 East Pratt Street, Suite 1900, Baltimore, MD 21202-1096
T: (410) 783 7600, F: (410) 783 7680, www.pwc.com/us

Northern States Power Company

Benson Power, LLC
 (A Delaware limited liability company)
Statement of Financial Position
December 31, 2015

(in thousands)

Assets	
Cash	\$ 59
Restricted cash	13,729
Accounts receivable	5,557
Unbilled accounts receivable	2,566
Inventory - fuel	1,404
Prepaid expenses	573
Other current assets	125
Total current assets	24,013
Property, plant and equipment, net	60,132
Inventory - spare parts	1,879
Total assets	<u>\$ 86,024</u>
Liabilities and Member's Equity	
Current portion of notes payable - related party	\$ 1,500
Accounts payable	3,551
Accrued expenses	1,338
Due to related party	116
Accrued interest	2,134
Total current liabilities	8,639
Notes payable - related party	73,236
Total liabilities	81,875
Member's equity	4,149
Total liabilities and members' equity	<u>\$ 86,024</u>

The accompanying notes are an integral part of these financial statements.

Northern States Power Company

Benson Power, LLC
 (A Delaware limited liability company)
Statement of Operations
Period From August 19, 2015 Through December 31, 2015

(in thousands)

Operating revenues	\$ 22,483
Operating expenses	
Fuel, ash and transportation expense	11,806
Operations and maintenance expense	3,965
General and administrative expense	2,248
Depreciation and amortization	1,813
Taxes other than income taxes	313
Total operating expenses	<u>20,145</u>
Income from operations	<u>2,338</u>
Interest expense and other income	
Interest expense and fees	2,141
Other income	<u>(1)</u>
Total interest expense and other income	<u>2,140</u>
Net income	<u>\$ 198</u>

The accompanying notes are an integral part of these financial statements.

Northern States Power Company

Benson Power, LLC

(A Delaware limited liability company)

Statement of Member's Equity**Period From August 19, 2015 Through December 31, 2015***(in thousands)*

	Class A Member	Class B Members	Total Members' Equity
Balances at August 19, 2015	\$ 2	\$ -	\$ 2
Contribution from members	-	3,949	3,949
Accumulated earnings, Net income	3	195	198
Balances at December 31, 2015	<u>\$ 5</u>	<u>\$ 4,144</u>	<u>\$ 4,149</u>

The accompanying notes are an integral part of these financial statements.

Northern States Power Company

Benson Power, LLC

(A Delaware limited liability company)

Statement of Cash Flows**Period From August 19, 2015 Through December 31, 2015***(in thousands)***Cash flows from operating activities**

Net income	\$	198
Adjustments to reconcile net income to cash provided by operating activities		
Depreciation		1,813
Deferred financing costs		8
Change in assets and liabilities		
Change in accounts receivable		4,152
Change in unbilled accounts receivable		(22)
Change in fuel inventory		(264)
Change in spare parts inventory		74
Change in prepaid expenses		348
Change in accounts payable		(3,079)
Change in accrued expenses		534
Change in due to related party		116
Change in accrued interest		2,134
Net cash provided by operating activities		<u>6,012</u>

Cash flows from investing activities

Capital expenditures		(146)
Changes in restricted cash		<u>(5,809)</u>
Net cash used in investing activities		<u>(5,955)</u>

Cash flows from financing activities

Capital contributions		<u>2</u>
Net cash provided by financing activities		<u>2</u>
Change in cash		59

Cash

Beginning of period		-
End of period	\$	<u>59</u>

Supplemental disclosure of cash flow information

Accrued capital expenditures	\$	172
Contributed working capital assets		22,362
Deferred financing costs contributed		272
Assumed working capital liabilities		(7,265)
Contributed property, plant and equipment		61,629
Contributed spare parts inventory		1,953
Assumed long term debt borrowings		(75,000)

The accompanying notes are an integral part of these financial statements.

Northern States Power Company

Benson Power, LLC
 (A Delaware limited liability company)
Notes to Financial Statements
December 31, 2015

1. Significant Accounting Policies

Description of Business

Benson Power, LLC (Benson, the Buyers Designee or the Company), is a Delaware limited liability company formed on October 22, 2014. The Company is designed to own and operate a 55 MW biomass electric generating facility located in Benson, Minnesota (Facility). On January 28, 2015, PowerMinn 9090, LLC and Fibrominn LLC, the Company's sellers (Sellers) and the existing debt holders (Noteholders) entered into an Asset Purchase Agreement (APA) with the Company. On January 29, 2015, the Noteholders commenced a receivership case in the state of Minnesota. The case acknowledged the APA and the proposal that the Noteholders would own 98.5% of the Buyer Designee's equity.

On March 6, 2015, CPV Biomass Holdings, LLC (CPV or the Class A Member) was admitted as a 1.5% equity member of the Company. On March 25, 2015, the State of Minnesota's Eighth Judicial Court issued a court order (Court Order) which established the sales price of \$78.951 million for the assets and liabilities of the Predecessor and authorized and approved the APA. The sale was conditioned upon Benson receiving all necessary regulatory approvals.

On August 19, 2015 the Company admitted its Class B Members, the Noteholders, who after admittance, contributed the assets acquired and liabilities assumed under the APA on August 20, 2015 and in return received 98.5% of the Company's equity. The Class B Members are comprised of Prudential Insurance Company of America, Pruco Life Insurance Company, Pruco Life Insurance Company of New Jersey, Par U Hartford Life and Annuity Comfort Trust, Prudential Retirement Insurance and Annuity Company, Prudential Retirement Insurance and Annuity Company, Prudential Annuities Life Assurance Corporation, John Hancock Life Insurance Company, Nationwide Life Insurance Company, Beneficial Life Insurance Company, CRT Capital Group, LLC, The Prudential Insurance Company of America, and Metropolitan Life Insurance Company. With the admission of its Class B Members and new Stock Subscription Agreement for Benson Power, LLC, a new reporting entity was created for accounting purposes and as such, these financial statements reflect the period from August 19, 2015 through December 31, 2015.

On August 20, 2015, all conditions of the Court Order were met and the APA was consummated and the Class B Members contributed the assets acquired and the liabilities assumed under the APA.

Basis of Presentation

The accompanying financial statements have been prepared in accordance with generally accepted accounting principles in the United States of America (U.S. GAAP).

Use of Estimates

Management makes estimates and assumptions relating to the reporting of assets and liabilities, the disclosure of contingent assets and liabilities, and reported amounts of revenues and expenses to prepare the financial statements in conformity with U.S. GAAP. Actual results could differ from those estimates.

Northern States Power Company

Benson Power, LLC
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Notes to Financial Statements
December 31, 2015

Revenue Recognition

The Company records gross revenue for energy and certain cost pass throughs related to its electric power generation facility under the accrual method. Cost pass through revenues include transportation, property tax and ash sales. The energy revenues and pass-through costs are billed pursuant to the terms of Power Purchase Agreement (PPA). Revenues recognized under the PPA are classified as Operating revenues in the accompanying Statement of Operations.

Cash and Cash Equivalents

The Company considers all short term investments with an original maturity of three months or less to be cash equivalents. Cash and cash equivalents are stated at cost. At December 31, 2015 the balance of cash and cash equivalents was \$59 thousand.

Restricted Cash

Restricted cash represents amounts held for debt service payments and other expenses. The Company has certain restrictions on cash balances due to debt covenants (Note 5). The restricted cash accounts are established and maintained by an agent. At December 31, 2015, the balance of restricted cash of the Company was \$13.7 million.

Accounts Receivable and Unbilled Accounts Receivable

Accounts receivable and unbilled accounts receivable are presented at the Company's estimate of net realizable value. The Company monitors its receivables on an ongoing basis and provides an allowance for uncollectible accounts when necessary. The Company does not have any historical experience of customer credit issues or customer bankruptcies that would indicate doubtful or uncollectible accounts. Accordingly, no allowance for doubtful accounts was recorded at December 31, 2015. The Company's accounts receivable and unbilled accounts receivable totaled \$5.6 million and \$2.6 million, respectively, at December 31, 2015.

Prepaid Expenses

The Company has prepaid expenses classified as short-term. Short-term prepaid expenses consist of insurance premiums, labor costs, bank fees, and other miscellaneous fees totaling \$0.6 million at December 31, 2015.

Property, Plant and Equipment

Property, plant, and equipment is stated at cost (fair value at the date of acquisition) plus the cost of subsequent additions less accumulated depreciation. Depreciation is computed on a straight line basis over the remaining twelve year estimated useful life of the assets. Property, plant, and equipment also includes land and construction work in progress. Additions and improvements extending assets' lives are capitalized, while repairs and maintenance, including planned major maintenance, are charged to expense as incurred. Depreciation expense was approximately \$1.8 million for the period ended December 31, 2015.

Income Taxes

The Company is organized as a limited liability company and is classified and treated as a partnership for federal and state income tax purposes. No provision for the payment of federal and state income taxes has been provided since the Company is not subject to income tax. Each member is responsible for reporting income or loss based on such member's respective share of the Company's income and expenses as reported for income tax purposes. As such, no income tax expense or benefit has been recorded within these financial statements for the period ended December 31, 2015.

Northern States Power Company

Benson Power, LLC
 (A Delaware limited liability company)
Notes to Financial Statements
December 31, 2015

Deferred Financing Costs

In April 2015, the FASB issued ASU 2015-03, *Simplifying the Presentation of Debt Issuance Costs*, (ASU 2015-03) which requires debt issuance costs to be presented in the balance sheet as a direct deduction from the carrying value of the associated debt liability, consistent with the presentation of a debt discount. The Company adopted ASU 2015-03 for the period ended December 31, 2015.

The Company capitalized direct costs associated with its original financing. These costs were classified as Current portion of long term debt and Long term debt on its Statement of Financial Position. Notes payable included \$0.3 million of deferred financing costs as of December 31, 2015. Direct costs incurred with obtaining debt are amortized under the interest method over the term of the related notes payable. The deferred financing costs paid during 2015 totaled \$0.3 million. Amortization of these costs totaled \$8 thousand for the period ended December 31, 2015 and is classified as Interest expense and fees in the accompanying Statement of loss.

Inventory

Inventory is comprised of biomass fuel stock that is stated at the lower of weighted average cost or market.

Impairment of Long-Lived Assets

ASC 360, *Property, Plant, and Equipment* (ASC 360), requires both long-lived assets and intangible assets with determinable useful lives be reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of the asset may not be recoverable. Recoverability of assets to be held and used is measured by comparing the carrying amount of the asset to its expected future undiscounted cash flows. If the carrying amount of the asset is greater than its undiscounted cash flows, the asset is considered impaired. In such circumstances, the impairment recognized is measured by the amount by which the carrying amount of the asset exceeds its fair value. The impairment is charged to earnings. No impairments were recognized during the period ended December 31, 2015.

ASC 360 also requires assets to be disposed of be reported at the lower of its carrying amount or fair value less the cost to sell.

Risks and Uncertainties

As with any power generation facility, operation of the Facility involves risk, including the performance of the Facility below expected levels of efficiency and output, shutdowns due to the breakdown or failure of equipment or processes, violations of permit requirements, operator error, labor disputes, or catastrophic events such as fires, earthquakes, floods, explosions, or other similar occurrences affecting a power generation facility or its power purchasers. In addition, the Facility is at risk related to the access to fuel, as well as changes in the rules and regulations governing these markets. The occurrence of any of these events could significantly reduce or eliminate revenue generated by the Company or significantly increase the expenses of the Company, and adversely impact the Company's ability to make payments on its debt when due.

Northern States Power Company

Benson Power, LLC
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Notes to Financial Statements
December 31, 2015

Commitments and Contingencies

The Company is party to claims and proceedings arising in the normal course of business. Management assesses each matter and determines the likelihood a loss has been incurred and the amount of such loss if it can be reasonably estimated. Management reviews such matters on an ongoing basis. Contingencies are evaluated based on estimates and judgments made by management with respect to the likely outcome of such matters. Management's estimates could change based on new information. The Company does not expect a material impact on its consolidated financial position, cash flows, or results of operations based on its evaluation.

The Company follows the guidance of ASC 460, *Guarantees* (ASC 460), for disclosing and accounting for guarantees and indemnifications entered into during the course of business. When a guarantee or indemnification subject to ASC 460 is entered into, the estimated fair value of the guarantee or indemnification is assessed. Some guarantees and indemnifications could have a financial impact under certain circumstances. Management's estimates could change based on new information. The Company does not expect a material impact on its consolidated financial position, cash flows, or results of operations based on its evaluation.

New Accounting Pronouncements

The Company has identified the following new accounting pronouncements that have not yet been adopted by the Company.

In May 2014, FASB issued Accounting Standards Update (ASU) 2014-09, *Revenue from Contracts with Customers* (ASU 2014-09). The guidance in ASU 2014-09 provides that an entity should recognize revenue to depict the transfer of goods or services to customers in an amount that reflects the consideration to which the entity expects to be entitled to in exchange for the goods or services provided and establishes the following steps to be applied by an entity: (1) identify the contract with a customer; (2) identify the performance obligations in the contract; (3) determine the transaction price; (4) allocate the transaction price to the performance obligations in the contract; and (5) recognize revenue when (or as) the entity satisfies the performance obligation. In August 2015, FASB issued ASU 2015-14, *Revenue from Contracts with Customers* (ASU 2015 14), which defers the effective start date for ASU 2014-09 for financial statements issued for the fiscal years beginning after December 15, 2018 for private companies. Early adoption is not permitted. The Company is currently evaluating the impact of the new revenue recognition standard on the Company's financial statements.

In August 2014, FASB issued ASU 2014-15, *Disclosure of Uncertainties about an Entity's Ability to Continue as a Going Concern* (ASU 2014-15). ASU 2014-15 explicitly requires management to assess an entity's ability to continue as a going concern, and to provide related footnote disclosure in certain circumstances. ASU 2014-15 will be effective for all entities in the first annual period ending after December 15, 2016. The Company does not expect the adoption of this standard to impact the Company's financial statements.

In July 2015, the FASB issued ASU 2015-11, *Inventory – Simplifying the Measurement of Inventory*, (ASU 2015-11). ASU 2015-11 simplifies the subsequent measurement of inventories by replacing the lower of cost or market test with a lower of cost and net realizable value test. The guidance applies only to inventories for which cost is determined by methods other than last-in first-out ("LIFO") and the retail inventory method. ASU 2015-11 is effective for annual reporting periods beginning after December 15, 2016. Early adoption is permitted. The Company does not expect the adoption of this standard will have a material impact on the Company's financial statements.

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In February 2016, the FASB issued ASU No. 2016-02, *Leases* (Topic 842) (ASU 2016-02). The new standard establishes a right-of-use (ROU) model that requires a lessee to record a ROU asset and a lease liability on the balance sheet for all leases with terms longer than 12 months. Leases will be classified as either finance or operating, with classification affecting the pattern of expense recognition in the income statement. ASU 2016-02 is effective for annual periods beginning after December 15, 2019 for private companies, including interim periods within those annual periods, with early adoption permitted. A modified retrospective transition approach is required for lessees for capital and operating leases existing at, or entered into after, the beginning of the earliest comparative period presented in the financial statements, with certain practical expedients available. The Company is currently evaluating the impact that the standard will have on the financial statements.

2. Contributed Assets and Assumed Liabilities

On March 25, 2015, the State of Minnesota's Eighth Judicial Court issued a court order (Court Order), which established the sales price of \$78.951 million for the assets and liabilities of the Seller and authorized and approved the APA. The sale was conditioned upon Benson receiving all necessary regulatory approvals. On August 20, 2015, all conditions of the Court Order were met, including regulatory approvals. The APA was consummated and the Class B Members contributed the assets acquired and the liabilities assumed under the APA.

The Court Order established the sales price which contemplated various valuation methods, including (i) a comparison of the Company and its projected performance to the market values of comparable companies; (ii) a review and analysis of several recent transactions of companies in similar industries to the Company; and (iii) a calculation of the present value of the future cash flows of the Company based on its projections.

The determination of the fair values of the identified assets and liabilities acquired other than working capital amounts was based on an income approach using discounted cash flow analysis. The assumptions used in the calculations for the discounted cash flow analysis in valuing PPE included projected revenue, costs and cash flows through 2027 and represented the Company's best estimates at the time the analysis was prepared. No value was ascribed to the PPA with Xcel Energy, Inc. Due to the unique nature of the Facility's operations, the fact that the Facility would not operate without the PPA, and the useful life of the Facility is coterminous with the PPA the contract was determined to be inseparable from the Property, Plant and Equipment. The discounted cash flow method reflects the following assumptions; a discount rate that considered various factors including risk-free rate, equity risk premium, company specific risk premium, bond yields, tax rates and target capital structure to determine a weighted average cost of capital (WACC) of 10.11%. While the Company considers such estimates and assumptions reasonable, they are inherently subject to significant business, economic and competitive uncertainties, many of which are beyond the Company's control and, therefore, may not be realized. The estimated fair value calculated for PPE, after adjusting for current assets and the estimated fair values of noninterest bearing current liabilities, approximates the sales price documented in the Court Order, or the amount a willing buyer would pay for the assets of the Company. A reconciliation of the sales price is provided in the table below (in thousands).

Northern States Power Company

Benson Power, LLC
 (A Delaware limited liability company)
Notes to Financial Statements
December 31, 2015

Allocation of Sales Price to Assets Acquired and Liabilities Assumed

Sales price	<u>\$ 78,951</u>
Current assets	
Cash and restricted cash	7,922
Accounts receivable	12,253
Inventory, fuel	1,141
Inventory, spare parts	1,953
Construction in progress	532
Prepaid expenses	921
Deposits	125
Other assets	<u>272</u>
Total current assets	<u>25,119</u>
Current liabilities	
Accounts payable	6,461
Accrued liabilities	<u>804</u>
Total current liabilities	<u>7,265</u>
Net working capital	17,854
Property, plant and equipment	<u>61,097</u>
Total net assets acquired and liabilities assumed	<u>\$ 78,951</u>

3. Property, Plant and Equipment

The following table presents a summary of property, plant and equipment, net by asset category (in thousands):

Buildings	\$ 14,675
Power, heat and steam assets - biomass	45,810
Accumulated depreciation	<u>(1,813)</u>
	58,672
Construction work in progress	158
Land	<u>1,302</u>
Property, plant and equipment, net	<u>\$ 60,132</u>

Depreciation expense totaled \$1.8 million for the period ended December 31, 2015.

4. Membership Interests

On March 6, 2015, CPV acquired all Class A membership interests of the Company for \$2 thousand.

Northern States Power Company

Benson Power, LLC
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Notes to Financial Statements
December 31, 2015

On August 19, 2015, the Company amended and restated its Limited Liability Company Agreement and admitted the Class B Members. On August 20, the Class B Members contributed the acquired assets and liabilities of the predecessor to the Company. The net contribution totaled \$3.9 million. The assets contributed were comprised of \$22.3 million of working capital assets, \$0.3 million of deferred financing costs, \$61.6 million of property plant and equipment, \$2.0 million of spare parts inventory. The liabilities assumed include the \$75.0 million Notes payable (Note 5) provided by the Class B Members to the Company, and \$7.3 million of working capital liabilities. Profits, losses, and distributions are allocated in proportion to each member's respective ownership interest with certain exceptions. As a limited liability company, the liability of each member is limited to (i) any unpaid capital contributions, (ii) the amount of any distributions required to be returned in accordance with the agreement, and (iii) any amount the member is required to pay pursuant to the agreement.

Profits, losses, and distributions are allocated in accordance with the provisions of the limited liability company agreement. The Company made no distributions for the period ended December 31, 2015.

5. Notes Payable – Related Party

On August 20, 2015, the Company entered into a \$75.0 million Note Agreement, with Class B Members. The Note Agreement is comprised of senior secured notes (Notes) which bear interest at a fixed 7.70% interest rate which are due on July 15, 2027. The Notes are secured by first-priority liens on the Company's real and personal property.

As of December 31, 2015 the total outstanding balance of the Notes was \$75.0 million, of which \$1.5 million is classified as Current portion of notes payable on the accompanying Statement of Financial Position.

The current maturities on Notes payable follow (in thousands):

2016	\$	1,500
2017		1,500
2018		1,500
2019		1,500
2020		1,500
Thereafter		67,500
	\$	<u>75,000</u>

For the period ended December 31, 2015, the Company incurred interest expense \$2.1 million which is classified as Interest expense on the accompanying Statement of Operations.

Northern States Power Company

Benson Power, LLC
 (A Delaware limited liability company)
Notes to Financial Statements
December 31, 2015

6. Commitments and Contingencies

Power Purchase Agreement

The Company is party to PPA with Xcel Energy, Inc. (through its Northern States Power Company subsidiary). The PPA expires in 2027 and had an original term of twenty-one years. The terms of the PPA permit the Company to pass through certain fuel transportation costs, property taxes, and any deficit from a set amount of revenues from ash sales. Total sales under the PPA of \$22.5 million for the period ended December 31, 2015 are classified as Operating revenues in the accompanying Statement of Operations.

Ash Purchase Agreement

The Company is party to an Ash Sale Agreement (ASA) with North American Fertilizer, LLC (NAF). The ASA allows the Company to sell the ash produced by the Facility which is a byproduct of utilizing poultry litter and wood chip as fuel sources when generating electricity. The ASA allows NAF to offset certain of its costs to process the ash into fertilizer against the Company's sales price. These costs include such items as NAF's operating costs, ash plant variable operating changes, sales and marketing costs and other specified items. Per the ASA, billing of ash sales occurs semiannually.

During 2015, an outbreak of Avian Flu in the United States resulted in the destruction of over 48 million chicken and turkeys in the Midwest (including Minnesota). Consequently, the Company could not source an adequate supply of turkey litter as fuel stock for a period of time and therefore relied heavily on wood chips as its primary fuel source for a period of time. During the latter part of the third quarter, both NAF and the Company acknowledged that the Avian Flu increased NAF's cost to process the ash to fertilizer.

In November 2015, NAF and the Company acknowledged that there would not be sufficient ash sales to offset the incremental cost to process the ash. Consequently, the Company commenced negotiations to clarify certain provisions of the ASA and finalize the amount that the Company would reimburse NAF. The Company's management believes that a payment of \$0.8 million for reimbursement to NAF is probable. An accrual for this contingency is included in Accrued expenses in the accompanying Statement of Financial Position. The corresponding expense is classified as Fuel, ash and transportation expense in the accompanying Statement of Operations at December 31, 2015.

7. Operations and Maintenance Service Agreements

The Company is party to an operations and maintenance agreement (O&M Agreement) with NAES Corporation (NAES) for a term of five years. Pursuant to the terms of agreement, NAES is required to operate and maintain the Facility. The Company is required to pay NAES fixed annual management fees, an incentive bonus, and to reimburse NAES for all labor costs, including payroll and taxes, subcontractor costs, and other costs deemed reimbursable under the O&M Agreement. The management fees are adjusted annually based on specified indices published by the U.S. government. Management fees totaled approximately \$0.4 million for the period ended December 31, 2015.

Northern States Power Company

Benson Power, LLC
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Notes to Financial Statements
December 31, 2015

8. Related Party Transaction – Asset Management Agreement

On August 20, 2015, the Company executed an Amended and Restated Asset Management Agreement (AAMA) with Competitive Power Ventures, Inc. (CPVI) for a term of five years. Among other things, the AAMA replaced the Predecessor AAMA with the Company. Under the AAMA, CPVI provides asset management services. The AAMA includes a fixed monthly fee, an incentive bonus and reimbursement to CPVI for its payments to third party vendors. The Company incurred \$0.8 million under the AAMA for the period ended December 31, 2015 which is included in General and administrative expense on the accompanying statement of Operations. The Company owed CPVI \$0.1 million as of December 31, 2015, which is included in Due to related party on the accompanying Statement of Financial Position.

9. Subsequent Events

The Company performed an evaluation of subsequent events for the accompanying financial statements through April 29, 2016, the date this report was issued, to determine whether the circumstances warranted recognition and disclosure of those events or transactions in the financial statements as of December 31, 2015.

Northern States Power Company

Most Recent Balance Sheet

Attached in the pages that follow are the unaudited financial statements for the quarterly period ended September 30, 2016.

Northern States Power Company

BENSON POWER, LLC
(A Delaware Limited Liability Company)

BALANCE SHEETS

(In Thousands)

	<u>September 30, 2016</u>	<u>December 31, 2015</u>
Assets		
Cash	\$ 58	\$ 59
Restricted cash	4,415	13,729
Accounts receivable	6,316	5,557
Unbilled accounts receivable	2,651	2,566
Inventory - fuel	814	1,404
Prepaid expenses	1,051	573
Other current assets	-	125
Total current assets	<u>15,305</u>	<u>24,013</u>
Property, plant, and equipment, net	58,997	60,132
Spare parts inventory	<u>2,170</u>	<u>1,879</u>
Total assets	<u><u>\$ 76,472</u></u>	<u><u>\$ 86,024</u></u>
Liabilities and Members' Equity		
Current portion of notes payable - related party	\$ 1,500	\$ 1,500
Accounts payable	4,048	3,551
Accrued liabilities	2,512	1,338
Due to related party	100	116
Accrued interest and fees	-	2,134
Total current liabilities	<u>8,160</u>	<u>8,639</u>
Notes payable - related party	<u>69,120</u>	<u>73,236</u>
Total liabilities	77,280	81,875
Members' equity (deficit)	<u>(808)</u>	<u>4,149</u>
Total liabilities and members' equity	<u><u>\$ 76,472</u></u>	<u><u>\$ 86,024</u></u>

Northern States Power Company

BENSON POWER, LLC (A Delaware Limited Liability Company)				
STATEMENTS OF CHANGES IN MEMBERS' EQUITY (DEFICIT)				
(In Thousands)				
	Class A member	Class B members	Accumulated retained earnings (deficit)	Total members' equity
Balance, August 19, 2015	\$ 2	\$ -	\$ -	\$ 2
Contributions	-	3,949	-	3,949
Net income (loss)	-	-	198	198
Balance, December 31, 2015	2	3,949	198	4,149
Net income (loss)	-	-	(4,957)	(4,957)
Balance, September 30, 2016	\$ 2	\$ 3,949	\$ (4,759)	\$ (808)

Northern States Power Company

<p style="text-align: center;">BENSON POWER, LLC (A Delaware Limited Liability Company)</p> <p style="text-align: center;">STATEMENTS OF CASH FLOWS</p> <p style="text-align: center;">(In Thousands)</p>				
	For the three months ended September 30, 2016	For the period ended September 30, 2015 ¹	For the nine months ended September 30, 2016	For the period ended September 30, 2015 ¹
Cash flows from operating activities:				
Net income (loss)	\$ (667)	\$ 349	\$ (4,957)	\$ 349
Adjustments to reconcile net income (loss) to cash provided by (used in) operating activities:				
Depreciation	1,320	489	3,850	489
Deferred financing costs	5	3	16	3
Changes in operating assets and liabilities:				
Accounts receivable	(5,238)	4,722	(759)	4,722
Unbilled accounts receivable	(1,788)	469	(85)	469
Fuel inventory	915	226	590	226
Spare parts inventory	(513)	(25)	(292)	(25)
Prepaid expenses	(303)	(129)	(477)	(129)
Accounts payable	2,850	(3,333)	687	(3,333)
Accrued expenses	(64)	(93)	1,174	(93)
Due to related party	9	-	(16)	-
Accrued interest	-	658	(2,134)	658
Other current assets	-	-	125	-
Restricted cash	4,944	-	9,314	-
Net cash provided by (used in) operating activities	1,670	3,386	7,036	3,386
Cash flows from investing activities:				
Capital expenditures	(1,296)	(73)	(2,906)	(73)
Change in restricted cash	-	(3,263)	-	(3,253)
Net cash provided by (used in) investing activities	(1,296)	(3,326)	(2,906)	(3,326)
Cash flows from financing activities:				
Capital contributions	-	2	-	2
Repayment of notes payable - related party	(375)	-	(4,131)	-
Net cash provided by (used in) financing activities	(375)	2	(4,131)	2
Increase (decrease) in cash	(1)	62	(1)	62
Cash, beginning of period	59	-	59	-
Cash, end of period	\$ 58	\$ 62	\$ 58	\$ 62

¹ Note: Reflect the financial results of the Company from August 19, 2015, the date its equity members contributed the assets and liabilities to the Company. There was no transactional activity from the Company's date of formation, October 22, 2014, to the date assets and liabilities were contributed.

Northern States Power Company

BENSON POWER, LLC (A Delaware Limited Liability Company)				
STATEMENTS OF OPERATIONS				
(In Thousands)				
	For the three months ended September 30, 2016	For the period ended September 30, 2015 ¹	For the nine months ended September 30, 2016	For the period ended September 30, 2015 ¹
Operating revenues	\$ 15,517	\$ 6,729	\$ 39,172	\$ 6,729
Fuel, ash and transportation expense	8,825	3,588	20,514	3,588
Operations and maintenance expense	3,411	831	11,522	831
General and administrative expense	1,040	713	3,422	713
Depreciation and amortization	1,330	489	3,850	489
Taxes other than income taxes	212	99	644	99
Total operating expenses	14,808	5,720	39,952	5,720
Income (loss) from operations	709	1,009	(780)	1,009
Interest income (expense), net	(1,376)	(660)	(4,177)	(660)
Net income (loss)	\$ (667)	\$ 349	\$ (4,957)	\$ 349

¹ - Note: Reflect the financial results of the Company from August 19, 2015, the date its equity members contributed the assets and liabilities to the Company. There was no transactional activity from the Company's date of formation, October 22, 2014, to the date assets and liabilities were contributed.

Northern States Power Company

Schedule 4.8

Absence of Undisclosed Liabilities

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Northern States Power Company

Schedule 4.9

Subsequent Events

None.

Northern States Power Company

Schedule 4.10**Legal Compliance**

1. Midwest Reliability Organization (MRO) Self Report related to NERC Standard PRC-005-1b submitted by Fibrominn LLC March 25, 2015, and related Mitigation Plan. MRO responded to this notice by letter dated June 14, 2016, indicating that MRO will not pursue an enforcement action in connection with this reported instance of noncompliance. As part of MRO's Annual Compliance Monitoring and Enforcement Program ("CMEP") Implementation Plan, MRO periodically samples Compliance Exceptions to verify that Mitigation Plans have been completed. On October 24, 2016, MRO requested supporting evidence to document that the Company has completed its Mitigation Plan for NERC Standard PRC-005-1b. The Company submitted the supporting evidence to MRO on October 27, 2016.
2. MRO Self Report related to NERC Standard VAR-002-1.1b submitted by Fibrominn LLC March 25, 2015, and related Mitigation Plan. MRO responded to this notice by letter dated May 13, 2016, indicating that MRO will not pursue an enforcement action in connection with this reported instance of noncompliance. As part of MRO's Annual Compliance Monitoring and Enforcement Program ("CMEP") Implementation Plan, MRO periodically samples Compliance Exceptions to verify that Mitigation Plans have been completed. On October 24, 2016, MRO requested supporting evidence to document that the Company has completed its Mitigation Plan for NERC Standard VAR-002-1.1b. The Company submitted the supporting evidence to MRO on October 27, 2016.
3. MRO Self Report related to NERC Standard CIP-003-3 submitted by Fibrominn LLC March 25, 2015, and related Mitigation Plan. MRO responded to this notice by letter dated May 13, 2016, indicating that MRO will not pursue an enforcement action in connection with this reported instance of noncompliance.
4. MRO Self Report related to NERC Standard CIP-002-3 submitted by Fibrominn LLC March 25, 2015, and related Mitigation Plan. MRO responded to this notice by letter dated May 13, 2016, indicating that MRO will not pursue an enforcement action in connection with this reported instance of noncompliance.
5. MRO Self Report related to NERC Standard MOD-25-2-R1 submitted by the Company October 07, 2016, and related Mitigation Plan.
6. MRO Self Report related to NERC Standard MOD-25-2-R2 submitted by the Company October 07, 2016, and related Mitigation Plan.
7. MRO Self Report related to NERC Standard PRC-19-2-R1 submitted by the Company October 07, 2016, and related Mitigation Plan.
8. See Schedule 4.19, items 1-13.

Northern States Power Company

Schedule 4.11

Tax Matters

(a)

The Company has timely filed for an extension to file its 2015 Federal and Minnesota income tax returns.

(d) The following tax returns (which have not been audited and are not currently under audit):

1. 2015 U.S. Return of Partnership Income.
2. 2015 Minnesota Partnership Return.

Northern States Power Company

Schedule 4.12

Real Property

(a)

Legal Description of the Facility: South Half (S 1/2) of Lot Five (5) and all of Lot Six (6), Block One (1); Lots One (1), Two (2) and Three (3), Block Two (2); Outlots A and B, Benson Industrial Rail Second Addition to the City of Benson, Swift County, Minnesota. (Abstract Property)

Northern States Power Company

Schedule 4.13

Intellectual Property

(a)

1. Truck Control Fuel Management System is a custom third-party application to control fuel truck deliveries to the fuel hall, developed by Allen Bradley (Rockwell Automation).
2. Fibrosys is a custom third-party application for fuel reporting and invoicing developed by Aldis.
3. The Distributed Control System is a customized Delta V (Emerson) software package developed by SNC-Lavalin.
4. The Cedar CEMS Software is a customized program developed by Custom Instrumentation Services Corp (CISCO).
5. MicroGADS GOLD / WebGADS Software System License Agreement between the Company and Navigant Consulting, Inc., dated September 10, 2015.
6. MAPCON Software License Agreement between the Company and Mapcon Technologies, Inc., dated September 22, 2015.

(b)

None.

Northern States Power Company

Schedule 4.14**Tangible Assets**

During the periodic inspection of the steam turbine at the Facility conducted by Fuji Electric Co., Ltd. (Fuji), and Reliable Turbine Services, LLC in May 2016, non-destructive evaluation (NDE) testing was performed on the L-0 and L-1 steam turbine blades in accordance with Fuji Technical Document R76-140718-148a (dated November 2014). Indications of cracks were detected in nineteen (19) of the forty-eight (48) L-0 steam turbine blades during the NDE testing. As a result of the findings of the NDE testing, the Company purchased and installed forty-eight (48) new L-0 steam turbine blades in July 2016. No indications of cracks were detected in the L-1 steam turbine blades during the NDE testing so the complete set of L-1 steam turbine blades were returned to service. Fuji and TG Advisors, Inc. (Company's third party steam turbine expert) have independently completed root cause failure analysis (RCFA) reports on the L-0 steam turbine blades.

The plant experiences occasional derates in the range of 5-7 MWs, especially in the summer, due to increased turbine back pressure as a result of high ambient temperatures and high differential pressure in the baghouse requiring online maintenance.

Northern States Power Company

Schedule 4.15

Contracts

(a)

None.

(b)

1. Engagement Letter between the Company and PricewaterhouseCoopers LLP, dated November 16, 2016.
2. Engagement Letter with Fitch Ratings, dated October 13, 2015.
3. Novaspect Service Support Plan between the Company and Novaspect, Inc., dated September 22, 2016.
4. Products and Services Agreement between Fibrominn LLC and Marco, Inc., dated February 16, 2015.
5. Marco Managed Voice for Cisco agreement between Fibrominn LLC and Marco, Inc., dated April 22, 2016.
6. Mapcon Software Support Agreement between the Company and Mapcon Technologies, Inc., dated September 22, 2015.
7. Independent Director Services Agreement between the Company and Mountaineer Power Consulting, LLC, dated August 19, 2015, and extended by email agreement.
8. Independent Director Services Agreement between the Company and Michael Hanson, dated August 19, 2015, and extended by email agreement.
9. Genusite Service Proposal between the Company and Genusite LLC, dated November 9, 2016.
10. Compensation Agreement between the Company and Arthur J. Gallagher Risk Management Services, Inc., effective April 20, 2016.
11. Letter Agreement Re: ASSIGNMENT OF MEMBERSHIP INTERESTS AND PLEDGE AGREEMENT, dated August 20th, 2015, between CPV BIOMASS HOLDINGS, LLC, and THE BANK OF NEW YORK MELLON, as collateral agent (together with its successors and assigns in such capacity, the "Collateral Agent") for the benefit of the note purchasers, the Collateral Agent and The Bank of New York Mellon, as depositary, between the Company and CT Corporation System, dated August 20, 2015.
12. Letter Agreement Re: SECURITY AGREEMENT dated as of August 20th, 2015 between Benson Power, LLC, and The Bank of New York Mellon, as collateral agent (together with its successors and assigns in such capacity, the "Collateral Agent") for the benefit of the purchasers, the Collateral Agent and The Bank of New York Mellon, as depositary, between the Company and CT Corporation System, dated August 20, 2015.

Northern States Power Company

13. Letter Agreement Re: The DEPOSITARY AGREEMENT, dated as of August 20th, 2015, among (i) Benson Power, LLC, (ii) The Bank of New York Mellon, as the Collateral Agent (together with its successors and assigns in that capacity, the “Collateral Agent”), for the benefit of the holders from time to time of the Notes, the Depositary and the Collateral Agent, and (iii) The Bank of New York Mellon, as depositary bank (together with its successors and assigns in that capacity, the “Depositary”), between the Company and CT Corporation System, dated August 20, 2015.
14. O&M Services Agreement between Fibrominn LLC and NAES Corporation, dated January 28, 2015.
15. Amended and Restated Asset Management Agreement between the Company and Competitive Power Ventures, Inc., dated August 20, 2015.
16. Amended and Restated Generator Interconnection Agreement between Fibrominn LLC, Great River Energy, and Midwest Independent Transmission System Operator, Inc., dated October 13, 2011.
17. Amended and Restated Generator Interconnection Agreement between Fibrominn LLC, Great River Energy, and Midcontinent Independent System Operator, Inc., dated January 13, 2014.
18. Biomass Fuel Supply Agreement between the Company and Wiener Custom Craft, dated March 1, 2016.
19. Biomass Fuel Supply Agreement between the Company and Shawn Fletcher Trucking, Inc., dated December 15, 2015.
20. Biomass Fuel Supply Agreement between the Company and Sawyer Natural Resources, LLC, dated December 15, 2015.
21. Biomass Fuel Supply Agreement between the Company and Precision Landscape & Tree Inc., dated March 1, 2016.
22. Biomass Fuel Supply Agreement between the Company and Harbo Mulch, Inc., dated March 1, 2016.
23. Biomass Fuel Supply Agreement between the Company and Enberg Logging Supply, Inc., dated December 15, 2015.
24. Biomass Fuel Supply Agreement between the Company and Dick Walsh Forest Products, LLP, dated December 23, 2015.
25. Biomass Fuel Supply Agreement between the Company and Dukek Logging, Inc., dated December 15, 2015.
26. Biomass Fuel Supply Agreement between the Company and D&D Ventures, Inc., dated March 1, 2016.
27. Biomass Fuel Supply Agreement between the Company and Carlson Timber Products, dated December 15, 2015.

Northern States Power Company

28. Biomass Fuel Supply Agreement between the Company and Banick Logging, Inc., dated March 1, 2016.
29. Biomass Fuel Transportation and Handling Agreement between the Company and Wiener Custom Craft, dated March 1, 2016.
30. Biomass Fuel Transportation and Handling Agreement between the Company and Shawn Fletcher Trucking, Inc., dated December 15, 2015.
31. Biomass Fuel Transportation and Handling Agreement between the Company and Sawyer Timber, LLP, dated December 15, 2015.
32. Biomass Fuel Transportation and Handling Agreement between the Company and Precision Landscape & Tree Inc., dated March 1, 2016.
33. Biomass Fuel Transportation and Handling Agreement between the Company and Harbo Mulch, Inc., dated March 1, 2016.
34. Biomass Fuel Transportation and Handling Agreement between the Company and Enberg Logging Supply, Inc., dated December 15, 2015.
35. Biomass Fuel Transportation and Handling Agreement between the Company and Dick Walsh Forest Products, LLP, dated December 23, 2015.
36. Biomass Fuel Transportation and Handling Agreement between the Company and Dukek Trucking, Inc., dated December 15, 2015.
37. Biomass Fuel Transportation and Handling Agreement between the Company and D&D Ventures, Inc., dated March 1, 2016.
38. Biomass Fuel Transportation and Handling Agreement between the Company and Carlson Timber Products, dated December 15, 2015.
39. Biomass Fuel Transportation and Handling Agreement between the Company and Banick Logging, Inc., dated March 1, 2016.
40. Services Agreement between Fibrominn LLC and Beaver Creek Transport, dated November 5, 2014.
41. Transportation Agreement between Fibrominn LLC and Pflipsen Trucking LLC, dated December 16, 2012, as amended by the Second Amendment to the Transportation Agreement dated February, 2014, and the Third Amendment to Transportation Agreement dated September 2, 2014.
42. Transportation Agreement between Fibrominn LLC and Pflipsen Trucking LLC, dated February 12, 2007, as amended by the First Amendment to the Transportation Agreement, dated October 14, 2008, and the Second Amendment to the Transportation Agreement, dated September 2, 2014.
43. Transportation Agreement between Fibrominn LLC and Pflipsen Trucking LLC, dated December 16, 2012, as amended by the Second Amendment to the Transportation Agreement dated

Northern States Power Company

- February, 2014, and the Third Amendment to Transportation Agreement dated September 2, 2014.
44. Poultry Litter Transportation and Handling Agreement between the Company and Huls Bros. Trucking, Inc., dated February 1, 2016.
 45. Poultry Litter Disposal Agreement between Fibrominn LLC and Taves Turkey Farm, dated December 7, 2001.
 46. Poultry Litter Disposal Agreement between Fibrominn LLC and New Life Farmers, dated March 19, 2001.
 47. Poultry Litter Disposal Agreement between Fibrominn LLC and Mickelson Family Farms of Frazee LLP, dated May 22, 2001.
 48. Eastern Division Long-Term Disposal Agreement between Fibrominn LLC and Jennie-O Turkey Store, Inc., dated November 1, 2001.
 49. Western Division Long-Term Disposal Agreement between Fibrominn LLC and Jennie-O Turkey Store, Inc., dated November 1, 2001.
 50. Poultry Litter Disposal Agreement between Fibrominn LLC and Dean Mace, dated February 12, 200_.
 51. Poultry Litter Disposal Agreement between Fibrominn LLC and Dennis Mace and Colleen Mace, dated February 12, 2001.
 52. Amended and Restated Water Supply Agreement between Fibrominn LLC and the City of Benson, Minnesota, dated December 1, 2004.
 53. Amended and Restated Improvements Agreement between Fibrominn LLC and the City of Benson, Minnesota, dated December 1, 2004.
 54. Power Purchase Agreement between Fibrominn LLC and Northern States Power Company, dated August 31, 2000, as amended by the Amendment, dated June 7, 2004, and the Second Amendment to Biomass Power Purchase Agreement dated February 16, 2011, and the Consent and Assignment dated as of August 20, 2015, between Northern States Power Company, and the Company and The Bank of New York Mellon, as Collateral Agent..
 55. Agreement for Backup Service between Fibrominn LLC and the City of Benson, Minnesota, dated April 12, 2004.
 56. Print Management Agreement between the Company and Bennett Office Technologies, Inc., dated September 21, 2015, as amended by Addendum A to Print Management Agreement dated April 20, 2016.
 57. Ash Sale Agreement between Fibrominn LLC and North American Fertilizer LLC, dated November 30, 2006, as amended by the First Amendment to Ash Sale Agreement dated 2010, and the Second Amendment to Ash Sale Agreement, dated 2010.

Northern States Power Company

58. Phosphate Supplement Agreement between Fibrominn LLC and North American Fertilizer, Inc., dated June 2013.
59. Transportation Agreement between Fibrominn LLC and Beaver Creek Transport, Inc., dated April 2007, as amended by the First Amendment to the Transport Agreement dated November 5, 2014.
60. Propane Supply Agreement between the Company and Dooley's Petroleum, Inc., dated September 6, 2016.
61. Uniform and Material Services Agreement between Company and GK Services, Inc., dated November 9, 2015.
62. Purchase Order between the Company and D&D Ventures, dated October 6, 2016.
63. Purchase Order between the Company and Huls Brothers Trucking, dated October 6, 2016.
64. Purchase Order between the Company and Burnham Companies, dated October 06, 2016.
65. Purchase Order between the Company and Dakota Wood Grinding Inc., dated October 06, 2016.
66. Purchase Order between the Company and Minnesota Hardwoods, Inc., dated October 06, 2016.
67. Purchase Order between the Company and Gold Turkey Farms, LLP, dated October 06, 2016.
68. Purchase Order between the Company and Jerry Ager, dated October 06, 2016.
69. Purchase Order between the Company and R&L Turkeys, dated October 06, 2016.
70. Purchase Order between the Company and Savanna Pallets, Inc., dated October 06, 2016.
71. Purchase Order between the Company and Timberline Farms, dated October 06, 2016.
72. Purchase Order between the Company and North Border Contracting., dated October 06, 2016.
73. Purchase Order between the Company and Hansen Concrete of Spicer, Inc., dated October 06, 2016.
74. Purchase Order between the Company and New Life Farms, dated October 26, 2016.
75. Purchase Order between the Company and JB Nanik Inc., dated October 06, 2016.
76. Purchase Order between the Company and Christensen Forest Products, LLC, dated October 06, 2016.
77. Purchase Order between the Company and Weiss & Sons Sawmill, Inc., dated October 06, 2016.
78. Purchase Order between the Company and Anoka Grain & Feed Inc., dated November 21, 2016.
79. Purchase Order between the Company and MN Bedding LLC, dated October 06, 2016.

Northern States Power Company

80. Letter Agreement Price Waterhouse Coopers for 2016 Audit, dated November 16, 2016.
81. Purchase Order between the Company and Jennie-O Turkey Store Eastern Division, dated January 01, 2017.
82. Purchase Order between the Company and MN Bedding LLC, dated January 01, 2017.
83. Letter Agreement Deloitte Tax LLP for 2016 Tax Preparation Services, dated January 23, 2017.
84. Purchase Order between the Company and CP Environmental, Inc., dated January 18, 2017.
85. Purchase Order between the Company and Rocky Mountain Specialty Services, dated January 05, 2017.
86. Purchase Order between the Company and Total Tool Supply, Inc., dated January 05, 2017.

(c)

1. Propane Supply Agreement between the Company and Dooley's Petroleum, Inc., dated September 6, 2016.
2. Ash Sale Agreement between Fibrominn LLC and North American Fertilizer LLC, dated November 30, 2006.
3. Eastern Division Long-Term Disposal Agreement between Fibrominn LLC and Jennie-O Turkey Store, Inc., dated November 1, 2001.
4. Western Division Long-Term Disposal Agreement between Fibrominn LLC and Jennie-O Turkey Store, Inc., dated November 1, 2001.

(d)

None.

(e)

1. Note Agreement (\$75,000,000, 7.70% Senior Secured Notes Due July 15, 2027) and related documents (including promissory notes) executed in connection with such Note Agreement among the Company, CRT Capital Group LLC, Beneficial Life Insurance Company, Nationwide Life Insurance Company, John Hancock Life Insurance Company, Prudential Legacy Insurance Company of New Jersey, Prudential Annuities Life Assurance Corporation, Prudential Retirement Insurance and Annuity Company, Par U Hartford Life & Annuity Comfort Trust, Pruco Life Insurance Company of New Jersey, Pruco Life Insurance Company, and The Prudential Insurance Company of America, dated August 20, 2015.

(f)

Northern States Power Company

None.

(g)

1. Amended and Restated Asset Management Agreement between the Company and Competitive Power Ventures, Inc., dated August 20, 2015.

(h)

None.

(i)

None.

(j)

None.

(k)

None.

(l)

None.

(m)

1. Power Purchase Agreement between Fibrominn LLC and Northern States Power Company, dated August 31, 2000, as amended by the Amendment, dated June 7, 2004, and the Second Amendment to Biomass Power Purchase Agreement dated February 16, 2011.
2. Timber Scaler Bond between Fibrominn LLC and the Minnesota Department of Natural Resources, dated March 29, 2012.

(n)

Indemnification Provisions

1. Engagement Letter between the Company and PricewaterhouseCoopers LLP, dated September 11, 2015.
2. Engagement Letter with Fitch Ratings, dated October 13, 2015.
3. Engagement Letter between the Company and Deloitte Tax LLP, dated December 21, 2015.
4. Engagement Letter between the Company and Deloitte Tax LLP, dated November 18, 2015.
5. Novaspect Service Support Plan between the Company and Novaspect, Inc., dated September 22, 2016.

Northern States Power Company

6. Products and Services Agreement between Fibrominn LLC and Marco, Inc., dated February 16, 2015.
7. Independent Director Services Agreement between the Company and Mountain Power Consulting, LLC, dated August 19, 2015, and extended by email agreement.
8. Independent Director Services Agreement between the Company and Michael Hanson, dated August 19, 2015, and extended by email agreement.
9. Engagement Letter between the Company and Deloitte Tax LLP, dated December 21, 2015.
10. Engagement Letter between the Company and Deloitte Tax LLP, dated November 18, 2015.
11. O&M Services Agreement between Fibrominn LLC and NAES Corporation, dated January 28, 2015.
12. Amended and Restated Asset Management Agreement between the Company and Competitive Power Ventures, Inc., dated August 20, 2015.
13. Amended and Restated Generator Interconnection Agreement between Fibrominn LLC, Great River Energy, and Midwest Independent Transmission System Operator, Inc., dated October 13, 2011.
14. Amended and Restated Generator Interconnection Agreement between Fibrominn LLC, Great River Energy, and Midcontinent Independent System Operator, Inc., dated January 13, 2014.
15. Biomass Fuel Supply Agreement between the Company and Wiener Custom Craft, dated March 1, 2016.
16. Biomass Fuel Supply Agreement between the Company and Shawn Fletcher Trucking, Inc., dated December 15, 2015.
17. Biomass Fuel Supply Agreement between the Company and Sawyer Natural Resources, LLC, dated December 15, 2015.
15. Biomass Fuel Supply Agreement between the Company and Precision Landscape & Tree Inc., dated March 1, 2016.
16. Biomass Fuel Supply Agreement between the Company and Harbo Mulch, Inc., dated March 1, 2016.
17. Biomass Fuel Supply Agreement between the Company and Enberg Logging Supply, Inc., dated December 15, 2015.
18. Biomass Fuel Supply Agreement between the Company and Dick Walsh Forest Products, LLP, dated December 23, 2015.
19. Biomass Fuel Supply Agreement between the Company and Dukek Logging, Inc., dated December 15, 2015.

Northern States Power Company

20. Biomass Fuel Supply Agreement between the Company and D&D Ventures, Inc., dated March 1, 2016.
21. Biomass Fuel Supply Agreement between the Company and Carlson Timber Products, dated December 15, 2015.
22. Biomass Fuel Supply Agreement between the Company and Banick Logging, Inc., dated March 1, 2016.
23. Biomass Fuel Transportation and Handling Agreement between the Company and Wiener Custom Craft, dated March 1, 2016.
24. Biomass Fuel Transportation and Handling Agreement between the Company and Shawn Fletcher Trucking, Inc., dated December 15, 2015.
25. Biomass Fuel Transportation and Handling Agreement between the Company and Sawyer Timber, LLP, dated December 15, 2015.
26. Biomass Fuel Transportation and Handling Agreement between the Company and Precision Landscape & Tree Inc., dated March 1, 2016.
27. Biomass Fuel Transportation and Handling Agreement between the Company and Harbo Mulch, Inc., dated March 1, 2016.
28. Biomass Fuel Transportation and Handling Agreement between the Company and Enberg Logging Supply, Inc., dated December 15, 2015.
29. Biomass Fuel Transportation and Handling Agreement between the Company and Dick Walsh Forest Products, LLP, dated December 23, 2015.
30. Biomass Fuel Transportation and Handling Agreement between the Company and Dukek Trucking, Inc., dated December 15, 2015.
31. Biomass Fuel Transportation and Handling Agreement between the Company and D&D Ventures, Inc., dated March 1, 2016.
32. Biomass Fuel Transportation and Handling Agreement between the Company and Carlson Timber Products, dated December 15, 2015.
33. Biomass Fuel Transportation and Handling Agreement between the Company and Banick Logging, Inc., dated March 1, 2016.
34. Services Agreement between Fibrominn LLC and Beaver Creek Transport, dated November 5, 2014.
35. Transportation Agreement between Fibrominn LLC and Pflipsen Trucking LLC, dated December 16, 2012, as amended by the Second Amendment to the Transportation Agreement dated February, 2014, and the Third Amendment to Transportation Agreement dated September 2, 2014.

Northern States Power Company

36. Transportation Agreement between Fibrominn LLC and Pflipsen Trucking LLC, dated February 12, 2007, as amended by the First Amendment to the Transportation Agreement, dated October 14, 2008, and the Second Amendment to the Transportation Agreement, dated September 2, 2014.
37. Transportation Agreement between Fibrominn LLC and Pflipsen Trucking LLC, dated December 16, 2012, as amended by the Second Amendment to the Transportation Agreement dated February, 2014, and the Third Amendment to Transportation Agreement dated September 2, 2014.
38. Poultry Litter Transportation and Handling Agreement between the Company and Huls Bros. Trucking, Inc., dated February 1, 2016.
39. Amended and Restated Water Supply Agreement between Fibrominn LLC and the City of Benson, Minnesota, dated December 1, 2004.
40. Amended and Restated Improvements Agreement between Fibrominn LLC and the City of Benson, Minnesota, dated December 1, 2004.
41. Power Purchase Agreement between Fibrominn LLC and Northern States Power Company, dated August 31, 2000, as amended by the Amendment, dated June 7, 2004, and the Second Amendment to Biomass Power Purchase Agreement dated February 16, 2011.
42. Print Management Agreement between the Company and Bennett Office Technologies, Inc., dated September 21, 2015, as amended by Addendum A to Print Management Agreement dated April 20, 2016.
43. Ash Sale Agreement between Fibrominn LLC and North American Fertilizer LLC, dated November 30, 2006, as amended by the First Amendment to Ash Sale Agreement dated 2010, and the Second Amendment to Ash Sale Agreement, dated 2010.
44. Phosphate Supplement Agreement between Fibrominn LLC and North American Fertilizer, Inc., dated June 2013.
45. Lease Agreement between the Company and Williams Scotsman, Inc., dated December 2, 2015.
46. Verizon Wireless Major Account Agreement between the Company and Verizon Wireless, dated June 23, 2010.
47. Spill Response Contingency Contract between Fibrominn LLC and West Central Environmental Consultants, Inc., dated February 2, 2014.
48. Transportation Agreement between Fibrominn LLC and Beaver Creek Transport, Inc., dated April 2007, as amended by the First Amendment to the Transport Agreement dated November 5, 2014.
49. Uniform and Material Services Agreement between Company and GK Services, Inc., dated November 9, 2015.
50. Purchase Order between the Company and MN Bedding LLC, dated December 31, 2015.

Northern States Power Company

51. Engagement Letter between the Company and PricewaterhouseCoopers LLP, dated November 16, 2016.

52. Purchase Order between the Company and MN Bedding LLC, dated January 01, 2017

(o)

1. Amended and Restated Water Supply Agreement between Fibrominn LLC and the City of Benson, Minnesota, dated December 1, 2004.
2. Amended and Restated Improvements Agreement between Fibrominn LLC and the City of Benson, Minnesota, dated December 1, 2004.
3. Agreement for Backup Service between Fibrominn LLC and the City of Benson, Minnesota, dated April 12, 2004.
4. Agreement for Consumer Scale between the Company and the Commissioner of Natural Resources, dated August 31, 2016.

(p)

None.

(q)

None.

Northern States Power Company

Default

On June 30, 2016, North American Fertilizer LLC provided the Company with a notice of default under the Ash Sale Agreement between Fibrominn LLC and North American Fertilizer LLC, dated November 30, 2006, as amended by the First Amendment to Ash Sale Agreement, dated 2010, and the Second Amendment to Ash Sale Agreement, dated 2010. The Company has disputed the alleged default and is in negotiations with North American Fertilizer LLC.

Northern States Power Company

Schedule 4.16**Permits**

1. Private Wireless Radio Station Authorization, license WQGH463, issued to Benson Power, LLC, by the Federal Communications Commission, under FCC Registration number 0015814957.
2. Prior to the middle of 2014 there is no indication that the Prior Owners of the Facility submitted a Notice of Regulated Activity Form to obtain a Hazardous Waste Identification Number prior to generating and shipping wastes for disposal.
3. City of Benson Resolution No. 2003-24, Findings of Fact and Conclusions of Law for Site Review Application and Agreement; Essential Services Permit; and, Conditional Use Permit Application, Fibrominn LLC, dated October 27, 2003.
4. North American Reliability Corporation (NERC) Registration NCR11300.
5. Federal Energy Regulatory Commission (FERC) Self-Certification of Qualifying Facility Status for a Small Power Production or Cogeneration Facility for the Facility, effective August 19, 2015.
6. FERC Self-Certification of Exempt Wholesale Generator (EWG) Status for the Company filed March 20, 2015.
7. The following Environmental Permits and pending applications:
 - a. Air Emission Permit No. 15100038-004, issued by MPCA to PowerMinn 9090, LLC and Fibrominn LLC on February 9, 2005, and approvals issued pursuant thereto.
 - b. Application to Renew Air Emission Permit No. 15100038-004, submitted to MPCA by Fibrominn, LLC on June 29, 2007, and supplemented in 2016.
 - c. Application to Transfer Air Emission Permit No. 15100038-004 from Fibrominn LLC to the Company, submitted to MPCA on August 19, 2015.
 - d. Amendment Application Review Completeness Determination Checklist from MPCA on permit application received August 20, 2015, dated September 3, 2015.
 - e. Application to Amend Air Emission Permit No. 15100038-004 to obtain numerical emissions limits for PM2.5 and PM10, submitted by the Company to MPCA on November 18, 2015 and February 2, 2016 (incomplete). The MPCA has informed the Company that it will issue the permit with PM2.5 and PM10 limits with the permit renewal. The Company has been providing supplemental information to MPCA to achieve complete applications for both the PM limits and the permit renewal.
 - f. Application to Amend Air Emission Permit No. 15100038-004 to extend the deadline for performance testing by sixty (60) days, an administrative amendment submitted by the Company to MPCA on June 21, 2016, which application was deemed complete by MPCA on July 12, 2016.

Northern States Power Company

- g. Notice of Coverage No. MNR053BST issued by MPCA to the Company for the NPDES/SDS General Permit for Industrial Stormwater, Multi-Sector Permit No. MNR050000 issued April 5, 2015.
- h. Non-Waste Determination under 40 CFR 241.3(c), issued by EPA to the Company, effective July 1, 2013, transmitted by letter dated September 25, 2015.
- i. Case Specific Beneficial Use Determination Permit No. UT0007, issued by the MPCA to Fibrominn, LLC on May 24, 2004.
- j. MPCA Tank Registration Site Identification 124802 for two above ground storage tanks at the Facility.
- k. Hazardous Waste Identification Number MNS000202879 information change confirmation from MPCA to the Company, dated September 24, 2015.
- l. Air Emissions Allowances as of May 5, 2016 (a) for the Acid Rain Program of 118 tons of Sulfur Dioxide, and (b) for the Cross-State Air Pollution Program of 33 tons Nitrogen Oxide and 159 tons of Sulfur Dioxide (Group 2).
- m. Agreement for Consumer Scale between the Company and the Commissioner of Natural Resources, dated August 31, 2016.

Northern States Power Company

Schedule 4.17

Litigation

On June 30, 2016, North American Fertilizer LLC provided the Company with a notice of default under the Ash Sale Agreement between Fibrominn LLC and North American Fertilizer LLC, dated November 30, 2006, as amended by the First Amendment to Ash Sale Agreement, dated 2010, and the Second Amendment to Ash Sale Agreement, dated 2010. The Company has disputed the alleged default and is in negotiations with North American Fertilizer LLC.

Northern States Power Company

Schedule 4.19**Environmental Matters**

1. The Company's Annual Compliance Certification Report, Air Quality Permit Program, dated January 28, 2016, and deviation reports referred to in that certification report, filed with the Minnesota Pollution Control Agency (MPCA) identifying some known deviations from air quality permitting requirements in 2015.
2. The Company's Annual Compliance Certification Report, Air Quality Permit Program, dated January 20, 2017, and deviation reports referred to in that certification report, filed with the MPCA identifying some known deviations from air quality permitting requirements in 2016.
3. The Company submitted supplemental air quality deviation reporting DRF-2 forms to the MPCA on November 10, 2016 identifying known and presumed deviations from air quality permitting requirements in 2015 and the first half of 2016, together with a cover letter explaining its interpretation of applicable permit requirements. An amended Annual Compliance Certification Report, Air Quality Permit Program, for calendar year 2015 was filed with the MPCA on January 5, 2017, reflecting this supplemental deviation reporting.
4. On or about October 28, 2015, the United States Environmental Protection Agency (EPA) conducted an air quality compliance inspection at the Facility. The EPA requested additional documents following the inspection, which the Company provided within the requested timeframe. To date, the Company has received no further follow-up from the EPA on its inspection.
5. Fibrominn LLC was a party to an open Stipulation Agreement with the MPCA requiring, among other things, corrective actions to perform modeling, and to prepare and submit a complete permit application to obtain numeric emission limits for PM10 and PM2.5, and imposing stipulated penalties for failure to meet deadlines required by the Stipulation Agreement. The Company takes the position that the Stipulation Agreement is not enforceable against the Company, based on the assignment provision of the Stipulation Agreement. That provision does not release Fibrominn LLC from the Stipulation Agreement requirements unless the agreement is assigned in writing, and MPCA agrees to the assignment. The Company has not obtained MPCA's concurrence with its position that the Stipulation Agreement does not apply to it.
6. Except for emissions and discharges authorized under a Permit identified in Schedule 4.16, Releases of Hazardous Substances occurring at the Facility since the Assumption Date, and to the Knowledge of the Company, prior to the Assumption Date are identified on the Spill Records as attached to this Schedule 4.19, in the Section 7.1 of the Phase I Environmental Site Assessments prepared by Wenck Associates, Inc., dated June 3, 2015 and August 18, 2015, and in Section 6.15 of said reports dated December 2014, June 3, 2015, and August 18, 2015.
7. In December 2015, the Company submitted an air quality modeling report on small particulate matter (PM10 and PM2.5) for a backward looking best available control technology (BACT) permit application to obtain numeric emission limits for PM10 and PM2.5. At MPCA's request, another modeling run was performed with some adjusted inputs. Those modeling results were submitted to MPCA on November 9, 2016, and also showed an exceedance of the increment for PM10 and of the national ambient air quality standard for PM2.5. MPCA and EPA have determined that the Facility was the initial permit applicant with respect to the available increment. Based on the significant

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contribution analysis from both modeling runs, Facility emissions comply with the PM10 and PM2.5 ambient air quality standards at all areas where Facility emissions exceed significant impact levels.

8. MPCA has informed the Facility that the application to amend the Title V air permit for PM2.5 and PM10 numeric emissions limits has been combined with the 2007 application to renew the Title V air permit and that the PM2.5 and PM10 numeric emissions limits will be issued with a renewal of the Facility's air emissions permit. The Company is supplementing and correcting the combined 2007 renewal and PM2.5 and PM10 numeric emissions limits application. This includes preparing and updating plans provided for under the permit. The Company anticipates that the reissued permit will contain additional and different provisions, including requirements related to Boiler MACT (40 CFR Part 63, Subpart DDDDD) and its limits.
9. The Company has been unable to locate a petition to or approval from USEPA pursuant to 40 CFR §75.66 for a site specific fuel factor under the Acid Rain program, and after inquiry, USEPA has taken the position that one is required. The Company submitted this petition to USEPA by letter dated November 3, 2016.
10. Historical annual reports submitted to MPCA for the Facility's NPDES Industrial Stormwater General Permit do not indicate that monthly inspections were performed when the Facility was staffed.
11. The Facility was unable to meet the performance testing deadline under its air emissions permit and for the Boiler MACT Rule (40 CFR Section 63, Subpart DDDDD). The Company submitted an application to amend its permit to extend the permit performance testing deadline to MPCA, and submitted a force majeure claim to the EPA concerning the Boiler MACT deadline. The MPCA acknowledged the permit application as complete and approved the test plan with the new testing date. The EPA requested further information on the force majeure submittal, and the Company responded to the information request on October 18, 2016. By letter dated November 30, 2016, the EPA accepted the Company's force majeure petition and approved the extension.
12. The Facility's air emission permit required Fibrominn to construct a fence around the site. The Company has now completed the fence installation in a manner that complies with that permit.
13. Annual reports for the Case Specific Beneficial Use Determination (CSBUD) have been filed after the applicable deadline. The reduced percentage of litter in the fuel mix has reduced the nutrient content of the ash below that identified in the application for the CSBUD.
14. The Facility discharges its domestic wastewater to the City of Benson wastewater treatment plant and trucks its fuel hall, truck and truck scale washwater to the City of Benson wastewater treatment plant for discharge at points designated by the City of Benson. The Company believes that these discharges do not subject the Facility to the existing categorical national pretreatment standards for industrial wastewater and do not require a pretreatment permit under the Clean Water Act.

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Date	Spill Event	Cleanup	Comments
1/23/2012	Precision #35 Hydraulic spill inside Fuel Hall Lane 3	Completed inhouse using floor dry.	2 bags of floor dry used. Disposed through East Side Oil.
3/27/2012	Wheeler Stockpile Truck Hydraulic spill inside Fuel Hall Lane 6	Completed inhouse using floor dry.	13 pads used. Disposed through East Side Oil.
3/28/2012	Gibson 655 Hydraulic spill inside Fuel Hall Lane 6	Completed inhouse using floor dry.	75 pads and 1 bags of floor dry used. Disposed through East Side Oil.
3/29/2012	Huls 704 Hydraulic spill inside Fuel Hall Lane 6	Completed inhouse using floor dry.	408 pads and 3 bags of floor dry used. Disposed through East Side Oil.
5/31/2012	Gibson 605 Hydraulic spill inside Fuel Hall Lane 4	Completed inhouse using floor dry.	35 pads and 3 bags of floor dry used. Disposed through East Side Oil.
6/7/2012	Huls 705 Hydraulic spill inside Fuel Hall Lane 1	Completed inhouse using floor dry.	7 bags of floor dry used. Disposed through East Side Oil.
6/12/2012	Pflipsen 320 Hydraulic spill inside Fuel Hall Lane 3	Completed inhouse using floor dry.	447 pads used. Disposed through East Side Oil.
7/6/2012	Milbrandt #116 Hydraulic spill inside Fuel Hall Lane 6	Completed inhouse using floor dry.	2.5 bags of floor dry used. Disposed through East Side Oil.
7/9/2012	Gibson #698 Hydraulic spill inside Fuel Hall Lane 1	Completed inhouse using floor dry.	4 bags of floor dry used. Disposed through East Side Oil.
7/19/2012	BC Kopel 00 Hydraulic spill inside Fuel Hall Lane 3	Completed inhouse using floor dry.	2 bags of floor dry used. Disposed through East Side Oil.
7/19/2012	J & D 272 Hydraulic spill inside Fuel Hall Lane 1	Completed inhouse using floor dry.	33 pads and 2 bags of floor dry used. Disposed through East Side Oil.
7/23/2012	Stockman 626 Hydraulic spill inside Fuel Hall Lane 4	Completed inhouse using floor dry.	1 bags of floor dry used. Disposed through East Side Oil.
7/31/2012	Banick 501 Hydraulic spill inside Fuel Hall Lane 3	Completed inhouse using floor dry.	1 bags of floor dry used. Disposed through East Side Oil.
8/1/2012	Gibson 662 Hydraulic spill inside Fuel Hall Lane 2	Completed inhouse using floor dry.	4 bags of floor dry used. Disposed through East Side Oil.
8/8/2012	Huls 707 Hydraulic spill inside Fuel Hall Lane 2	Completed inhouse using floor dry.	12.5 bags of floor dry used. Disposed through East Side Oil.

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Date	Spill Event	Cleanup	Comments
8/10/2012	Huls 704 Hydraulic spill inside Fuel Hall Lane 2	Completed inhouse using floor dry.	10 bags of floor dry used. Disposed through East Side Oil.
8/27/2012	Huls 705 Hydraulic spill inside Fuel Hall Lane 4	Completed inhouse using floor dry.	2 bags of floor dry used. Disposed through East Side Oil.
8/29/2012	GTI 680 Hydraulic spill inside Fuel Hall Lane 6	Completed inhouse using floor dry.	4 bags of floor dry used. Disposed through East Side Oil.
9/5/2012	Terry Gorst #10 Hydraulic spill inside Fuel Hall Lane 5	Completed inhouse using floor dry.	2 bags of floor dry used. Disposed through East Side Oil.
11/12/2012	PLT Hydraulic spill inside Fuel Hall Lane 6	Completed inhouse using floor dry.	60 pads and 1bags of floor dry used. Disposed through East Side Oil.
11/12/2012	Harbo Hydraulic spill inside Fuel Hall Lane 6	Completed inhouse using floor dry.	28 pads and 2 bags of floor dry used. Disposed through East Side Oil.
11/23/2012	Sawyer #81 Hydraulic spill inside Fuel Hall Lane 5 and 6	Completed inhouse using floor dry.	49 pads used. Disposed through East Side Oil.
11/23/2012	Weiner Custom Craft #9 Hydraulic spill inside Fuel Hall Lane 4	Completed inhouse using floor dry.	43 pads used. Disposed through East Side Oil.
12/5/2012	Goodland Enterprises #51 Hydraulic spill inside Fuel Hall Lane 4	Completed inhouse using floor dry.	3 bags of floor dry used. Disposed through East Side Oil.
12/17/2012	Pflipsen 328 Hydraulic spill inside Fuel Hall Lane 1	Completed inhouse using floor dry.	6.5 bags of floor dry used. Disposed through East Side Oil.
3/7/2013	Pflipsen 100 Hydraulic spill inside Fuel Hall Lane 2	Completed inhouse using floor dry.	1 bags of floor dry used. Disposed through East Side Oil.
3/19/2013	Sawyer 76 Hydraulic spill inside Fuel Hall Lane 6	Completed inhouse using floor dry.	3 bags of floor dry used. Disposed through East Side Oil.
4/9/2013	Fletcher 330 Hydraulic spill inside Fuel Hall Lane 2	Completed inhouse using floor dry.	2 bags of floor dry used. Disposed through East Side Oil.
4/29/2013	Fletcher 240 Hydraulic spill inside Fuel Hall Lane 6	Completed inhouse using floor dry.	5 bags of floor dry used. Disposed through East Side Oil.
5/6/2013	Enberg 824 Hydraulic spill inside Fuel Hall Lane 6	Completed inhouse using floor dry.	1.5 bags of floor dry used. Disposed through East Side Oil.

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Date	Spill Event	Cleanup	Comments
5/16/2013	New Life #1 Hydraulic spill inside Fuel Hall Lane 6	Completed inhouse using floor dry.	5 bags of floor dry used. Disposed through East Side Oil.
5/20/2013	Terry Forest #10 Hydraulic spill inside Fuel Hall Lane 4	Completed inhouse using floor dry.	6 bags of floor dry used. Disposed through East Side Oil.
6/12/2013	Pflipsen 07 Hydraulic spill inside Fuel Hall Lane 3	Completed inhouse using floor dry.	4 bags of floor dry used. Disposed through East Side Oil.
6/18/2013	Pflipsen 06 Hydraulic spill inside Fuel Hall Lane 4	Completed inhouse using floor dry.	1 bags of floor dry used. Disposed through East Side Oil.
6/19/2013	Pflipsen 06 Hydraulic spill inside Fuel Hall Lane 1	Completed inhouse using floor dry.	2 bags of floor dry used. Disposed through East Side Oil.
7/3/2013	Red Horizon 118 Hydraulic spill inside Fuel Hall Lane 6	Completed inhouse using floor dry.	6 bags of floor dry used. Disposed through East Side Oil.
7/29/2013	Red Horizon 968 Hydraulic spill inside Fuel Hall Lane 2	Completed inhouse using floor dry.	3 bags of floor dry used. Disposed through East Side Oil.
7/30/2013	Red Horizon 148 Hydraulic spill inside Fuel Hall Lane 5	Completed inhouse using floor dry.	3 bags of floor dry used. Disposed through East Side Oil.
8/2/2013	Fletcher #224 Hydraulic spill inside Fuel Hall Lane 1	Completed inhouse using floor dry.	5 bags of floor dry used. Disposed through East Side Oil.
8/7/2013	Pflipsen 330 Hydraulic spill inside Fuel Hall Lane 2	Completed inhouse using floor dry.	2 bags of floor dry used. Disposed through East Side Oil.
8/27/2013	PLT 301 Hydraulic spill inside Fuel Hall Lane 1	Completed inhouse using floor dry.	2.5 bags of floor dry used. Disposed through East Side Oil.
9/3/2013	Red Horizon 968 Hydraulic spill inside Fuel Hall Lane 2	Completed inhouse using floor dry.	3 bags of floor dry used. Disposed through East Side Oil.
9/6/2013	Pflipsen #622 Hydraulic spill inside Fuel Hall Lane 6	Completed inhouse using floor dry.	2 bags of floor dry used. Disposed through East Side Oil.
9/13/2013	PLT #305 Hydraulic spill inside Fuel Hall Lane 6	Completed inhouse using floor dry.	8 bags of floor dry used. Disposed through East Side Oil.
12/5/2013	Harbo 1015 Hydraulic spill inside Fuel Hall Lane 6	Completed inhouse using floor dry.	.5 bags of floor dry used. Disposed through East Side Oil.

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Date	Spill Event	Cleanup	Comments
12/13/2013	Red Horizon #103 Hydraulic spill inside Fuel Hall Lane 1	Completed inhouse using floor dry.	1 bags of floor dry used. Disposed through East Side Oil.
1/2/2014	Huls 708 Hydraulic spill inside Fuel Hall Lane 1	Completed inhouse using floor dry.	2 bags of floor dry used. Disposed through East Side Oil.
1/6/2014	Huls 708 Hydraulic spill inside Fuel Hall Lane 4	Completed inhouse using floor dry.	2 bags of floor dry used. Disposed through East Side Oil.
1/9/2014	Pflipsen #320 Hydraulic spill inside Fuel Hall Lane 5	Completed inhouse using floor dry.	4 bags of floor dry used. Disposed through East Side Oil.
1/14/2014	Eilen & Soons 473 Hydraulic spill inside Fuel Hall Lane 1	Completed inhouse using floor dry.	4.5 bags of floor dry used. Disposed through East Side Oil.
2/14/2014	Hils #722 Hydraulic spill inside Fuel Hall Lane 1	Completed inhouse using floor dry.	1 bags of floor dry used. Disposed through East Side Oil.
2/25/2014	Hils #724 Hydraulic spill inside Fuel Hall Lane 1	Completed inhouse using floor dry.	.5 bags of floor dry used. Disposed through East Side Oil.
4/1/2014	Enberg Hydraulic spill inside Fuel Hall Lane 5	Completed inhouse using floor dry.	2.5 bags of floor dry used. Disposed through East Side Oil.
4/1/2014	Red Horizon 117 Hydraulic spill inside Fuel Hall Lane 6	Completed inhouse using floor dry.	9 bags of floor dry used. Disposed through East Side Oil.
4/8/2014	Beaver Creek Kopel #4 Hydraulic spill inside Fuel Hall Lane 6	Completed inhouse using floor dry.	1 bags of floor dry used. Disposed through East Side Oil.
4/17/2014	PLT 302 Hydraulic spill inside Fuel Hall Lane 2	Completed inhouse using floor dry.	1.5 bags of floor dry used. Disposed through East Side Oil.
4/24/2014	Savanna Tony Nistler #544 Hydraulic spill inside Fuel Hall Lane 2	Completed inhouse using floor dry.	4.5 bags of floor dry used. Disposed through East Side Oil.
4/28/2014	Eilen & Sons 727 Hydraulic spill inside Fuel Hall Lane 6	Completed inhouse using floor dry.	18 bags of floor dry used. Disposed through East Side Oil.
5/6/2014	Pflipsen 328 Hydraulic spill inside Fuel Hall Lane 2	Completed inhouse using floor dry.	5 bags of floor dry used. Disposed through East Side Oil.
5/7/2014	Red Horizon 103 Hydraulic spill inside Fuel Hall Lane 1	Completed inhouse using floor dry.	3 bags of floor dry used. Disposed through East Side Oil.

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Benson Power , LLC

Date	Spill Event	Cleanup	Comments
5/8/2014	Red Horizon 103 Hydraulic spill inside Fuel Hall Lane 2	Completed inhouse using floor dry.	2 bags of floor dry used. Disposed through East Side Oil.
5/27/2014	Pflipsen #336 Hydraulic spill inside Fuel Hall Lane 2	Completed inhouse using floor dry.	3 bags of floor dry used. Disposed through East Side Oil.
5/29/2014	Eilen & Sons #112 Hydraulic spill inside Fuel Hall Lane 3	Completed inhouse using floor dry.	2 bags of floor dry used. Disposed through East Side Oil.
6/10/2014	Huls 721 Hydraulic spill inside Fuel Hall Lane 4	Completed inhouse using floor dry.	2 bags of floor dry used. Disposed through East Side Oil.
6/27/2014	Pflipsen #329 Hydraulic spill inside Fuel Hall Lane 5	Completed inhouse using floor dry.	3.5 bags of floor dry used. Disposed through East Side Oil.
8/6/2014	Red Horizon #978 Hydraulic spill inside Fuel Hall Lane 6	Completed inhouse using floor dry.	2 bags of floor dry used. Disposed through East Side Oil.
8/7/2014	BCT Lundberg 10 Hydraulic spill inside Fuel Hall Lane 3	Completed inhouse using floor dry.	2.5 bags of floor dry used. Disposed through East Side Oil.
9/13/2014	Huls B0726 Hydraulic spill inside Fuel Hall Lane 1	Completed inhouse using floor dry.	2.5 bags of floor dry used. Disposed through East Side Oil.
9/29/2014	Enberg #263 Hydraulic spill inside Fuel Hall Lane 4	Completed inhouse using floor dry.	5 bags of floor dry used. Disposed through East Side Oil.
10/8/2014	Holbeck #139 Hydraulic spill inside Fuel Hall Lane 3	Completed inhouse using floor dry.	4 bags of floor dry used. Disposed through East Side Oil.
10/20/2014	Pflipsen 007 Hydraulic spill inside Fuel Hall Lane 1	Completed inhouse using floor dry.	5 bags of floor dry used. Disposed through East Side Oil.
12/2/2014	Fletcher 262 Hydraulic spill inside Fuel Hall Lane 5	Completed inhouse using floor dry.	2 bags of floor dry used. Disposed through East Side Oil.
12/12/2014	Terry Forst #13 hydraulic spill inside Fuel Hall Lane 6	Completed inhouse using floor dry.	2 bags of floor dry used. Disposed through East Side Oil.
1/9/2015	Richard Miller #53C Hydraulic spill inside Fuel Hall Lane 3	Completed inhouse using floor dry.	2 1/2 bags of floor dry used. Disposed through East Side Oil.

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Date	Spill Event	Cleanup	Comments
1/26/2015	<p>Lime Slurry spill outside grit bin containment. Lime slurry was released for 3 to 4 hours with approximately 1700 gallons of water and lime slurry released to ground. Spill was caused by slaker pump motor failer and water/lime slurry pouring into grit screw and into grit bin. Grit bin overflowed causing spill to outside.</p>	<p>Attempted clean up inhouse. Could not finish because of potential chemical exposure to employees and material freezing to ground. West Central Environmental Consultants were called in to complete/finish the cleanup. Cleanup was completed using heated presure washer and vacuum truck.</p>	<p>Spill was not handled per Emergency Action Plan procedures. EHS Manager was not notified for two days of the spill. As per MN staute 115.061 any size spill in this case of corrosive material must be reported to the MN Duty Officer. This spill was motified to the MN Duty Officer when WCEC was notified. WCEC completed the spill clean up on 1/30/15. The 24 hour report and summary report were sent into the MPCA by WCEC. Final notification of spill to MPCA was completed on the Annual SWPPP report.</p>
2/9/2015	<p>Lime Slurry spill outside grit bin containment. Lime slurry was released for 3 hours with approximately 1500 gallons of water and lime slurry released to ground. Spill was caused by clogged grit screen and water/lime slurry pouring into grit screw and into grit bin. Grit bin overflowed causing spill to outside.</p>	<p>Spill was contained and isolated by inhouse personnel. WCEC was call when discoved and established cleanup procedures. Cleanup was completed by 2/10/15 using vacuum truck and pressure washer.</p>	<p>Spill was handled to Emergency Action Plan procedures, MN duty Officer was call by EHS Mnager apou discovering and Mgmt notification. The 24 hour report and summary report were sent into the MPCA by WCEC. Final notification of spill to MPCA was completed on the Annual SWPPP report. To prevent future spills, the CRO notifies the Boiler Operator when the slaker starts producing lime slurry. The Boiler Operator must varify proper operation on the Lime Slurry system and periodically monitor slaker operations until finished.</p>
3/4/2015	<p>Sawyer Todd Minion #19 Hydraulic spill inside Fuel Hall Lane 1</p>	<p>Completed inhouse using floor dry.</p>	<p>12 bags of floor dry used. Disposed through East Side Oil.</p>

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Benson Power , LLC

Date	Spill Event	Cleanup	Comments
5/3/2015	Lime slurry spill inside Boiler Building. Lime slurry pump A developed a hole in the pump casing causing a lime slurry spill into the containment and around the containment. Estimated 10 gallons of water and slurry went to the floor and to the sump pit of the Boiler Building.	Cleanup was completed by contractor and contain/disposed by waste hauler.	Cleanup was completed by vacuum and contained for disposal. Water used during cleanup reduce the Ph and the waste hauling company Advanced Waste charged for disposal since they could not use the material in their processes.
5/5/2015	Red Horizon 552 Hydraulic spill inside Fuel Hall Lane 2	Completed inhouse using floor dry.	2 1/2 bags of floor dry used. Disposed through East Side Oil.
5/28/2015	Tony Nistler #570 Hydraulic spill inside Fuel Hall Lane 1	Completed inhouse using floor dry.	1 bags of floor dry used. Disposed through East Side Oil.
6/1/2015	MN Hardwood #115 Hydraulic spill inside Fuel Hall Lane 4	Completed inhouse using floor dry.	2 1/2 bags of floor dry used. Disposed through East Side Oil.
6/1/2015	Pflipsen #327 Hydraulic spill inside Fuel Hall Lane 3	Completed inhouse using floor dry.	3 bags of floor dry used. Disposed through East Side Oil.
6/11/2015	Huls 05 Hydraulic spill inside Fuel Hall Lane 1	Completed inhouse using floor dry.	2 bags of floor dry used. Disposed through East Side Oil.
6/26/2015	Lime slurry spill inside containment by lime slurry pumps. This was caused by a rubber flush line valve not fully closed. Spill was discovered and overflowed the containment. 10 to 20 gallons of water and slurry exited the containment area.	Cleanup was completed by contractor and inhouse.	Cleanup was completed by vacuum and contained for disposal. Water used during cleanup reduce the Ph and the waste hauling company Advanced Waste charged for disposal since they could not use the material in their processes.
6/29/2015	Harbo (card478) Hydraulic spill inside Fuel Hall Lane 1	Completed inhouse using floor dry.	6 bags of floor dry used. Disposed through East Side Oil.
7/7/2015	Philipsen 326 Hydraulic spill inside Fuel Hall Lane 3	Completed inhouse using floor dry.	9 bags of floor dry used. Disposed through East Side Oil.

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Date	Spill Event	Cleanup	Comments
7/29/2015	Pine Products 1016 Hydraulic spill inside Fuel Hall Lane 4	Completed inhouse using floor dry.	2 bags of floor dry used. Disposed through East Side Oil.
11/18/2015	KTL #1040 Hydraulic spill inside Fuel Hall Lane 5	Completed inhouse using floor dry.	2 bags of floor dry used. Disposed through East Side Oil.
11/19/2015	Fletcher 236 Hydraulic spill inside Fuel Hall Lane 6	Completed inhouse using floor dry.	5 bags of floor dry used. Disposed through East Side Oil.
11/23/2015	Pflipsen 329 Hydraulic spill inside Fuel Hall Lane 5	Completed inhouse using floor dry.	5 bags of floor dry used. Disposed through East Side Oil.
12/29/2015	Pflipsen 323 Hydraulic spill inside Fuel Hall Lane 2	Completed inhouse using floor dry.	1/2 bags of floor dry used. Disposed through East Side Oil.
1/11/2016	Fletcher 266 Hydraulic spill inside Fuel Hall Lane 4	Completed inhouse using floor dry.	3 bags of floor dry used. Disposed through East Side Oil.
2/1/2016	Terry Forst 19 Hydraulic spill inside Fuel Hall Lane 4	Completed inhouse using floor dry.	4 bags of floor dry used. Disposed through East Side Oil.
2/25/2016	Lime slurry spill inside Boiler Building. Lime slurry pump A developed a hole in the pipe nipple causing a lime slurry spill into the containment and around the containment. Estimated 5 to 10 gallons of water and slurry went to the floor.	Cleanup was completed inhouse and disposed with the grit bin materials.	Spill was contained inside and cleanup was completed using proper PPE.
3/8/2016	Fletcher 264 Hydraulic spill inside Fuel Hall Lane 1	Completed inhouse using floor dry.	6 bags of floor dry used. Disposed through East Side Oil.
3/8/2016	Pflipsen 329 Hydraulic spill inside Fuel Hall Lane 5	Completed inhouse using floor dry.	3 bags of floor dry used. Disposed through East Side Oil.
3/18/2016	Endberg 620 Hydraulic spill inside Fuel Hall Lane 1	Completed inhouse using floor dry.	2 bags of floor dry used. Disposed through East Side Oil.
4/11/2016	Huls/Barron Aglime 708 Hydraulic spill inside Fuel Hall Lane 3/4	Completed inhouse using floor dry.	6 bags of floor dry used. Disposed through East Side Oil.

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Date	Spill Event	Cleanup	Comments
4/13/2016	Huls 917 Hydraulic spill inside Fuel Hall Lane 5	Completed inhouse using floor dry.	9 bags of floor dry used. Disposed through East Side Oil.
7/25/2016	Burnham 112 Hydraulic spill inside Fuel Hall Lane 1	Completed inhouse using floor dry.	6 bags of floor dry used. Disposed through East Side Oil.
7/29/2016	Richard Miller 53 Hydraulic spill inside Fuel Hall Lane 1	Completed inhouse using floor dry.	5 bags of floor dry used. Disposed through East Side Oil.
11/18/2015	PTL #1040 Hydraulic spill inside Fuel Hall Lane 5	Completed inhouse using floor dry.	2 bags of floor dry used. Disposed through East Side Oil.
11/19/2015	Fletcher 236 Hydraulic spill inside Fuel Hall Lane 6	Completed inhouse using floor dry.	5 bags of floor dry used. Disposed through East Side Oil.
11/23/2015	Pfipsen 329 Hydraulic spill inside Fuel Hall Lane 5	Completed inhouse using floor dry.	5 bags of floor dry used. Disposed through East Side Oil.
12/29/2015	Pfipsen 323 Hydraulic spill inside Fuel Hall Lane 2	Completed inhouse using floor dry.	1 1/2 bags of floor dry used. Disposed through East Side Oil.
1/11/2016	Fletcher 266 Hydraulic spill inside Fuel Hall Lane 4	Completed inhouse using floor dry.	3 bags of floor dry used. Disposed through East Side Oil.
2/1/2016	Terry Forst 19 Hydraulic spill inside Fuel Hall Lane 4	Completed inhouse using floor dry.	4 bags of floor dry used. Disposed through East Side Oil.
2/25/2016	Lime slurry spill inside Boiler Building. Lime slurry pump A developed a hole in the pipe nipple causing a lime slurry spill into the containment and around the confinement. Estimated 5 to 10 gallons of water and slurry went to the floor.	Cleanup was completed inhouse and disposed with the grit bin materials.	Spill was contained inside and cleanup was completed using proper PPE.
3/8/2016	Fletcher 264 Hydraulic spill inside Fuel Hall Lane 1	Completed inhouse using floor dry.	6 bags of floor dry used. Disposed through East Side Oil.
3/8/2016	Pfipsen 329 Hydraulic spill inside Fuel Hall Lane 5	Completed inhouse using floor dry.	3 bags of floor dry used. Disposed through East Side Oil.

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Benson Power , LLC

Date	Spill Event	Cleanup	Comments
3/18/2016	Endberg 620 Hydraulic spill inside Fuel Hall Lane 1	Completed inhouse using floor dry.	2 bags of floor dry used. Disposed through East Side Oil.
7/29/2016	Richards Miller 53 Hydraulic spill inside Fuel Hall Lane 1	Completed inhouse using floor dry.	5 bags of floor dry used. Disposed through East Side Oil.
8/22/2016	PTL #310 Hydraulic spill inside Fuel Hall Lane 6	Completed inhouse using floor dry.	9 bags of floor dry used. Disposed through East Side Oil.
9/6/2016	Carlson 443 Hydraulic spill inside Fuel Hall Lane 2	Completed inhouse using floor dry.	4 bags of floor dry used. Disposed through East Side Oil.
9/8/2016	BCJ & D Trans @272 (Triple G) Hydraulic spill inside Fuel Hall Lane 2	Completed inhouse using floor dry.	4 bags of floor dry used. Disposed through East Side Oil.
9/8/2016	Carlson 443 Hydraulic spill inside Fuel Hall Lane 6	Completed inhouse using floor dry.	5 bags of floor dry used. Disposed through East Side Oil.
9/21/2016	Fletcher 274 Hydraulic spill inside Fuel Hall Lane 6	Completed inhouse using floor dry.	3 bags of floor dry used. Disposed through East Side Oil.
10/10/2016	Eilen & Sons 112 Hydraulic spill inside Fuel Hall Lane 6	Completed inhouse using floor dry.	1 bags of floor dry used. Disposed through East Side Oil.
10/14/2016	Huls 702 Hydraulic spill inside Fuel Hall Lane 6	Completed inhouse using floor dry.	10 bags of floor dry used. Disposed through East Side Oil.
10/12/2016	Pflipsen 330 Hydraulic spill inside Fuel Hall Lane 3	Completed inhouse using floor dry.	4 bags of floor dry used. Disposed through East Side Oil.
10/26/2016	Carlson 24 Hydraulic spill inside Fuel Hall Lane 5	Completed inhouse using floor dry.	5 bags of floor dry used. Disposed through East Side Oil.
11/18/2016	Huls 702 Hydraulic spill inside Fuel Hall Lane 5	Completed inhouse using floor dry.	.5 bags of floor dry used. Disposed through East Side Oil.
11/22/2016	Enberg 620 Hydraulic spill inside Fuel Hall Lane 5	Completed inhouse using floor dry.	1.5 bags of floor dry used. Disposed through East Side Oil.
12/6/2016	Enberg 258 Hydraulic spill inside Fuel Hall Lane 2	Completed inhouse using floor dry.	2 bags of floor dry used. Disposed through East Side Oil.
12/9/2016	Red Hizon 873 Hydraulic spill inside Fuel Hall Lane 1	Completed inhouse using floor dry.	3 bags of floor dry used. Disposed through East Side Oil.

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Date	Spill Event	Cleanup	Comments
12/14/2016	Red Hrizon 905 Hydraulic spill inside Fuel Hall Lane 2	Completed inhouse using floor dry.	4 bags of floor dry used. Disposed through East Side Oil.
12/15/2016	Harbo Mulch 1016 Hydraulic spill inside Fuel Hall Lane 4	Completed inhouse using floor dry.	1 bags of floor dry used. Disposed through East Side Oil.
12/26/2016	Carlson 717 Hydraulic spill inside Fuel Hall Lane 3	Completed inhouse using floor dry.	3 bags of floor dry used. Disposed through East Side Oil.
12/29/2016	RHE 485 Hydraulic spill inside Fuel Hall Lane 4	Completed inhouse using floor dry.	3.5 bags of floor dry used. Disposed through East Side Oil.
1/3/2017	Fletcher 268 Hydraulic spill inside Fuel Hall Lane 5	Completed inhouse using floor dry.	1.5 bags of floor dry used. Disposed through East Side Oil.
1/4/2017	Pflipsen330 Hydraulic spill inside Fuel Hall Lane 4	Completed inhouse using floor dry.	4.5 bags of floor dry used. Disposed through East Side Oil.
1/9/2017	Calson Timber 470 Hydraulic spill inside Fuel Hall Lane 5	Completed inhouse using floor dry.	2 bags of floor dry used. Disposed through East Side Oil.
1/17/2017	Enberg 556 Hydraulic spill inside Fuel Hall Lane 2&3	Completed inhouse using floor dry.	2 bags of floor dry used. Disposed through East Side Oil.
2/1/2017	Fletcher 284 Hydraulic spill inside Fuel Hall Lane 2	Completed inhouse using floor dry.	1 bags of floor dry used. Disposed through East Side Oil.

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Schedule 4.20**Insurance**

(a)

	Policy Name	Policy Number	Insurer	Policy Term
1.	Management Indemnity Package	DON G25127584 002	Westchester Fire Insurance Company	4/22/2016 – 4/22/2017
2.	Standard Workers Compensation and Employers Liability	NWC C4 88 39 26 5	Ace Property & Casualty Insurance	4/20/2016 – 4/20/2017
3.	Commercial Liability Umbrella	G27586326 002	Westchester Fire Insurance Company	4/20/2016 – 4/20/2017
4.	Commercial General Liability	G27586223 002	Westchester Fire Insurance Company	4/20/2016 – 4/20/2017
5.	Business Auto	PMU H08459319	Ace Property & Casualty Insurance	4/20/2016 – 4/20/2017
6.	Property	P05673601P	AEGIS (25%)	4/20/2016 – 4/20/2017
7.	Property	1000208827-02	Liberty Mutual Insurance Company (10%)	4/20/2016 – 4/20/2017
8.	Property	254-10-000	AIG (45%)	4/20/2016 – 4/20/2017
9.	Property	UTP 200003001	Westport Insurance Company (20%)	4/20/2016 – 4/20/2017

(b)

None.

Northern States Power Company

Schedule 2.1(b)(viii)

Excluded Contracts

1. Engagement Letter with Fitch Ratings, dated October 13, 2015.
2. Engagement Letter between the Company and PricewaterhouseCoopers LLP, dated November 16, 2016.
3. Engagement Letter between the Company and Deloitte Tax LLP, dated December 21, 2015.
4. Engagement Letter between the Company and Deloitte Tax LLP, dated November 18, 2015.
5. Letter Agreement with Deloitte Tax LLP for 2016 Tax Preparation Services, dated January 23, 2017.
6. Note Agreement (\$75,000,000, 7.70% Senior Secured Notes Due July 15, 2027) and related documents (including promissory notes) executed in connection with such Note Agreement among the Company, CRT Capital Group LLC, Beneficial Life Insurance Company, Nationwide Life Insurance Company, John Hancock Life Insurance Company, Prudential Legacy Insurance Company of New Jersey, Prudential Annuities Life Assurance Corporation, Prudential Retirement Insurance and Annuity Company, Par U Hartford Life & Annuity Comfort Trust, Pruco Life Insurance Company of New Jersey, Pruco Life Insurance Company, and The Prudential Insurance Company of America, dated August 20, 2015.
7. Letter Agreement Re: ASSIGNMENT OF MEMBERSHIP INTERESTS AND PLEDGE AGREEMENT, dated August 20th, 2015, between CPV BIOMASS HOLDINGS, LLC, and THE BANK OF NEW YORK MELLON, as collateral agent (together with its successors and assigns in such capacity, the “Collateral Agent”) for the benefit of the note purchasers, the Collateral Agent and The Bank of New York Mellon, as depositary, between the Company and CT Corporation System, dated August 20, 2015.
8. Letter Agreement Re: SECURITY AGREEMENT dated as of August 20th, 2015 between Benson Power, LLC, and The Bank of New York Mellon, as collateral agent (together with its successors and assigns in such capacity, the “Collateral Agent”) for the benefit of the purchasers, the Collateral Agent and The Bank of New York Mellon, as depositary, between the Company and CT Corporation System, dated August 20, 2015.
9. Letter Agreement Re: The DEPOSITARY AGREEMENT, dated as of August 20th, 2015, among (i) Benson Power, LLC, (ii) The Bank of New York Mellon, as the Collateral Agent (together with its successors and assigns in that capacity, the “Collateral Agent”), for the benefit of the holders from time to time of the Notes, the Depositary and the Collateral Agent, and (iii) The Bank of New York Mellon, as depositary bank (together with its successors and assigns in that capacity, the “Depositary”), between the Company and CT Corporation System, dated August 20, 2015.
10. Independent Director Services Agreement between the Company and Mountain Power Consulting, LLC, dated August 19, 2015, and extended by email agreement.

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11. Independent Director Services Agreement between the Company and Michael Hanson, dated August 19, 2015, and extended by email agreement.
12. Power Purchase Agreement between Fibrominn LLC and Northern States Power Company, dated August 31, 2000, as amended by the Amendment, dated June 7, 2004, and the Second Amendment to Biomass Power Purchase Agreement dated February 16, 2011, and the Consent and Assignment dated as of August 20, 2015, between Northern States Power Company, and the Company and The Bank of New York Mellon, as Collateral Agent.

Northern States Power Company

Schedule 2.1(b)(xiii)

Excluded Assets

None.

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Schedule 5.2**Regulatory Approvals**

1. At least ninety (90) days prior to the Closing, the Company shall execute an agreement, effective as of the Closing Date, with Buyer transferring responsibility and liability from the Company to Buyer for Minnesota Pollution Control Agency (“MPCA”) Title V Air Permit No. 15100038-004, including any pending air permit applications relating to the Facility. With respect to all pending air permit renewal applications related to the Facility (the “Permit Applications”):
 - a. Within 20 days prior to Closing, the Company will deliver a written certification to Buyer certifying that the Company has completed all application forms that MPCA has requested as of the date of such certification, and the Company shall complete by time of Closing all modeling which MPCA has requested as of 15 days or more from the date of Closing;
 - b. Within a reasonable amount of time prior to the Closing, a representative of the Company who is responsible for air permitting will meet with Buyer to discuss the status and remaining requirements for obtaining MPCA approval with respect to the Permit Applications; and
 - c. Within a reasonable amount of time prior to the Closing and after Buyer submits an application to transfer the Permit Applications, the Company will obtain a letter from the MPCA identifying any additional information the MPCA needs to process the Permit Applications and recognizing that Buyer will be responsible for handling the Permit Applications following the Closing.
2. At least ninety (90) days prior to the Closing, the Company and the Buyer shall file a joint application on FCC Form 603 with the Federal Communication Commission (the “FCC”) with respect to the change of ownership of license No. WQGH463, and the FCC must approve such application.
3. At least sixty (60) days prior to the Closing, the Company will provide (a) a letter to Buyer consenting to the transfer from the Company to Buyer, effective as of the Closing Date, of NPDES Industrial Stormwater Discharge Permit Coverage No. MNR053BST and (b) an MPCA form wq-storm 3-60 containing facility information provided by the Company.
4. At least sixty (60) days prior to the Closing, the Company will provide a letter to Buyer consenting to the transfer from the Company to Buyer, effective as of the Closing Date, of Hazardous Waste ID# MNS00020287, and immediately prior to the Closing, the Company will submit a Notification of Regulated Waste Activity advising the MPCA that, effective as of the Closing, the Company is no longer generating hazardous waste at the Facility under Hazardous Waste ID# MNS00020287.
5. At least ninety (90) days prior to the Closing, the Company will provide a letter to Buyer consenting to the transfer from the Company to Buyer, effective as of the Closing Date, of the non-waste determination under the RCRA Non-Hazardous Secondary Materials Rule found at 40 CFR 241.3(c) with regard to poultry litter burned as fuel to produce electricity.

Northern States Power Company

For purposes of clarity, the parties agree that obtaining approvals from the Governmental Authorities for the transfers of the Permits referenced in paragraphs 1, 3, 4 and 5 are not conditions of Closing.

6. By June 30, 2017, the Company will provide Buyer with the wastewater flow and wastewater quality information that is necessary for Buyer to complete an MPCA Pre-Treatment permit application on form wq-wwprm-7-23, should Buyer decide one is necessary for its planned operation of the Facility.

For purposes of clarity, the parties agree that obtaining approvals from the Governmental Authorities for the transfers of the Permits referenced in paragraphs 1, 3, 4 and 5 are not conditions of Closing.

Northern States Power Company

Schedule 5.3

Proforma Title Policy

[See attached]

Northern States Power Company

OWNER'S POLICY OF TITLE INSURANCE

Issued by Chicago Title Insurance Company

POLICY NUMBER
PROFORMA

CHICAGO TITLE INSURANCE COMPANY

Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at the address shown in Section 18 of the Conditions.

COVERED RISKS

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE EXCEPTIONS FROM COVERAGE CONTAINED IN SCHEDULE B, AND THE CONDITIONS, **Chicago Title Insurance Company**, a Nebraska corporation (the "Company") insures, as of Date of Policy and, to the extent stated in Covered Risks 9 and 10, after Date of Policy, against loss or damage, not exceeding the Amount of Insurance, sustained or incurred by the Insured by reason of:

1. Title being vested other than as stated in Schedule A.
2. Any defect in or lien or encumbrance on the Title. This Covered Risk includes but is not limited to insurance against loss from
 - (a) A defect in the Title caused by
 - (i) forgery, fraud, undue influence, duress, incompetency, incapacity, or impersonation;
 - (ii) failure of any person or Entity to have authorized a transfer or conveyance;
 - (iii) a document affecting Title not properly created, executed, witnessed, sealed, acknowledged, notarized, or delivered;
 - (iv) failure to perform those acts necessary to create a document by electronic means authorized by law;
 - (v) a document executed under a falsified, expired, or otherwise invalid power of attorney;
 - (vi) a document not properly filed, recorded, or indexed in the Public Records including failure to perform those acts by electronic means authorized by law; or
 - (vii) a defective judicial or administrative proceeding.
 - (b) The lien of real estate taxes or assessments imposed on the Title by a governmental authority due or payable, but unpaid.
 - (c) Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land. The term "encroachment" includes encroachments of existing improvements located on the Land onto adjoining land, and encroachments onto the Land of existing improvements located on adjoining land.
3. Unmarketable Title.
4. No right of access to and from the Land.
5. The violation or enforcement of any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to:
 - (a) the occupancy, use, or enjoyment of the Land;
 - (b) the character, dimensions, or location of any improvement erected on the Land;
 - (c) the subdivision of land; or
 - (d) environmental protection
 if a notice, describing any part of the Land, is recorded in the Public Records setting forth the violation or intention to enforce, but only to the extent of the violation or enforcement referred to in that notice.
6. An enforcement action based on the exercise of a governmental police power not covered by Covered Risk 5 if a notice of the enforcement action, describing any part of the Land, is recorded in the Public Records, but only to the extent of the enforcement referred to in that notice.
7. The exercise of the rights of eminent domain if a notice of the exercise, describing any part of the Land, is recorded in the Public Records.
8. Any taking by a governmental body that has occurred and is binding on the rights of a purchaser for value without Knowledge.
9. Title being vested other than as stated in Schedule A or being defective
 - (a) as a result of the avoidance in whole or in part, or from a court order providing an alternative remedy, of a transfer of all or any part of the title to or any interest in the Land occurring prior to the transaction vesting Title as shown in Schedule A because that prior transfer constituted a fraudulent or preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws; or
 - (b) because the instrument of transfer vesting Title as shown in Schedule A constitutes a preferential transfer under federal bankruptcy, state insolvency, or similar creditors' rights laws by reason of the failure of its recording in the Public Records
 - (i) to be timely, or
 - (ii) to impart notice of its existence to a purchaser for value or to a judgment or lien creditor.
10. Any defect in or lien or encumbrance on the Title or other matter included in Covered Risks 1 through 9 that has been created or attached or has been filed or recorded in the Public Records subsequent to Date of Policy and prior to the recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The Company will also pay the costs, attorneys' fees, and expenses incurred in defense of any matter insured against by this Policy, but only to the extent provided in the Conditions.

IN WITNESS WHEREOF, the Company has caused this Policy to be signed with the facsimile signatures of its President and Secretary and sealed as required by its By-Laws.

Attest:

Secretary



By:

President

Countersigned:

PROFORMA

By: _____

Authorized Signatory

ALTA Owner's Policy (06/17/06)

Valid Only if Schedules A and B are attached

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Northern States Power Company

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection; or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10; or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
 - (a) a fraudulent conveyance or fraudulent transfer; or
 - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A

CONDITIONS

1. DEFINITION OF TERMS

The following terms when used in this policy mean:

- (a) "Amount of Insurance": The amount stated in Schedule A, as may be increased or decreased by endorsement to this policy, increased by Section 8(b), or decreased by Sections 11 and 12 of these Conditions.
- (b) "Date of Policy": The date designated as "Date of Policy" in Schedule A.
- (c) "Entity": A corporation, partnership, trust, limited liability company, or other similar legal entity.
- (d) "Insured": The Insured named in Schedule A.
 - (i) The term "Insured" also includes
 - (A) successors to the Title of the Insured by operation of law as distinguished from purchase, including heirs, devisees, survivors, personal representatives, or next of kin;
 - (B) successors to an Insured by dissolution, merger, consolidation, distribution, or reorganization;
 - (C) successors to an Insured by its conversion to another kind of Entity;
 - (D) a grantee of an Insured under a deed delivered without payment of actual valuable consideration conveying the Title
 - (1) if the stock, shares, memberships, or other equity interests of the grantee are wholly-owned by the named Insured,
 - (2) if the grantee wholly owns the named Insured,
 - (3) if the grantee is wholly-owned by an affiliated Entity of the named Insured, provided the affiliated Entity and the named Insured are both wholly-owned by the same person or Entity, or
 - (4) if the grantee is a trustee or beneficiary of a trust created by a written instrument established by the Insured named in Schedule A for estate planning purposes.
 - (ii) With regard to (A), (B), (C), and (D) reserving, however, all rights and defenses as to any successor that the Company would have had against any predecessor Insured.
- (e) "Insured Claimant": An Insured claiming loss or damage.
- (f) "Knowledge" or "Known": Actual knowledge, not constructive knowledge or notice that may be imputed to an Insured by reason of the Public Records or any other records that impart constructive notice of matters affecting the Title.

(g) "Land": The land described in Schedule A, and affixed improvements that by law constitute real property. The term "Land" does not include any property beyond the lines of the area described in Schedule A, nor any right, title, interest, estate, or easement in abutting streets, roads, avenues, alleys, lanes, ways, or waterways, but this does not modify or limit the extent that a right of access to and from the Land is insured by this policy.

(h) "Mortgage": Mortgage, deed of trust, trust deed, or other security instrument, including one evidenced by electronic means authorized by law.

(i) "Public Records": Records established under state statutes at Date of Policy for the purpose of imparting constructive notice of matters relating to real property to purchasers for value and without Knowledge. With respect to Covered Risk 5(d), "Public Records" shall also include environmental protection liens filed in the records of the clerk of the United States District Court for the district where the Land is located.

(j) "Title": The estate or interest described in Schedule A.

(k) "Unmarketable Title": Title affected by an alleged or apparent matter that would permit a prospective purchaser or lessee of the Title or lender on the Title to be released from the obligation to purchase, lease, or lend if there is a contractual condition requiring the delivery of marketable title.

2. CONTINUATION OF INSURANCE

The coverage of this policy shall continue in force as of Date of Policy in favor of an Insured, but only so long as the Insured retains an estate or interest in the Land, or holds an obligation secured by a purchase money Mortgage given by a purchaser from the Insured, or only so long as the Insured shall have liability by reason of warranties in any transfer or conveyance of the Title. This policy shall not continue in force in favor of any purchaser from the Insured of either (i) an estate or interest in the Land, or (ii) an obligation secured by a purchase money Mortgage given to the Insured.

3. NOTICE OF CLAIM TO BE GIVEN BY INSURED CLAIMANT

The Insured shall notify the Company promptly in writing (i) in case of any litigation as set forth in Section 5(a) of these Conditions, (ii) in case Knowledge shall come to an Insured hereunder of any claim of title or interest that is adverse to the Title, as insured, and that might cause loss or damage for which the Company may be liable by virtue of this policy, or (iii) if the Title, as insured, is rejected as

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CONDITIONS CONTINUED

Unmarketable Title. If the Company is prejudiced by the failure of the Insured Claimant to provide prompt notice, the Company's liability to the Insured Claimant under the policy shall be reduced to the extent of the prejudice.

4. PROOF OF LOSS

In the event the Company is unable to determine the amount of loss or damage, the Company may, at its option, require as a condition of payment that the Insured Claimant furnish a signed proof of loss. The proof of loss must describe the defect, lien, encumbrance, or other matter insured against by this policy that constitutes the basis of loss or damage and shall state, to the extent possible, the basis of calculating the amount of the loss or damage.

5. DEFENSE AND PROSECUTION OF ACTIONS

(a) Upon written request by the Insured, and subject to the options contained in Section 7 of these Conditions, the Company, at its own cost and without unreasonable delay, shall provide for the defense of an Insured in litigation in which any third party asserts a claim covered by this policy adverse to the Insured. This obligation is limited to only those stated causes of action alleging matters insured against by this policy. The Company shall have the right to select counsel of its choice (subject to the right of the Insured to object for reasonable cause) to represent the Insured as to those stated causes of action. It shall not be liable for and will not pay the fees of any other counsel. The Company will not pay any fees, costs, or expenses incurred by the Insured in the defense of those causes of action that allege matters not insured against by this policy.

(b) The Company shall have the right, in addition to the options contained in Section 7 of these Conditions, at its own cost, to institute and prosecute any action or proceeding or to do any other act that in its opinion may be necessary or desirable to establish the Title, as insured, or to prevent or reduce loss or damage to the Insured. The Company may take any appropriate action under the terms of this policy, whether or not it shall be liable to the Insured. The exercise of these rights shall not be an admission of liability or waiver of any provision of this policy. If the Company exercises its rights under this subsection, it must do so diligently.

Whenever the Company brings an action or asserts a defense as required or permitted by this policy, the Company may pursue the litigation to a final determination by a court of competent jurisdiction, and it expressly reserves the right, in its sole discretion, to appeal any adverse judgment or order.

6. DUTY OF INSURED CLAIMANT TO COOPERATE

(a) In all cases where this policy permits or requires the Company to prosecute or provide for the defense of any action or proceeding and any appeals, the Insured shall secure to the Company the right to so prosecute or provide defense in the action or proceeding, including the right to use, at its option, the name of the Insured for this purpose. Whenever requested by the Company, the Insured, at the Company's expense, shall give the Company all reasonable aid (i) in securing evidence, obtaining witnesses, prosecuting or defending the action or proceeding, or effecting settlement, and (ii) in any other lawful act that in the opinion of the Company may be necessary or desirable to establish the Title or any other matter as insured. If the Company is prejudiced by the failure of the Insured to furnish the required cooperation, the Company's obligations to the Insured under the policy shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation, with regard to the matter or matters requiring such cooperation.

(b) The Company may reasonably require the Insured Claimant to submit to examination under oath by any authorized representative of the Company and to produce for examination, inspection, and copying, at such reasonable times and places as may be designated by the authorized representative of the Company, all records, in whatever medium maintained, including books, ledgers, checks, memoranda, correspondence, reports, e-mails, disks, tapes, and videos whether bearing a date before or after Date of Policy, that reasonably pertain to the loss or damage. Further, if requested by any authorized representative of the Company, the Insured Claimant shall grant its permission, in writing, for any authorized representative of the Company to examine, inspect, and copy all of these records in the custody or control of a third party that reasonably pertain to the loss or damage. All information designated as confidential by the Insured

Claimant provided to the Company pursuant to this Section shall not be disclosed to others unless, in the reasonable judgment of the Company, it is necessary in the administration of the claim. Failure of the Insured Claimant to submit for examination under oath, produce any reasonably requested information, or grant permission to secure reasonably necessary information from third parties as required in this subsection, unless prohibited by law or governmental regulation, shall terminate any liability of the Company under this policy as to that claim.

7. OPTIONS TO PAY OR OTHERWISE SETTLE CLAIMS; TERMINATION OF LIABILITY

In case of a claim under this policy, the Company shall have the following additional options:

(a) To Pay or Tender Payment of the Amount of Insurance. To pay or tender payment of the Amount of Insurance under this policy together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment or tender of payment and that the Company is obligated to pay.

Upon the exercise by the Company of this option, all liability and obligations of the Company to the Insured under this policy, other than to make the payment required in this subsection, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

(b) To Pay or Otherwise Settle With Parties Other Than the Insured or With the Insured Claimant.

(i) To pay or otherwise settle with other parties for or in the name of an Insured Claimant any claim insured against under this policy. In addition, the Company will pay any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay; or

(ii) To pay or otherwise settle with the Insured Claimant the loss or damage provided for under this policy, together with any costs, attorneys' fees, and expenses incurred by the Insured Claimant that were authorized by the Company up to the time of payment and that the Company is obligated to pay. Upon the exercise by the Company of either of the options provided for in subsections (b)(i) or (ii), the Company's obligations to the Insured under this policy for the claimed loss or damage, other than the payments required to be made, shall terminate, including any liability or obligation to defend, prosecute, or continue any litigation.

8. DETERMINATION AND EXTENT OF LIABILITY

This policy is a contract of indemnity against actual monetary loss or damage sustained or incurred by the Insured Claimant who has suffered loss or damage by reason of matters insured against by this policy.

(a) The extent of liability of the Company for loss or damage under this policy shall not exceed the lesser of

(i) the Amount of Insurance; or

(ii) the difference between the value of the Title as insured and the value of the Title subject to the risk insured against by this policy.

(b) If the Company pursues its rights under Section 5 of these Conditions and is unsuccessful in establishing the Title, as insured,

(i) the Amount of Insurance shall be increased by 10%, and

(ii) the Insured Claimant shall have the right to have the loss or damage determined either as of the date the claim was made by the Insured Claimant or as of the date it is settled and paid.

(c) In addition to the extent of liability under (a) and (b), the Company will also pay those costs, attorneys' fees, and expenses incurred in accordance with Sections 5 and 7 of these Conditions.

9. LIMITATION OF LIABILITY

(a) If the Company establishes the Title, or removes the alleged defect, lien, or encumbrance, or cures the lack of a right of access to or from the Land, or cures the claim of Unmarketable Title, all as insured, in a reasonably diligent manner by any method, including litigation and the completion of any appeals, it shall have fully performed its obligations with respect to that matter and shall not be liable for any loss or damage caused to the Insured.

(b) In the event of any litigation, including litigation by

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CONDITIONS CONTINUED

the Company or with the Company's consent, the Company shall have no liability for loss or damage until there has been a final determination by a court of competent jurisdiction, and disposition of all appeals, adverse to the Title, as insured.

(c) The Company shall not be liable for loss or damage to the Insured for liability voluntarily assumed by the Insured in settling any claim or suit without the prior written consent of the Company.

10. REDUCTION OF INSURANCE; REDUCTION OR TERMINATION OF LIABILITY

All payments under this policy, except payments made for costs, attorneys' fees, and expenses, shall reduce the Amount of Insurance by the amount of the payment.

11. LIABILITY NONCUMULATIVE

The Amount of Insurance shall be reduced by any amount the Company pays under any policy insuring a Mortgage to which exception is taken in Schedule B or to which the Insured has agreed, assumed, or taken subject, or which is executed by an Insured after Date of Policy and which is a charge or lien on the Title, and the amount so paid shall be deemed a payment to the Insured under this policy.

12. PAYMENT OF LOSS

When liability and the extent of loss or damage have been definitely fixed in accordance with these Conditions, the payment shall be made within 30 days.

13. RIGHTS OF RECOVERY UPON PAYMENT OR SETTLEMENT

(a) Whenever the Company shall have settled and paid a claim under this policy, it shall be subrogated and entitled to the rights of the Insured Claimant in the Title and all other rights and remedies in respect to the claim that the Insured Claimant has against any person or property, to the extent of the amount of any loss, costs, attorneys' fees, and expenses paid by the Company. If requested by the Company, the Insured Claimant shall execute documents to evidence the transfer to the Company of these rights and remedies. The Insured Claimant shall permit the Company to sue, compromise, or settle in the name of the Insured Claimant and to use the name of the Insured Claimant in any transaction or litigation involving these rights and remedies.

If a payment on account of a claim does not fully cover the loss of the Insured Claimant, the Company shall defer the exercise of its right to recover until after the Insured Claimant shall have recovered its loss.

(b) The Company's right of subrogation includes the rights of the Insured to indemnities, guaranties, other policies of insurance, or bonds, notwithstanding any terms or conditions contained in those instruments that address subrogation rights.

14. ARBITRATION

Either the Company or the Insured may demand that the claim or controversy shall be submitted to arbitration pursuant to the Title Insurance Arbitration Rules of the American Land Title Association ("Rules"). Except as provided in the Rules, there shall be no joinder or consolidation with claims or controversies of other persons.

Arbitrable matters may include, but are not limited to, any controversy or claim between the Company and the Insured arising out of or relating to this policy, any service in connection with its issuance or the breach of a policy provision, or to any other controversy or claim

arising out of the transaction giving rise to this policy. All arbitrable matters when the Amount of Insurance is \$2,000,000 or less shall be arbitrated at the option of either the Company or the Insured. All arbitrable matters when the Amount of Insurance is in excess of \$2,000,000 shall be arbitrated only when agreed to by both the Company and the Insured. Arbitration pursuant to this policy and under the Rules shall be binding upon the parties. Judgment upon the award rendered by the Arbitrator(s) may be entered in any court of competent jurisdiction.

15. LIABILITY LIMITED TO THIS POLICY; POLICY ENTIRE CONTRACT

(a) This policy together with all endorsements, if any, attached to it by the Company is the entire policy and contract between the Insured and the Company. In interpreting any provision of this policy, this policy shall be construed as a whole.

(b) Any claim of loss or damage that arises out of the status of the Title or by any action asserting such claim shall be restricted to this policy.

(c) Any amendment of or endorsement to this policy must be in writing and authenticated by an authorized person, or expressly incorporated by Schedule A of this policy.

(d) Each endorsement to this policy issued at any time is made a part of this policy and is subject to all of its terms and provisions. Except as the endorsement expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsement, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance.

16. SEVERABILITY

In the event any provision of this policy, in whole or in part, is held invalid or unenforceable under applicable law, the policy shall be deemed not to include that provision or such part held to be invalid, but all other provisions shall remain in full force and effect.

17. CHOICE OF LAW; FORUM

(a) Choice of Law: The Insured acknowledges the Company has underwritten the risks covered by this policy and determined the premium charged therefor in reliance upon the law affecting interests in real property and applicable to the interpretation, rights, remedies, or enforcement of policies of title insurance of the jurisdiction where the Land is located.

Therefore, the court or an arbitrator shall apply the law of the jurisdiction where the Land is located to determine the validity of claims against the Title that are adverse to the Insured and to interpret and enforce the terms of this policy. In neither case shall the court or arbitrator apply its conflicts of law principles to determine the applicable law.

(b) Choice of Forum: Any litigation or other proceeding brought by the Insured against the Company must be filed only in a state or federal court within the United States of America or its territories having appropriate jurisdiction.

18. NOTICES, WHERE SENT

Any notice of claim and any other notice or statement in writing required to be given to the Company under this Policy must be given to the Company at: Claims Department, PO Box 45023, Jacksonville, Florida 32232-5023.

Northern States Power Company



CHICAGO TITLE INSURANCE COMPANY

Order No. : 238326

2nd AMENDED 1/18/2017
PROFORMA
OWNER'S POLICY FOR TITLE INSURANCE
SCHEDULE A

Proposed Amount of Insurance:**Policy Number: PROFORMA****Date of Policy:** (Date and Time of Recording)**1. Name of Insured:**

Northern States Power Company, a Minnesota corporation

2. The estate or interest in the land which is covered by this Policy is:

fee simple

3. Title to the estate or interest in the land is vested in:

Northern States Power Company, a Minnesota corporation

4. The land referred to in this Policy is situate in the County of Swift, State of Minnesota, and is described as follows:

See Exhibit A Attached

Note for Information: Property is Abstract

Note: This is a Pro Forma Policy. It does not reflect the present state of the Title and is not a commitment to (i) insure the Title or (ii) issue any of the attached endorsements. Any such commitment must be an express written undertaking on appropriate forms of the Company. This Pro Forma Policy presumes satisfaction of all requirements pertinent to the transaction as set forth in the commitment and any revisions thereto. The terms of the title insurance commitment, as revised, control. This Pro Forma merely provides a sample to the proposed insured as to what will appear within the policy if all requirements are met. This Pro Forma is not an insurance policy.

CountersignedBy: PROFORMA

Northern States Power Company

Order No. : 238326

EXHIBIT A

South Half (S 1/2) of Lot Five (5) and all of Lot Six (6), Block One (1); Lots One (1), Two (2) and Three (3), Block Two (2); Outlots A and B, Benson Industrial Rail Second Addition to the City of Benson, Swift County, Minnesota.

Abstract Property

Northern States Power Company

Order No. : 238326

SCHEDULE B EXCEPTIONS FROM COVERAGE

This Policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Intentionally deleted.
2. Intentionally deleted.
3. Intentionally deleted.
4. Intentionally deleted.
5. Intentionally deleted.
6. Intentionally deleted.
7. Real estate taxes and special assessments payable for the year 2017 due and payable in 2017 and subsequent years, which are a lien not yet due and payable.
Property Tax Identification No. 23-1342-000
8. Intentionally deleted.
9. Intentionally deleted.
10. Intentionally deleted.
11. Terms and conditions of Right-of-Way Easement dated October 31, 1947, filed December 20, 1947 in Book 70 Deeds, page 516, as Document No. 111146, and shown on the ALTA/NSPS Land Title Survey prepared by Nyberg Surveying, dated August 11, 2016, last revised January 12, 2017, as Job No. 9098.
12. Terms and conditions of Right-of-Way Easement dated June 7, 1965, filed July 30, 1965, in Book 90 Deeds, page 508, as Document No. 140265, and shown on the ALTA/NSPS Land Title Survey prepared by Nyberg Surveying, dated August 11, 2016, last revised January 12, 2017, as Job No. 9098.
13. Terms and conditions of an Easement dated October 10, 1947, filed October 22, 1947, in Book 70 Deeds, page 479, as Document No. 110771, and shown on the ALTA/NSPS Land Title Survey prepared by Nyberg Surveying, dated August 11, 2016, last revised January 12, 2017, as Job No. 9098.
14. Terms and conditions of Easement dated June 9, 1965, filed July 30, 1965, in Book 90 Deeds, page 511, as Document No. 140268, and shown on the ALTA/NSPS Land Title Survey prepared by Nyberg Surveying, dated August 11, 2016, last revised January 12, 2017, as Job No. 9098.
15. Terms and conditions of Easement dated January 28, 2002, filed March 25, 2002, in Book 165 Deeds, page 287, as Document No. 210477, and shown on the ALTA/NSPS Land Title Survey prepared by Nyberg Surveying, dated August 11, 2016, last revised January 12, 2017, as Job No. 9098.
16. Terms and conditions of an Easement dated January 28, 2002, filed March 25, 2002,

ALTA Owner 6/17/06

MN-02100.321010-RAM-72306-1- -238326 Proforma

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Northern States Power Company

Order No. : 238326

SCHEDULE B
EXCEPTIONS FROM COVERAGE (Continued)

in Book 165 Deeds, page 290, as Document No. 210478, and shown on the ALTA/NSPS Land Title Survey prepared by Nyberg Surveying, dated August 11, 2016, last revised January 12, 2017, as Job No. 9098.

17. Terms and conditions of that certain unrecorded Resolution No. 2003-24 Findings of Facts and Conclusions of Law for Site Review Application and Agreement; Essential Services Permit; and Conditional Use Permit Application approved by the Benson City Council on October 27, 2003.
18. The following matters shown on the ALTA/NSPS Land Title Survey prepared by Nyberg Surveying, dated August 11, 2016, last revised January 12, 2017, as Job No. 9098:
 - (a) Drainage ditches crossing the subject property without benefit of easement;
 - (b) The conveyor empties into a structure located upon property adjoining to the West;
 - (c) Encroachment of neighboring sign and landscape near Northwest corner of property encroaches approximately 8 feet;
 - (d) Parking stalls encroach into Industry Drive;
 - (e) Utility poles exist outside an electrical transmission line easements in Southwest corner;
 - (f) Gravel surface encroaches onto neighboring property to the West;
 - (g) Bituminous surface and gate encroach onto neighboring property to the West;
 - (h) The building near the Northerly boundary sits on top of the electrical line easement recorded as Document No. 210478 and possibly Document No. 210477;
 - (i) Building near Northerly boundary encroaches into the building setback line;
 - (j) Electric line and guy wire crosses Northeasterly boundary without benefit of easement;
 - (k) Sign is located outside property boundary in Northeasterly boundary;
 - (l) A guy wire exists outside an electrical easement along the Southwesterly boundary of property and underground electrical line exists on the Westerly portion of the property which extends North of a transformer, without benefit of easement.
19. Easement for public electric utility distribution line or system and other public utilities pursuant to Instrument of Dedication, dated November 19, 2004, made by City of Benson, recorded November 19, 2004, in Book 10 Misc., page 448, as Document No. 218122, and shown on the ALTA/NSPS Land Title Survey prepared by Nyberg Surveying, dated August 11, 2016, last revised January 12, 2017, as Job No. 9098.
20. Easement, dated July 6, 2006, granted to Cooperative Power Associates (CPA), for telecommunication purposes, recorded July 31, 2006 in Book 172 Deeds, Page 858 as



Northern States Power Company

Order No. : 238326

SCHEDULE B
EXCEPTIONS FROM COVERAGE (Continued)

Document No. 222257, and shown on the ALTA/NSPS Land Title Survey prepared by Nyberg Surveying, dated August 11, 2016, last revised January 12, 2017, as Job No. 9098.

- 21. Intentionally deleted.
- 22. Intentionally deleted.

END OF EXCEPTIONS



Northern States Power Company



CHICAGO TITLE INSURANCE COMPANY

Order No.: 238326

ARBITRATION ENDORSEMENT
ATTACHED TO OWNER'S POLICY NO. PROFORMA
ISSUED BY
CHICAGO TITLE INSURANCE COMPANY

Item 14 (Arbitration) of the Conditions of Coverage shown on the back page hereof, is hereby deleted.

This Endorsement is made a part of the Policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the Policy and any prior endorsements, nor does it extend the effective date of the Policy and prior endorsements, nor does it increase the face amount thereof.

Dated: (Date and Time of Recording)

Countersigned:

By: PROFORMA
Authorized Officer or Agent

End. -- Arbitration

MN-02100.321010-RAM-72999-1- -238326

Northern States Power Company

ALTA ENDORSEMENT - FORM 3.1-06 – ZONING – COMPLETED STRUCTUREIssued by **Chicago Title Insurance Company**Chicago Title
Insurance Company

File No.: 238326

Attached to and made a part of Policy No.: PROFORMA

1. The Company insures against loss or damage sustained by the Insured in the event that, at Date of Policy,
 - a. according to applicable zoning ordinances and amendments, the Land is not classified Zone I-3 Special Industrial;
 - b. the following use or uses are not allowed under that classification: Biomass-Fired Electric Generation Facility
 - c. There shall be no liability under paragraph 1.b. if the use or uses are not allowed as the result of any lack of compliance with any conditions, restrictions, or requirements contained in the zoning ordinances and amendments, including but not limited to the failure to secure necessary consents or authorizations as a prerequisite to the use or uses. This paragraph 1.c. does not modify or limit the coverage provided in Covered Risk 5.
2. The Company further insures against loss or damage sustained by the Insured by reason of a final decree of a court of competent jurisdiction
 - a. prohibiting the use of the Land, with any existing structure, as insured in paragraph 1.b.; or
 - b. requiring the removal or alteration of the structure on the basis that, at Date of Policy, the zoning ordinances and amendments have been violated with respect to any of the following matters:
 - i. Area, width, or depth of the Land as a building site for the structure
 - ii. Floor space area of the structure
 - iii. Setback of the structure from the property lines of the Land
 - iv. Height of the structure, or
 - v. Number of parking spaces.
3. There shall be no liability under this endorsement based on
 - a. the invalidity of the zoning ordinances and amendments until after a final decree of a court of competent jurisdiction adjudicating the invalidity, the effect of which is to prohibit the use or uses;
 - b. the refusal of any person to purchase, lease or lend money on the Title covered by this policy.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: (Date and Time of Recording)

Countersigned:

By: **PROFORMA**
Authorized Officer or Agent



Northern States Power Company

ALTA ENDORSEMENT - FORM 8.2-06 COMMERCIAL ENVIRONMENTAL PROTECTION LIENIssued by **Chicago Title Insurance Company**Chicago Title
Insurance Company

File No.: 238326

Attached to and made a part of Policy No.: PROFORMA

The Company insures against loss or damage sustained by the Insured by reason of an environmental protection lien that, at Date of Policy, is recorded in the Public Records or filed in the records of the clerk of the United States district court for the district in which the Land is located, unless the environmental protection lien is set forth as an exception in Schedule B.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: (Date and Time of Recording)

Countersigned:

By: **PROFORMA**

Authorized Officer or Agent



Northern States Power Company

ALTA ENDORSEMENT - FORM 9.2-06 - Covenants, Conditions and Restrictions - Improved Land - Owner's Policy

Issued by **Chicago Title Insurance Company**



File No.: 238326

Attached to and made a part of Policy No.: PROFORMA

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For the purposes of this endorsement only,
 - a. "Covenant" means a covenant, condition, limitation or restriction in a document or instrument in effect at Date of Policy.
 - b. "Improvement" means a building, structure located on the surface of the Land, road, walkway, driveway, or curb, affixed to the Land at Date of Policy and that by law constitutes real property, but excluding any crops, landscaping, lawn, shrubbery, or trees.
3. The Company insures against loss or damage sustained by the Insured by reason of:
 - a. A violation on the Land at Date of Policy of an enforceable Covenant, unless an exception in Schedule B of the policy identifies the violation;
 - b. Enforced removal of an Improvement as a result of a violation, at Date of Policy, of a building setback line shown on a plat of subdivision recorded or filed in the Public Records, unless an exception in Schedule B of the policy identifies the violation; or
 - c. A notice of a violation, recorded in the Public Records at Date of Policy, of an enforceable Covenant relating to environmental protection describing any part of the Land and referring to that Covenant, but only to the extent of the violation of the Covenant referred to in that notice, unless an exception in Schedule B of the policy identifies the notice of the violation.
4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
 - a. any Covenant contained in an instrument creating a lease;
 - b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land; or
 - c. except as provided in Section 3.c., any Covenant relating to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances



Northern States Power Company

ALTA ENDORSEMENT - FORM 9.2-06 - Covenants, Conditions and Restrictions - Improved Land - Owner's Policy

File No.: 238326

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: (Date and Time of Recording)

Countersigned:

By: **PROFORMA**
Authorized Officer or Agent



Northern States Power Company

ALTA ENDORSEMENT - FORM 9.9-06 - PRIVATE RIGHTS - OWNER'S POLICY

Issued by **Chicago Title Insurance Company**



Chicago Title
Insurance Company

File No.: 238326

Attached to and made a part of Policy No.: PROFORMA

1. The insurance provided by this endorsement is subject to the exclusions in Section 4 of this endorsement; and the Exclusions from Coverage, the Exceptions from Coverage contained in Schedule B, and the Conditions in the policy.
2. For the purposes of this endorsement only:
 - a. "Covenant" means a covenant, condition, limitation or restriction in a document or instrument recorded in the Public Records at Date of Policy.
 - b. "Private Right" means (i) an option to purchase; (ii) a right of first refusal; or (iii) a right of prior approval of a future purchaser or occupant.
3. The Company insures against loss or damage sustained by the Insured under this Owner's Policy if enforcement of a Private Right in a Covenant affecting the Title at Date of Policy based on a transfer of Title on or before Date of Policy causes a loss of the Insured's Title.
4. This endorsement does not insure against loss or damage (and the Company will not pay costs, attorneys' fees, or expenses) resulting from:
 - a. any Covenant contained in an instrument creating a lease;
 - b. any Covenant relating to obligations of any type to perform maintenance, repair, or remediation on the Land;
 - c. any Covenant relating to environmental protection of any kind or nature, including hazardous or toxic matters, conditions, or substances; or
 - d. exercise of any Private Right described in Exceptions None in Schedule B.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: (Date and Time of Recording)

Countersigned:

By: **PROFORMA**
Authorized Officer or Agent



Northern States Power Company

ALTA ENDORSEMENT - FORM 17-06 - ACCESS AND ENTRY

Issued by **Chicago Title Insurance Company**



Chicago Title
Insurance Company

File No.: 238326

Attached to and made a part of Policy No.: PROFORMA

The Company insures against loss or damage sustained by the Insured if, at Date of Policy (i) the Land does not abut and have both actual vehicular and pedestrian access to and from Industry Drive and CSAH No. 3 (the "Street"), (ii) the Street is not physically open and publicly maintained, or (iii) the Insured has no right to use existing curb cuts or entries along that portion of the Street abutting the Land.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements to it.

Dated: (Date and Time of Recording)

Countersigned:

By: **PROFORMA**
Authorized Officer or Agent



Northern States Power Company

ALTA ENDORSEMENT FORM 17.2-06 UTILITY ACCESS

Issued by **Chicago Title Insurance Company**



Chicago Title
Insurance Company

File No.: 238326

Attached to and made a part of Policy No.: PROFORMA

The Company insures against a loss or damage sustained by the Insured by reason of the lack of a right of access to the following utilities or services: **(CHECK ALL THAT APPLY)**

- | | | |
|--|---|--|
| <input checked="" type="checkbox"/> Water Service | <input checked="" type="checkbox"/> Natural gas service | <input checked="" type="checkbox"/> Telephone service |
| <input checked="" type="checkbox"/> Electrical power service | <input checked="" type="checkbox"/> Sanitary sewer | <input checked="" type="checkbox"/> Storm water drainage |
| <input type="checkbox"/> _____ | <input type="checkbox"/> _____ | <input type="checkbox"/> _____ |

either over, under or upon rights-of-way or easements for the benefit of the Land because of:

- (1) a gap or gore between the boundaries of the land and the rights-of-way or easements;
- (2) a gap between the boundaries of the rights-of way or easements; or
- (3) a termination by a grantor, or its successors, of the rights-of-way or easements.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: (Date and Time of Recording)

Countersigned:

By: **PROFORMA**
Authorized Officer or Agent



Northern States Power Company

ALTA ENDORSEMENT - FORM 18-06 – SINGLE TAX PARCEL

Issued by **Chicago Title Insurance Company**



Chicago Title
Insurance Company

File No.: 238326

Attached to and made a part of Policy No.: PROFORMA

The Company insures against loss or damage sustained by the Insured by reason of the Land being taxed as part of a larger parcel of land or failing to constitute a separate tax parcel for real estate taxes.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements to it.

Dated: (Date and Time of Recording)

Countersigned:

By: **PROFORMA**
Authorized Officer or Agent



Northern States Power Company

ENDORSEMENT – CONTIGUITY – MULTIPLE PARCELS

Issued by **Chicago Title Insurance Company**



Chicago Title
Insurance Company

File No.: 238326

Attached to and made a part of Policy No.: PROFORMA

The Company hereby insures the insured against loss or damage which the insured shall sustain in the event that, at Date of Policy:

South half (S1/2) of Lot 5, and all of Lot 6, Block 1; Lots 1, 2 and 3, Block 2; and Outlots A and B, Benson Industrial Rail Second Addition to the City of Benson, Minnesota, described in Schedule A, are not contiguous to each other and, taken as a tract, do not constitute one parcel of land.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements to it.

Dated: (Date and Time of Recording)

Countersigned:

By: **PROFORMA**
Authorized Officer or Agent

Northern States Power Company

ALTA ENDORSEMENT – FORM 25-06 - SAME AS SURVEY

Issued by **Chicago Title Insurance Company**



Chicago Title
Insurance Company

File No. 238326

Attached to and made a part of Policy No.: PROFORMA

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land as described in Schedule A to be the same as that identified on the survey made by Nyberg Surveying dated August 11, 2016, last revised January 12, 2017, and designated Job No. 9098.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: (Date and Time of Recording)

Countersigned:

By: **PROFORMA**
Authorized Officer or Agent

End. – ALTA Form 25-06 – Same as Survey (10/16/08)

MN-02100.321010-RAM-72999-1- -238326



Northern States Power Company

ALTA ENDORSEMENT - FORM 26-06 - SUBDIVISION

Issued by **Chicago Title Insurance Company**



Chicago Title
Insurance Company

File No.: 238326

Attached to and made a part of Policy No.: PROFORMA

The Company insures against loss or damage sustained by the Insured by reason of the failure of the Land to constitute a lawfully created parcel according to the subdivision statutes and local subdivision ordinances applicable to the Land.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: (Date and Time of Recording)

Countersigned:

By: **PROFORMA**

Authorized Officer or Agent



Northern States Power Company

ALTA ENDORSEMENT - FORM 28-06 - Easement - Damage or Enforced Removal

Issued by **Chicago Title Insurance Company**



Chicago Title
Insurance Company

File No.: 238326

Attached to and made a part of Policy No.: PROFORMA

The Company insures against loss or damage sustained by the Insured if the exercise of the granted or reserved rights to use or maintain the easement(s) referred to in Exception(s) 18 (h) of Schedule B results in:

- (1) damage to an existing building located on the Land, or
- (2) enforced removal or alteration of an existing building located on the Land,

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements.

Dated: (Date and Time of Recording)

Countersigned:

By: **PROFORMA**
Authorized Officer or Agent

End. - ALTA Form 28-06 - Easement - Damage or Enforced Removal
(02/03/10).

MN-02100.321010-RAM-72999-1- -238326

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Northern States Power Company



CHICAGO TITLE INSURANCE COMPANY

Order No.: 238326

FORCED REMOVAL ENDORSEMENT**ATTACHED TO OWNER'S POLICY NO.****ISSUED BY****CHICAGO TITLE INSURANCE COMPANY**

The Company hereby insures the Insured against loss or damage which the Insured shall sustain by reason of the entry of any court order or judgment which constitutes a final determination and denies the right to maintain the existing improvements on the land because of the encroachment or encroachments thereof specifically set forth at exception number(s) 18 (i) in Schedule B onto the easement, except for a claim of lack of marketability by reason of said encroachment, but the company shall be willing to furnish its policy of title insurance at then existing rates to any prospective purchaser or mortgagee under the same insuring provisions, exceptions and exclusions herein, and to such further matters affecting title as may arise subsequent to the effective date of this policy.

This Endorsement is made a part of the Policy and is subject to all of the terms and provisions thereof and of any prior endorsements thereto. Except to the extent expressly stated, it neither modifies any of the terms and provisions of the Policy and any prior endorsements, nor does it extend the effective date of the Policy and any prior endorsements, nor does it increase the face amount thereof.

Chicago Title Insurance Company

Authorized Signature

Insuring Over Encroachments

Page 1 of 1

Northern States Power Company

ALTA ENDORSEMENT - FORM 39-06 - POLICY AUTHENTICATIONIssued by **Chicago Title Insurance Company**Chicago Title
Insurance Company

File No.: 238326

Attached to and made a part of Policy No.: PROFORMA

When the policy is issued by the Company with a policy number and Date of Policy, the Company will not deny liability under the policy or any endorsements issued with the policy solely on the grounds that the policy or endorsements were issued electronically or lack signatures in accordance with the Conditions.

This endorsement is issued as part of the policy. Except as it expressly states, it does not (i) modify any of the terms and provisions of the policy, (ii) modify any prior endorsements, (iii) extend the Date of Policy, or (iv) increase the Amount of Insurance. To the extent a provision of the policy or a previous endorsement is inconsistent with an express provision of this endorsement, this endorsement controls. Otherwise, this endorsement is subject to all of the terms and provisions of the policy and of any prior endorsements

Dated: (Date and Time of Recording)

Countersigned:

By: **PROFORMA**

Authorized Officer or Agent



Northern States Power Company

Schedule 8.2(h)

Required Third-Party Consents

1. Amended and Restated Generator Interconnection Agreement between Fibrominn LLC, Great River Energy, and Midwest Independent Transmission System Operator, Inc., dated October 13, 2011.
2. Amended and Restated Generator Interconnection Agreement between Fibrominn LLC, Great River Energy, and Midcontinent Independent System Operator, Inc., dated January 13, 2014.
3. Eastern Division Long-Term Disposal Agreement between Fibrominn LLC and Jennie-O Turkey Store, Inc., dated November 1, 2001.
4. Western Division Long-Term Disposal Agreement between Fibrominn LLC and Jennie-O Turkey Store, Inc., dated November 1, 2001.
5. Amended and Restated Water Supply Agreement between Fibrominn LLC and the City of Benson, Minnesota, dated December 1, 2004.
6. Amended and Restated Improvements Agreement between Fibrominn LLC and the City of Benson, Minnesota, dated December 1, 2004.
7. Agreement for Backup Service between Fibrominn LLC and the City of Benson, Minnesota, dated April 12, 2004.
8. Ash Sale Agreement between Fibrominn LLC and North American Fertilizer LLC, dated November 30, 2006, as amended by the First Amendment to Ash Sale Agreement, dated 2010, and the Second Amendment to Ash Sale Agreement, dated 2010.
9. MAPCON Software Support Agreement by and between Mapcon Technologies, Inc. and Benson Power LLC, dated September 22, 2015.
10. MAPCON Software License Agreement between the Company and Mapcon Technologies, Inc., dated September 22, 2015.
11. Product and Services Agreement by and between Marco, Inc. and Fibrominn LLC, dated February 16, 2015.
12. Those certain rights under the O&M Services Agreement between Fibrominn LLC and NAES Corporation, dated January 28, 2015, as are assigned to Buyer pursuant to Section 2.1(a)(ix).

Northern States Power Company

Schedule 8.2(i)

NERC Compliance Requirements

1. Comply with PRC-005-1.1b and provide documentation of monthly, quarterly and annual battery tests results.
2. Comply with FAC-001 and provide attachments documenting interconnection request.
3. Comply with FAC-008 and provide attachments documenting ratings and methodology.
4. Comply with MOD-025 and provide attachments including data submitted.
5. Comply with PRC-001 and provide evidence that a coordination study has been completed and that Great River Energy and Ottertail Power approved the coordination study.
6. Comply with PRC-005 and provide (a) evidence that all components were tested to meet the mitigation plan of the self-report and (b) M&R, AC schemes, and DC schemes for the line, generator, GSU, and aux transformer.
7. Comply with PRC-019/024/025 and provide all attachments documenting completion.
8. Comply with VAR-002 and provide (a) attachment with equipment data and (b) new voltage letter. Verify no transfer of liability for open self-reports.
9. Provide evidence 2016 CIP compliance has been completed.

Northern States Power Company

Schedule 11.4

Allocation of Purchase Price

Entire Purchase Price to be allocated to Class V assets included in the Acquired Assets.

Northern States Power Company

ENTIRE EXHIBIT HAS BEEN REDACTED

REDACTED

Northern States Power Company

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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Northern States Power Company

EXHIBIT B

SAMPLE CALCULATION OF FUEL INVENTORY VALUE

A summary calculation of the Fuel Inventory Value as of August 31, 2016, and September 30, 2016, is attached. The actual Fuel Inventory Value as of the Closing Date will be calculated (i) using the same methodologies as used in this summary and (ii) in accordance with GAAP, applying the same accounting treatment and methodologies as used for the line item titled “Inventory-fuel” in the Financial Statements.

Northern States Power Company

EXHIBIT B					
SAMPLE CALCULATION OF FUEL INVENTORY VALUE					
Biomass Fuel Inventory Value ¹	Tons	Fuel Cost	Transport Cost	Total Cost	
Contract Biomass ²	29,596	\$ 225,339.16	\$ 1,352,239.15	\$ 1,577,578.31	
Spot Biomass ²	4,755	\$ 10,240.30	\$ 161,909.08	\$ 172,149.38	
Contract Biomass ³	31,782	\$ 234,133.75	\$ 1,445,045.76	\$ 1,679,179.51	
Spot Biomass ³	4,079	\$ 8,530.72	\$ 143,299.71	\$ 151,830.43	
Total	70,212	\$ 478,243.93	\$ 3,102,493.70	\$ 3,580,737.63	
	A	B	C		
Average Biomass Fuel (\$/ton)	\$ 6.81	= B / A			
Average Biomass Transport (\$/ton)	\$ 44.19	= C / A			
Total Average Biomass Fuel and Transport (\$/ton)	\$ 51.00	D			
Biomass Inventory Amount Close Balance (tons)	11,257	E			
Total Biomass Estimated Inventory Value (\$)	\$ 574,109	= D x E			
Litter Fuel Inventory Value ¹					
Costs	Tons	Fuel Cost (\$)	Transport Cost (\$)	Total Cost (\$)	
Contract Litter ²	7,671	\$ 55,080.80	\$ 242,054.41	\$ 297,135.21	
Contract Litter ³	19,163	\$ 153,978.20	\$ 559,716.06	\$ 713,694.26	
Total	26,834	\$ 209,059.00	\$ 801,770.47	\$ 1,010,829.47	
	F	G	H		
Average Litter Fuel (\$/ton)	\$ 7.79	= G / F			
Average Litter Transport (\$/ton)	\$ 29.88	= H / F			
Total Average Litter Fuel and Transport (\$/ton)	\$ 37.67	I			
Litter Inventory Amount Close Balance (tons)	6,206	J			
Total Litter Estimated Inventory Value (\$)	\$ 233,770	= I x J			
Fuel Inventory Value (Biomass + Litter)					
Fuel Inventory Amount (Biomass + Litter) Close Balance (tons)	17,463	= E + J			
Fuel Inventory Value (Biomass + Litter) (\$)	\$ 807,878.71	= (D x E) + (I x J)			
Fuel Inventory Amount (tons) vs. Fuel Inventory Amount Close Balance (tons)					
Biomass Inventory Amount Close Balance (tons)	11,257	E	64.46%	= E / K	
Litter Inventory Amount Close Balance (tons)	6,206	J	35.54%	= J / K	
Biomass and Litter Inventory Amount Close Balance (tons)	17,463	= E + J = K	100.00%		
Target Fuel Inventory Amount (tons)	17,000	L			
Surplus/(Deficit)	463	= K - L = M			
Fuel Inventory Value of Surplus/(Deficit)	\$ 21,422.15	= (M x (E / K) x D) + (M x (J / K) x I)			
Notes					
¹ For illustrative purposes, aggregate fuel data (tons, fuel cost, and transportation cost) for the months of September 2016 and August 2016 have been utilized for the sample calculation of Fuel Inventory Value.					
² Represents the actual tons, fuel costs and transport costs for September 2016.					
³ Represents the actual tons, fuel costs and transport costs for August 2016.					

Northern States Power Company

EXHIBIT C

SAMPLE CALCULATION OF SPARE PARTS INVENTORY VALUE

A summary calculation of the Spare Parts Inventory Value as of September 30, 2016, is attached. The actual Spare Parts Inventory Value as of the Closing Date will be calculated (i) using the same methodologies as used in this summary and (ii) in accordance with GAAP, applying the same accounting treatment and methodologies as used for the line item titled “Inventory-spare parts” in the Financial Statements.

Northern States Power Company

Date	10/03/2016	Inventory Value by Stockroom	Time	06:24 PM
	Total for stockroom BOILER	\$ 123,289.5280		
	Total for stockroom I_AND_E	\$ 184,077.1576		
	Total for stockroom MAIN_STORES	\$ 1,118,278.0227		
	Total for stockroom MAINT	\$ 415.0000		
	Total for stockroom NAF_CONVEYOR_PARTS	\$ 0.0000		
	Total for stockroom NAF0	\$ 13,830.3428		
	Total for stockroom ODOR_CONTROL_ROOM	\$ 166,306.1700		
	Total for stockroom TEMP_STOCKROOM	\$ 292,509.6000		
	Total for stockroom TEMP_STORES	\$ 0.0000		
	Total for stockroom TURBINE_DECK	\$ 86,500.0000		
	Total for stockroom TURBINE_FLOOR	\$ 231,293.5700		
	Total for stockroom WATER_TREATMENT	\$ 0.0000		
	Total for Site MAIN	\$ 2,216,499.3912		
	Total Value of Inventory	\$ 2,216,499.3912		

Benson Power LLC

End Of Report

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Northern States Power Company

EXHIBIT D

ESCROW AGREEMENT

This ESCROW AGREEMENT dated this ____ day of _____, 20__ (the “**Escrow Agreement**”), is entered into by and among Northern States Power Company, a Minnesota corporation (the “**Buyer**”), Benson Power, LLC, a Delaware limited liability company (the “**Company**,” and together with the Buyer, the “**Parties**,” and individually, a “**Party**”), and Wells Fargo Bank, National Association, a national banking association organized under the laws of the United States, as escrow agent (“**Escrow Agent**”).

RECITALS

A. The Buyer and the Company are parties to that certain Asset Purchase and Sale Agreement dated as of February 3, 2017 (the “**Purchase Agreement**”), pursuant to which the Company is selling to the Buyer substantially all of the assets of the Company. Capitalized terms used but not otherwise defined herein shall have the meanings given to such terms in the Purchase Agreement.

B. In connection with the transactions contemplated thereby, the Buyer and the Company have agreed to enter into this Escrow Agreement and deposit an amount of \$12,000,000 in cash (the “**Escrow Amount**”) with the Escrow Agent as (i) partial security for satisfaction of any adjustment to the Purchase Price in favor of the Buyer pursuant to Section 2.4 of the Purchase Agreement, (ii) exclusive security for any indemnification obligations of the Company under Sections 10.2(a) and 10.2(b) of the Purchase Agreement and (iii) partial security for any indemnification obligations of the Company under Sections 10.2(c) and 10.2(d) of the Purchase Agreement.

C. The Escrow Agent agrees to hold and distribute such funds in accordance with the terms of this Escrow Agreement.

D. The Parties acknowledge that the Escrow Agent is not a party to, is not bound by, and has no duties or obligations under, the Purchase Agreement, that all references in this Escrow Agreement to the Purchase Agreement are for convenience, and that the Escrow Agent shall have no implied duties beyond the express duties set forth in this Escrow Agreement.

In consideration of the promises and agreements of the Parties and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties and the Escrow Agent agree as follows:

ARTICLE 1 ESCROW DEPOSIT

Section 1.1. Receipt of Escrow Property. Following execution hereof, the Buyer shall deliver to the Escrow Agent the Escrow Amount (together with any investment earnings and income thereon, the “**Escrow Property**”) in immediately available funds.

Northern States Power Company

Section 1.2. Investments.

(a) The Escrow Agent is authorized and directed to deposit, transfer, hold and invest the Escrow Property as set forth in Exhibit A hereto or as set forth in any subsequent written instruction signed by the Company. Any investment earnings and income on the Escrow Property shall become part of the Escrow Property, and shall be disbursed in accordance with Section 1.3 or Section 1.6 of this Escrow Agreement.

(b) The Escrow Agent is hereby authorized and directed to sell or redeem any such investments as it deems necessary to make any payments or distributions required under this Escrow Agreement. The Escrow Agent shall have no responsibility or liability for any loss which may result from any investment or sale of investment made pursuant to this Escrow Agreement. The Escrow Agent is hereby authorized, in making or disposing of any investment permitted by this Escrow Agreement, to deal with itself (in its individual capacity) or with any one or more of its affiliates, whether it or any such affiliate is acting as agent of the Escrow Agent or for any third person or dealing as principal for its own account. The Parties acknowledge that the Escrow Agent is not providing investment supervision, recommendations, or advice.

(c) The Parties agree that confirmations of permitted investments are not required to be issued by the Escrow Agent for each month in which a monthly statement is rendered. No statement need be rendered for any fund or account if no activity occurred in such fund or account during such month.

Section 1.3. Disbursements.

(a) The Escrow Agent shall disburse all or any portion of the Escrow Property at any time and from time to time, upon receipt of, and in accordance with, a written direction executed by the Buyer and the Company and directing the Escrow Agent to disburse all or a portion of the Escrow Property (a “**Joint Instruction**”). Such Joint Instruction shall include directions to disburse funds in accordance with payment instructions set forth therein, including wiring instructions or an address to which a check shall be sent. Prior to any disbursements of the Escrow Property, the Escrow Agent shall have received (i) reasonable identifying information regarding the recipient such that Escrow Agent may comply with its regulatory obligations and reasonable business practices, including without limitation a properly completed United States Internal Revenue Service (“IRS”) Form W-9 or Form W-8, as applicable and (ii) if such disbursement is to be made without a Joint Instruction in accordance with Section 1.3(c) or 1.3(d) below, payment instructions of the recipient, including wiring instructions or an address to which a check shall be sent.

(b) If the Final Closing Date Purchase Price is less than the Estimated Closing Date Purchase Price and the Buyer elects to be paid from the Escrow Property pursuant to and in accordance with Section 2.4 of the Purchase Agreement (“**Purchase Price Adjustment**”), then, within five (5) days after the final determination of the Closing Date Statement, the Company and the Buyer shall deliver to the Escrow Agent a Joint Instruction authorizing the Escrow Agent

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to release to the Buyer an amount equal to such shortfall. Promptly following receipt of such Joint Instruction, the Escrow Agent shall release to the Buyer such amount of the Escrow Property in accordance with such Joint Instruction.

(c) At any time and from time to time on or prior to the date that is twenty-four (24) months from the date hereof (such period, the “**Escrow Period**”), if any Buyer Indemnitee elects to assert a claim for indemnification pursuant to and in accordance with Section 10.5 of the Purchase Agreement related to a claim by a third party (a “**Third Party Claim**”), the Buyer shall deliver to the Escrow Agent and the Company a written notice setting forth a description and the amount of such Third Party Claim (a “**Third Party Claim Notice**”). The Escrow Agent shall not distribute any portion of the Escrow Property that is the subject of a Third Party Claim until the Escrow Agent receives either (i) a Joint Instruction authorizing the Escrow Agent to release to the applicable Buyer Indemnitee the portion of the Escrow Property that is agreed upon as the amount recoverable in respect of such Third Party Claim, or (ii) a final, non-appealable determination by a court of competent jurisdiction (“**Final Determination**”) specifying the amount of such Third Party Claim for which the applicable Buyer Indemnitee is entitled to payment. Subject to Section 3.5 below, promptly following receipt of such Joint Instruction or Final Determination, as applicable, the Escrow Agent shall release to the applicable Buyer Indemnitee such amount of the Escrow Property as is required by such Joint Instruction or Final Determination.

(d) At any time and from time to time on or prior to the expiration of the Escrow Period, if any Buyer Indemnitee elects to assert a claim for indemnification pursuant to and in accordance with Section 10.6 of the Purchase Agreement that does not involve a Third Party Claim (a “**Direct Claim**”), the Buyer shall deliver to the Escrow Agent and the Company a written notice setting forth a description and the amount of such Direct Claim (a “**Direct Claim Notice**”). Within thirty (30) days after the date upon which such Direct Claim Notice is delivered to the Escrow Agent and the Company (such period, the “**Claim Notice Period**”), the Company may advise the Buyer and the Escrow Agent in writing whether the Company objects to some or all of the Direct Claim described in the Direct Claim Notice.

With respect to each Direct Claim, the Escrow Agent shall release to the applicable Buyer Indemnitee from the Escrow Property the full Direct Claim Amount promptly following (i) the expiration of the Claim Notice Delivery Period if the Escrow Agent has not received from the Company a written objection (a “**Claim Response**”) to any or all of the Direct Claim Amount (the “**Contested Amount**”) within the Claim Notice Delivery Period; or (ii) receipt of a Joint Instruction authorizing the Escrow Agent to release the full Direct Claim Amount to such Buyer Indemnitee.

If the Escrow Agent receives from the Buyer a Claim Response prior to the expiration of the Claim Notice Period, the Escrow Agent shall promptly release to the applicable Buyer Indemnitee from the Escrow Property an amount equal to the Direct Claim Amount less the Contested Amount. Thereafter, the Escrow Agent shall not distribute any portion of the Contested Amount until the Escrow Agent receives either (i) a Joint Instruction authorizing the Escrow Agent to release to the applicable Buyer Indemnitee the portion of the Contested Amount that is agreed upon as the amount recoverable in respect of such Direct Claim, or (ii) a Final

Northern States Power Company

Determination specifying the amount of such Direct Claim for which the applicable Buyer Indemnatee is entitled to payment. Subject to Section 3.5 below, promptly following receipt of such Joint Instruction or Final Determination, as applicable, the Escrow Agent shall release to the applicable Buyer Indemnatee such amount of the Escrow Property as is required by such Joint Instruction or Final Determination.

(e) Upon the expiration of the Escrow Period and receipt by the Escrow Agent of a written notice from the Company, the Escrow Agent shall release to the Company the amount of the Escrow Property then remaining, less an amount sufficient to satisfy any remaining unpaid or contested Direct Claims and Third Party Claims (“**Pending Claims**”), if any, for which a Direct Claim Notice or Third Party Claim Notice has been provided by the Buyer prior to expiration of the Escrow Period (such amount to be released, the “**Released Amount**” and the amount so retained, the “**Retained Amount**”). The Escrow Agent shall hold the Retained Amount until the Escrow Agent is required to release all or any portion of such Retained Amount to the Buyer Indemnitees in accordance with the requirements set forth in Section 1.3(c) and 1.3(d) above, as applicable. Following release by the Escrow Agent of the full amount owed to the Buyer Indemnitees, if any, for all Pending Claims in accordance with Sections 1.3(c) and 1.3(d) above, the Escrow Agent shall release to the Company any remaining portion of the Retained Amount that has not been released to the Buyer Indemnitees.

Section 1.4. Security Procedure For Funds Transfers. The Escrow Agent shall confirm each funds transfer instruction received in the name of a Party by means of the security procedure selected by such Party and communicated to the Escrow Agent through a signed certificate in the form of Exhibit B-1 or B-2 attached hereto, which upon receipt by the Escrow Agent shall become a part of this Escrow Agreement. Once delivered to the Escrow Agent, Exhibit B-1 or B-2 may be revised or rescinded only by a writing signed by an authorized representative of the delivering Party. Such revisions or rescissions shall be effective only after actual receipt and following such period of time as may be necessary to afford the Escrow Agent a reasonable opportunity to act on it. If a revised Exhibit B-1 or B-2 or a rescission of an existing Exhibit B-1 or B-2 is delivered to the Escrow Agent by an entity that is a successor-in-interest to such Party, such document shall be accompanied by additional documentation satisfactory to the Escrow Agent showing that such entity has succeeded to the rights and responsibilities of the Party under this Escrow Agreement.

The Parties understand that the Escrow Agent’s inability to receive or confirm funds transfer instructions pursuant to the security procedure selected by such Party may result in a delay in accomplishing such funds transfer, and agree that the Escrow Agent shall not be liable for any loss caused by any such delay.

Section 1.5. Income Tax Allocation and Reporting.

(a) The Buyer shall be treated as the owner of the Escrow Property until the distribution of the Escrow Property (or such portion thereof) as provided in this Escrow Agreement. The Parties agree that, for tax reporting purposes, all interest and other income from investment of the Escrow Property shall, as of the end of each calendar year and to the extent required by the Internal Revenue Service, be reported as having been earned by the Buyer,

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whether or not such income was disbursed during such calendar year. Within 30 days after the end of each calendar year, if the Escrow Property has not been fully distributed by the end of such calendar year, the Escrow Agent shall distribute or cause to be distributed to Buyer an amount equal to forty percent (40%) of the amount of any interest or other income on the Escrow Property earned during such calendar year. Concurrently with the final distribution of the balance of the Escrow Property, the Escrow Agent shall make a tax distribution to the Buyer in an amount equal to forty percent (40%) of the amount of any interest or other income on the Escrow Property earned since the end of the applicable preceding calendar year.

(b) For certain payments made pursuant to this Escrow Agreement, the Escrow Agent may be required to make a “reportable payment” or “withholdable payment” and in such cases the Escrow Agent shall have the duty to act as a payor or withholding agent, respectively, that is responsible for any tax withholding and reporting required under Chapters 3, 4, and 61 of the United States Internal Revenue Code of 1986, as amended (the “Code”). The Escrow Agent shall have the sole right to make the determination as to which payments are “reportable payments” or “withholdable payments.” All parties to this Escrow Agreement shall provide an executed IRS Form W-9 or appropriate IRS Form W-8 (or, in each case, any successor form) to the Escrow Agent prior to the date hereof, and shall promptly update any such form to the extent such form becomes obsolete or inaccurate in any respect. The Escrow Agent shall have the right to request from any party to this Escrow Agreement, or any other person or entity entitled to payment hereunder, any additional forms, documentation or other information as may be reasonably necessary for the Escrow Agent to satisfy its reporting and withholding obligations under the Code. To the extent any such forms to be delivered under this Section 1.5(b) are not provided prior to the date hereof or by the time the related payment is required to be made or are determined by the Escrow Agent to be incomplete and/or inaccurate in any respect, the Escrow Agent shall be entitled to withhold (without liability) a portion of any interest or other income earned on the investment of the Escrow Property or on any such payments hereunder to the extent withholding is required under Chapters 3, 4, or 61 of the Code, and shall have no obligation to gross up any such payment.

(c) To the extent that the Escrow Agent becomes liable for the payment of any taxes in respect of income derived from the investment of the Escrow Property, the Escrow Agent shall satisfy such liability to the extent possible from the Escrow Property. The Parties, jointly and severally, shall indemnify, defend and hold the Escrow Agent harmless from and against any tax, late payment, interest, penalty or other cost or expense that may be assessed against the Escrow Agent on or with respect to the Escrow Property and the investment thereof unless such tax, late payment, interest, penalty or other expense was directly caused by the gross negligence or willful misconduct of the Escrow Agent. The indemnification provided by this Section 1.5(c) is in addition to the indemnification provided in Section 3.1 and shall survive the resignation or removal of the Escrow Agent and the termination of this Escrow Agreement.

(d) The Parties hereto acknowledge that, in order to help fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions, including the Escrow Agent, to obtain, verify and record information that identifies each person or corporation who opens an account and /or enters into a business relationship. The Parties hereby agree that they shall provide the Escrow Agent with such information as the Escrow Agent may request

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including, but not limited to, each Party's name, physical address, tax identification number and other information that will assist the Escrow Agent to identify and verify each Party's identity such as organizational documents, certificates of good standing, license to do business, or other pertinent identifying information.

Section 1.6. Termination. This Escrow Agreement shall terminate upon the disbursement of all of the Escrow Property, except that the provisions of Sections 1.5(c), 3.1 and 3.2 hereof shall survive termination and the Escrow Agent is authorized and directed to disburse the Escrow Property in accordance with Section 1.3 of this Escrow Agreement.

ARTICLE 2 DUTIES OF THE ESCROW AGENT

Section 2.1. Scope of Responsibility. Notwithstanding any provision to the contrary, the Escrow Agent is obligated only to perform the duties specifically set forth in this Escrow Agreement, which shall be deemed purely ministerial in nature. Under no circumstance will the Escrow Agent be deemed to be a fiduciary to any Party or any other person under this Escrow Agreement. The Escrow Agent will not be responsible or liable for the failure of any Party to perform in accordance with this Escrow Agreement. The Escrow Agent shall neither be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument, or document other than this Escrow Agreement, whether or not an original or a copy of such agreement has been provided to the Escrow Agent; and the Escrow Agent shall have no duty to know or inquire as to the performance or nonperformance of any provision of any such agreement, instrument, or document. References in this Escrow Agreement to any other agreement, instrument, or document are for the convenience of the Parties, and the Escrow Agent has no duties or obligations with respect thereto. The Escrow Agent will not be responsible to determine or to make inquiry into any term, capitalized, or otherwise, not defined herein. This Escrow Agreement sets forth all matters pertinent to the escrow contemplated hereunder, and no additional obligations of the Escrow Agent shall be inferred or implied from the terms of this Escrow Agreement or any other agreement.

Section 2.2. Attorneys and Agents. The Escrow Agent shall be entitled to rely on and shall not be liable for any action taken or omitted to be taken by the Escrow Agent in accordance with the advice of counsel or other professionals retained or consulted by the Escrow Agent. The Escrow Agent shall be reimbursed as set forth in Section 3.1 for any and all compensation (fees, expenses and other costs) paid and/or reimbursed to such counsel and/or professionals. The Escrow Agent may perform any and all of its duties through its agents, representatives, attorneys, custodians, and/or nominees. The Escrow Agent shall not be responsible for the negligence or misconduct of agents or attorneys appointed by it with reasonable care.

Section 2.3. Reliance. The Escrow Agent shall not be liable for any action taken or not taken by it in accordance with the direction or consent of the Parties or their respective agents, representatives, successors, or assigns. The Escrow Agent shall not be liable for acting or refraining from acting upon any notice, request, consent, direction, requisition, certificate, order, affidavit, letter, or other paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons, without further inquiry into the person's or

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persons' authority. Concurrent with the execution of this Escrow Agreement, the Parties shall deliver to the Escrow Agent Exhibit B-1 and B-2, which contain authorized signer designations in Part I thereof.

Section 2.4. Right Not Duty Undertaken. The permissive rights of the Escrow Agent to do things enumerated in this Escrow Agreement shall not be construed as duties.

Section 2.5. No Financial Obligation. No provision of this Escrow Agreement shall require the Escrow Agent to risk or advance its own funds or otherwise incur any financial liability or potential financial liability in the performance of its duties or the exercise of its rights under this Escrow Agreement.

ARTICLE 3

PROVISIONS CONCERNING THE ESCROW AGENT

Section 3.1. Indemnification. The Parties, jointly and severally, shall indemnify, defend and hold harmless the Escrow Agent from and against any and all loss, liability, cost, damage and expense, including, without limitation, attorneys' fees and expenses or other professional fees and expenses which the Escrow Agent may suffer or incur by reason of any action, claim or proceeding brought against the Escrow Agent, arising out of or relating in any way to this Escrow Agreement or any transaction to which this Escrow Agreement relates ("Indemnity Damages"), unless such loss, liability, cost, damage or expense shall have been finally adjudicated to have been directly caused by the willful misconduct or gross negligence of the Escrow Agent. The provisions of this Section 3.1 shall survive the resignation or removal of the Escrow Agent and the termination of this Escrow Agreement. Notwithstanding the foregoing, if the Buyer or the Company pays more than one half of any Indemnity Damages, such paying Party shall have a right of contribution from the other Party, except to the extent that the Indemnity Damages incurred by the Escrow Agent were caused by the breach of contract, negligence, or other unlawful act of the party seeking contribution.

Section 3.2. Limitation of Liability. THE ESCROW AGENT SHALL NOT BE LIABLE, DIRECTLY OR INDIRECTLY, FOR ANY (I) DAMAGES, LOSSES OR EXPENSES ARISING OUT OF THE SERVICES PROVIDED HEREUNDER, OTHER THAN DAMAGES, LOSSES OR EXPENSES WHICH HAVE BEEN FINALLY ADJUDICATED TO HAVE DIRECTLY RESULTED FROM THE ESCROW AGENT'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (II) SPECIAL, INDIRECT, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR LOSSES OF ANY KIND WHATSOEVER (INCLUDING WITHOUT LIMITATION LOST PROFITS), EVEN IF THE ESCROW AGENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES AND REGARDLESS OF THE FORM OF ACTION.

Section 3.3. Resignation or Removal. The Escrow Agent may resign by furnishing written notice of its resignation to the Parties, and the Parties may remove the Escrow Agent by furnishing to the Escrow Agent a joint written notice of its removal along with payment of all fees and expenses to which the Escrow Agent is entitled through the date of removal. Such resignation or removal, as the case may be, shall be effective thirty (30) calendar days after the delivery of such notice or upon the earlier appointment of a successor, and the Escrow Agent's

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sole responsibility thereafter shall be to safely keep the Escrow Property and to deliver the same to a successor escrow agent as shall be appointed by the Parties, as evidenced by a joint written notice filed with the Escrow Agent or in accordance with a court order. If the Parties have failed to appoint a successor escrow agent prior to the expiration of thirty (30) calendar days following the delivery of such notice of resignation or removal, the Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon the Parties.

Section 3.4. Compensation. The Escrow Agent shall be entitled to compensation for its services as stated in the fee schedule attached hereto as Exhibit C, which compensation shall be paid by the Parties, jointly and severally; provided, that, notwithstanding the joint and several nature of their obligations to Escrow Agent, the Buyer and the Company agree between themselves that each will be responsible for one-half of the Escrow Agent's compensation. The fee agreed upon for the services rendered hereunder is intended as full compensation for the Escrow Agent's services as contemplated by this Escrow Agreement; provided, however, that in the event that the conditions for the disbursement of funds under this Escrow Agreement are not fulfilled, or the Escrow Agent renders any service not contemplated in this Escrow Agreement, or there is any assignment of interest in the subject matter of this Escrow Agreement, or any material modification hereof, or if any material controversy arises hereunder, or the Escrow Agent is made a party to any litigation pertaining to this Escrow Agreement or the subject matter hereof, then the Escrow Agent shall be compensated for such extraordinary services and reimbursed for all costs and expenses (which shall be paid equally by the Parties), including reasonable attorneys' fees and expenses, occasioned by any such delay, controversy, litigation or event. If any amount due to the Escrow Agent hereunder is not paid within thirty (30) calendar days of the date due, the Escrow Agent in its sole discretion may charge interest on such amount up to the highest rate permitted by applicable law. The Escrow Agent shall have, and is hereby granted, a prior lien upon the Escrow Property with respect to its unpaid fees, non-reimbursed expenses and unsatisfied indemnification rights, superior to the interests of any other persons or entities and is hereby granted the right to set off and deduct any unpaid fees, non-reimbursed expenses and unsatisfied indemnification rights from the Escrow Property.

Section 3.5. Disagreements. If any conflict, disagreement or dispute arises between, among, or involving any of the parties hereto concerning the meaning or validity of any provision hereunder or concerning any other matter relating to this Escrow Agreement, or the Escrow Agent is in doubt as to the action to be taken hereunder, the Escrow Agent may, at its option, retain the Escrow Property until the Escrow Agent (i) receives a Final Determination directing delivery of the Escrow Property, (ii) receives a Joint Instruction directing delivery of the Escrow Property, in which event the Escrow Agent shall be authorized to disburse the Escrow Property in accordance with such Final Determination of Joint Instruction, or (iii) files an interpleader action in any court of competent jurisdiction, and upon the filing thereof, the Escrow Agent shall be relieved of all liability as to the Escrow Property and shall be entitled to recover attorneys' fees, expenses and other costs incurred in commencing and maintaining any such interpleader action. Any such Final Determination shall be accompanied by a written instrument of the presenting Party certifying that such court order or arbitration decision is final, non-appealable and from a court of competent jurisdiction or from a competent arbitration panel, upon which instrument the Escrow Agent shall be entitled to conclusively rely without further investigation.

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The Escrow Agent shall be entitled to act on any such Final Determination without further question, inquiry, or consent.

Section 3.6. Merger or Consolidation. Any corporation or association into which the Escrow Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which the Escrow Agent is a party, shall be and become the successor escrow agent under this Escrow Agreement and shall have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act.

Section 3.7. Attachment of Escrow Property; Compliance with Legal Orders. In the event that any Escrow Property shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the Escrow Property, the Escrow Agent is hereby expressly authorized, in its sole discretion, to respond as it deems appropriate or to comply with all writs, orders or decrees so entered or issued, or which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction. In the event that the Escrow Agent obeys or complies with any such writ, order or decree it shall not be liable to any of the Parties or to any other person, firm or corporation, should, by reason of such compliance notwithstanding, such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated. The Escrow Agent shall further have no obligation to pursue any action that is not in accordance with applicable law.

Section 3.8 Force Majeure. The Escrow Agent shall not be responsible or liable for any failure or delay in the performance of its obligation under this Escrow Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; fire; flood; wars; acts of terrorism; civil or military disturbances; sabotage; epidemic; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications services; accidents; labor disputes; acts of civil or military authority or governmental action; it being understood that the Escrow Agent shall use commercially reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

ARTICLE 4 MISCELLANEOUS

Section 4.1. Binding Agreement, Successors and Assigns. The Parties and Escrow Agent represent and warrant that the execution and delivery of this Escrow Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Escrow Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms. This Escrow Agreement shall be binding on and inure to the benefit of the Parties and the Escrow Agent and their respective successors and permitted assigns. No other persons shall have any rights under this Escrow Agreement. No assignment of the interest of any of the Parties shall be binding unless and until written notice of such assignment shall be

Northern States Power Company

delivered to the other Party and the Escrow Agent and shall require the prior written consent of the other Party and the Escrow Agent (such consent not to be unreasonably withheld).

Section 4.2. Escheat. The Parties are aware that under applicable state law, property which is presumed abandoned may under certain circumstances escheat to the applicable state. The Escrow Agent shall have no liability to the Parties, their respective heirs, legal representatives, successors and assigns, or any other party, should any or all of the Escrow Property escheat by operation of law.

Section 4.3. Notices. All notices, requests, demands, and other communications required under this Escrow Agreement shall be in writing, in English, and shall be deemed to have been duly given if delivered (a) personally, (b) by facsimile transmission with written confirmation of receipt, (c) on the day of transmission if sent by electronic mail (“e-mail”, as long as such e-mail is accompanied by a PDF signature or similar version of the relevant document bearing an authorized signature, which such signature shall, in the case of each of the parties, be a signature set forth in Exhibit B-1 or B-2, as applicable) to the e-mail address given below, and written confirmation of receipt is obtained promptly after completion of transmission, (d) by overnight delivery with a reputable national overnight delivery service, or (e) by mail or by certified mail, return receipt requested, and postage prepaid. If any notice is mailed, it shall be deemed given five (5) Business Days after the date such notice is deposited in the United States mail. For the purpose of this Escrow Agreement, “Business Day” shall mean any day other than a Saturday, a Sunday, a federal or state holiday, and any other day on which the Escrow Agent is closed. If notice is given to a party, it shall be given at the address for such party set forth below. It shall be the responsibility of the Parties to notify the Escrow Agent and the other Party in writing of any name or address changes. In the case of communications delivered to the Escrow Agent, such communications shall be deemed to have been given on the date received by the Escrow Agent.

If to the Company:

Benson Power, LLC
c/o Competitive Power Ventures, Inc.
50 Braintree Hill Office Park
Suite 300
Braintree, MA 02184
Attn: Donald Atwood
Fax: 781-848-5804

with a copy, which does not constitute notice, to:

Gray, Plant, Mooty, Mooty & Bennett, P.A.
500 IDS Center
80 South 8th Street
Minneapolis, MN 55402
Attn: Mark D. Williamson, Esq.
Fax: 612-632-4379

Northern States Power Company

If to the Buyer:

Attention:

Telephone:

Facsimile:

E-mail:

If to the Escrow Agent:

Wells Fargo Bank, National Association

600 S. 4th Street, 6th Floor

Minneapolis, MN 55479

Attention: Lynn Lean

Telephone: 612-667-2528 Facsimile: 612-478-5380

E-mail: lynn.lean@wellsfargo.com

Section 4.4. Governing Law. This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

Section 4.5. Entire Agreement. This Escrow Agreement and the exhibits hereto, and, as between the Buyer and the Company, the Purchase Agreement, set forth the entire agreement and understanding of the parties related to the Escrow Property.

Section 4.6. Amendment. This Escrow Agreement may be amended, modified, superseded, rescinded, or canceled only by a written instrument executed by the Parties and the Escrow Agent.

Section 4.7. Waivers. The failure of any party to this Escrow Agreement at any time or times to require performance of any provision under this Escrow Agreement shall in no manner affect the right at a later time to enforce the same performance. A waiver by any party to this Escrow Agreement of any such condition or breach of any term, covenant, representation, or warranty contained in this Escrow Agreement, in any one or more instances, shall neither be construed as a further or continuing waiver of any such condition or breach nor a waiver of any other condition or breach of any other term, covenant, representation, or warranty contained in this Escrow Agreement.

Section 4.8. Headings. Section headings of this Escrow Agreement have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions of this Escrow Agreement.

Section 4.9. Counterparts. This Escrow Agreement may be executed in one or more counterparts, each of which when executed shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument. The exchange of copies of this Escrow Agreement and of signature pages by facsimile or by electronic image scan

Northern States Power Company

transmission in .pdf format shall constitute effective execution and delivery of this Escrow Agreement as to the Parties and the Escrow Agent and may be used in lieu of the original Escrow Agreement for all purposes.

Section 4.10. Trial by Jury. Each of the parties hereto hereby irrevocably waives all right to trial by jury to the extent permitted by law in any litigation, action, proceeding in any court arising out of, relating to or in connection with this Escrow Agreement.

Section 4.11. Publication; Disclosure. By executing this Escrow Agreement, the Parties and the Escrow Agent acknowledge that this Escrow Agreement (including related attachments) contains certain information that is sensitive and confidential in nature and agree that such information needs to be protected from improper disclosure, including the publication or dissemination of this Escrow Agreement and related information to individuals or entities not a party to this Escrow Agreement. The Parties further agree to take reasonable measures to mitigate any risks associated with the publication or disclosure of this Escrow Agreement and information contained therein, including, without limitation, the redaction of the manual signatures of the signatories to this Escrow Agreement, or, in the alternative, publishing a conformed copy of this Escrow Agreement. If a Party must disclose or publish this Escrow Agreement or information contained therein pursuant to any regulatory, statutory, or governmental requirement, as well as any judicial, or administrative order, subpoena or discovery request, it shall notify in writing the other Party and the Escrow Agent at the time of execution of this Escrow Agreement of the legal requirement to do so. If any Party becomes aware of any threatened or actual unauthorized disclosure, publication or use of this Escrow Agreement, that Party shall promptly notify in writing the other Party and the Escrow Agent and shall be liable for any unauthorized release or disclosure.

[The remainder of this page left intentionally blank.]

Northern States Power Company

IN WITNESS WHEREOF, this Escrow Agreement has been duly executed as of
the date first written above.

NORTHERN STATES POWER
COMPANY

By: _____

Name: _____

Title: _____

BENSON POWER, LLC

By: _____

Name: _____

Title: _____

WELLS FARGO BANK, NATIONAL
ASSOCIATION, as Escrow Agent

By: _____

Name: _____

Title: _____

Northern States Power Company

EXHIBIT A

**Agency and Custody Account Direction
For Cash Balances
Wells Fargo Money Market Deposit Accounts**

Direction to use the following Wells Fargo Money Market Deposit Accounts for Cash Balances for the escrow account or accounts (the “**Account**”) established under the Escrow Agreement to which this Exhibit A is attached.

You are hereby directed to deposit, as indicated below, or as I shall direct further in writing from time to time, all cash in the Account in the following money market deposit account of Wells Fargo Bank, National Association:

Wells Fargo Money Market Deposit Account (MMDA)

I understand that amounts on deposit in the MMDA are insured, subject to the applicable rules and regulations of the Federal Deposit Insurance Corporation (FDIC), in the basic FDIC insurance amount of \$250,000 per depositor, per insured bank. This includes principal and accrued interest up to a total of \$250,000.

I acknowledge that I have full power to direct investments of the Account.

I understand that I may change this direction at any time and that it shall continue in effect until revoked or modified by me by written notice to you.

Northern States Power Company

EXHIBIT B-1

Northern States Power Company (the “**Buyer**”) certifies that the names, titles, telephone numbers, e-mail addresses and specimen signatures set forth in Parts I and II of this Exhibit B-1 identify the persons authorized to provide direction and initiate or confirm transactions, including funds transfer instructions, on behalf of the Buyer, and that the option checked in Part III of this Exhibit B-1 is the security procedure selected by the Buyer for use in verifying that a funds transfer instruction received by the Escrow Agent is that of the Buyer.

The Buyer has reviewed each of the security procedures and has determined that the option checked in Part III of this Exhibit B-1 best meets its requirements; given the size, type and frequency of the instructions it will issue to the Escrow Agent. By selecting the security procedure specified in Part III of this Exhibit B-1, the Buyer acknowledges that it has elected to not use the other security procedures described and agrees to be bound by any funds transfer instruction, whether or not authorized, issued in its name and accepted by the Escrow Agent in compliance with the particular security procedure chosen by the Buyer.

NOTICE: The security procedure selected by the Buyer will not be used to detect errors in the funds transfer instructions given by the Buyer. If a funds transfer instruction describes the beneficiary of the payment inconsistently by name and account number, payment may be made on the basis of the account number even if it identifies a person different from the named beneficiary. If a funds transfer instruction describes a participating financial institution inconsistently by name and identification number, the identification number may be relied upon as the proper identification of the financial institution. Therefore, it is important that the Buyer take such steps as it deems prudent to ensure that there are no such inconsistencies in the funds transfer instructions it sends to the Escrow Agent.

Part I

Name, Title, Telephone Number, Electronic Mail (“e-mail”) Address and Specimen Signature for person(s) designated to provide direction, including but not limited to funds transfer instructions, and to otherwise act on behalf of Northern States Power Company

<u>Name</u>	<u>Title</u>	<u>Telephone Number</u>	<u>E-mail Address</u>	<u>Specimen Signature</u>
Mariama Larson	Senior Cash Management Analyst	612.215.5386	mariama.larson@xcelenergy.com	_____
Gary Seiner	Senior Cash Management Analyst	612.215.5389	gary.m.seiner@xcelenergy.com	_____
Kelly Triemert	Cash Management Analyst	612-215-5388	kelly.triemert@xcelenergy.com	_____
Elizabeth M. Dullum	Treasury Cash Management Analyst	612-215-5387	elizabeth.m.dullum@xcelenergy.com	_____
Eric V. Gray	Director, Cash Management	612.215.5363	eric.v.gray@xcelenergy.com	_____

Part II

Name, Title, Telephone Number and E-mail Address for person(s) designated to confirm funds transfer instructions

<u>Name</u>	<u>Title</u>	<u>Telephone Number</u>	<u>E-mail Address</u>
Mariama Larson	Senior Cash Management Analyst	612.215.5386	mariama.larson@xcelenergy.com
Gary Seiner	Senior Cash Management Analyst	612.215.5389	gary.m.seiner@xcelenergy.com
Kelly Triemert	Cash Management Analyst	612-215-5388	kelly.triemert@xcelenergy.com
Elizabeth M. Dullum	Treasury Cash Management Analyst	612-215-5387	elizabeth.m.dullum@xcelenergy.com
Eric V. Gray	Director, Cash Management	612.215.5363	eric.v.gray@xcelenergy.com

Northern States Power Company

Part III

Means for delivery of instructions and/or confirmations

The security procedure to be used with respect to funds transfer instructions is checked below:

- ☒ Option 1. Confirmation by telephone call-back. The Escrow Agent shall confirm funds transfer instructions by telephone call-back to a person at the telephone number designated on Part II above. The person confirming the funds transfer instruction shall be a person other than the person from whom the funds transfer instruction was received, unless only one person is designated in both Parts I and II of this Exhibit B-1.
- ☒ CHECK box, if applicable:
If the Escrow Agent is unable to obtain confirmation by telephone call-back, the Escrow Agent may, at its discretion, confirm by e-mail, as described in Option 2.
- ☐ Option 2. Confirmation by e-mail. The Escrow Agent shall confirm funds transfer instructions by e-mail to a person at the e-mail address specified for such person in Part II of this Exhibit B-1. The person confirming the funds transfer instruction shall be a person other than the person from whom the funds transfer instruction was received, unless only one person is designated in both Parts I and II of this Exhibit B-1. The Buyer understands the risks associated with communicating sensitive matters, including time sensitive matters, by e-mail. The Buyer further acknowledges that instructions and data sent by e-mail may be less confidential or secure than instructions or data transmitted by other methods. The Escrow Agent shall not be liable for any loss of the confidentiality of instructions and data prior to receipt by the Escrow Agent.
- ☐ CHECK box, if applicable:
If the Escrow Agent is unable to obtain confirmation by e-mail, the Escrow Agent may, at its discretion, confirm by telephone call-back, as described in Option 1.
- ☐ *Option 3. Delivery of funds transfer instructions by password protected file transfer system only - no confirmation. The Escrow Agent offers the option to deliver funds transfer instructions through a password protected file transfer system. If the Buyer wishes to use the password protected file transfer system, further instructions will be provided by the Escrow Agent. If the Buyer chooses this Option 3, it agrees that no further confirmation of funds transfer instructions will be performed by the Escrow Agent.
- ☐ *Option 4. Delivery of funds transfer instructions by password protected file transfer system with confirmation. Same as Option 3 above, but the Escrow Agent shall confirm funds transfer instructions by ☐ telephone call-back or ☐ e-mail (must check at least one, may check both) to a person at the telephone number or e-mail address designated on Part II above. By checking a box in the prior sentence, the party shall be deemed to have agreed to the terms of such confirmation option as more fully described in Option 1 and Option 2 above.

**The password protected file system has a password that expires every 60 days. If you anticipate having infrequent activity on this account, please consult with your Escrow Agent before selecting this option.*

Dated this ____ day of _____, 20__.

By _____
Name:
Title:

Northern States Power Company

EXHIBIT B-2

Benson Power, LLC (the “**Company**”) certifies that the names, titles, telephone numbers, e-mail addresses and specimen signatures set forth in Parts I and II of this Exhibit B-2 identify the persons authorized to provide direction and initiate or confirm transactions, including funds transfer instructions, on behalf of the Company, and that the option checked in Part III of this Exhibit B-2 is the security procedure selected by the Company for use in verifying that a funds transfer instruction received by the Escrow Agent is that of the Company.

The Company has reviewed each of the security procedures and has determined that the option checked in Part III of this Exhibit B-2 best meets its requirements; given the size, type and frequency of the instructions it will issue to the Escrow Agent. By selecting the security procedure specified in Part III of this Exhibit B-2, the Company acknowledges that it has elected to not use the other security procedures described and agrees to be bound by any funds transfer instruction, whether or not authorized, issued in its name and accepted by the Escrow Agent in compliance with the particular security procedure chosen by the Company.

NOTICE: The security procedure selected by the Company will not be used to detect errors in the funds transfer instructions given by the Company. If a funds transfer instruction describes the beneficiary of the payment inconsistently by name and account number, payment may be made on the basis of the account number even if it identifies a person different from the named beneficiary. If a funds transfer instruction describes a participating financial institution inconsistently by name and identification number, the identification number may be relied upon as the proper identification of the financial institution. Therefore, it is important that the Company take such steps as it deems prudent to ensure that there are no such inconsistencies in the funds transfer instructions it sends to the Escrow Agent.

Part I

Name, Title, Telephone Number, Electronic Mail (“e-mail”) Address and Specimen Signature for person(s) designated to provide direction, including but not limited to funds transfer instructions, and to otherwise act on behalf of Benson Power, LLC

<u>Name</u>	<u>Title</u>	<u>Telephone Number</u>	<u>E-mail Address</u>	<u>Specimen Signature</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Part II

Name, Title, Telephone Number and E-mail Address for person(s) designated to confirm funds transfer instructions

<u>Name</u>	<u>Title</u>	<u>Telephone Number</u>	<u>E-mail Address</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Northern States Power Company

Part III

Means for delivery of instructions and/or confirmations

The security procedure to be used with respect to funds transfer instructions is checked below:

- ☐ Option 1. Confirmation by telephone call-back. The Escrow Agent shall confirm funds transfer instructions by telephone call-back to a person at the telephone number designated on Part II above. The person confirming the funds transfer instruction shall be a person other than the person from whom the funds transfer instruction was received, unless only one person is designated in both Parts I and II of this Exhibit B-2.
- ☐ CHECK box, if applicable:
If the Escrow Agent is unable to obtain confirmation by telephone call-back, the Escrow Agent may, at its discretion, confirm by e-mail, as described in Option 2.
- ☐ Option 2. Confirmation by e-mail. The Escrow Agent shall confirm funds transfer instructions by e-mail to a person at the e-mail address specified for such person in Part II of this Exhibit B-2. The person confirming the funds transfer instruction shall be a person other than the person from whom the funds transfer instruction was received, unless only one person is designated in both Parts I and II of this Exhibit B-2. The Company understands the risks associated with communicating sensitive matters, including time sensitive matters, by e-mail. The Company further acknowledges that instructions and data sent by e-mail may be less confidential or secure than instructions or data transmitted by other methods. The Escrow Agent shall not be liable for any loss of the confidentiality of instructions and data prior to receipt by the Escrow Agent.
- ☐ CHECK box, if applicable:
If the Escrow Agent is unable to obtain confirmation by e-mail, the Escrow Agent may, at its discretion, confirm by telephone call-back, as described in Option 1.
- ☐ *Option 3. Delivery of funds transfer instructions by password protected file transfer system only - no confirmation. The Escrow Agent offers the option to deliver funds transfer instructions through a password protected file transfer system. If the Company wishes to use the password protected file transfer system, further instructions will be provided by the Escrow Agent. If the Company chooses this Option 3, it agrees that no further confirmation of funds transfer instructions will be performed by the Escrow Agent.
- ☐ *Option 4. Delivery of funds transfer instructions by password protected file transfer system with confirmation. Same as Option 3 above, but the Escrow Agent shall confirm funds transfer instructions by ☐ telephone call-back or ☐ e-mail (must check at least one, may check both) to a person at the telephone number or e-mail address designated on Part II above. By checking a box in the prior sentence, the party shall be deemed to have agreed to the terms of such confirmation option as more fully described in Option 1 and Option 2 above.

**The password protected file system has a password that expires every 60 days. If you anticipate having infrequent activity on this account, please consult with your Escrow Agent before selecting this option.*

Dated this ____ day of _____, 20__.

By _____
Name:
Title:

Northern States Power Company

EXHIBIT C

FEES OF ESCROW AGENT

Acceptance fee	Waived
A one-time fee for our initial review of governing documents, account set-up and customary duties and responsibilities related to the closing. This fee is payable at closing.	
Annual administration fee	\$3,500
An annual fee for customary administrative services provided by the escrow agent, including daily routine account management; cash management transactions processing (including wire and check processing), disbursement of funds in accordance with the agreement, tax reporting for two entities and providing account statements to the parties. The administration fee is payable annually in advance per escrow account established and is not subject to proration. The first installment of the administrative fee is payable at closing.	
Out-of-pocket expenses	At cost
Out-of-pocket expenses will be billed as incurred at cost at the sole discretion of Wells Fargo.	
Extraordinary services	Standard rate
The charges for performing services not contemplated at the time of execution of the governing documents or not specifically covered elsewhere in this schedule will be at Wells Fargo's rates for such services in effect at the time the expense is incurred. The review of complex tax forms, including by way of example but not limited to IRS Form W-8IMY, shall be considered extraordinary services.	

Assumptions

This proposal is based upon the following assumptions with respect to the role of escrow agent:

- Number of escrow accounts to be established: One (1)
- Amount of escrow: \$12,000,000
- Escrow term: 24 months
- Number of tax reporting parties: One (1)
- Number of parties to the transaction: Three (3) domestic parties including escrow agent
- Number of cash transactions: One deposit and up to five (5) disbursements
- Fees quoted assume all transaction account balances will be held uninvested or invested in select Wells Fargo deposit products.
- Disbursements shall be made only to the parties specified in the agreement. Any payments to other parties are at the sole discretion and subject to the requirements of Wells Fargo and shall be considered extraordinary services.

Terms and conditions

- The recipient acknowledges and agrees that this proposal does not commit or bind Wells Fargo to enter into a contract or any other business arrangement, and that acceptance of the appointment described in this proposal is expressly conditioned on (1) compliance with the requirements of the USA Patriot Act of 2001, described below, (2) satisfactory completion of Wells Fargo's internal account acceptance procedures, (3) Wells Fargo's review of all applicable governing documents and its confirmation that all terms and conditions pertaining to its role are satisfactory to it and (4) execution of the governing documents by all applicable parties.
- Should this transaction fail to close or if Wells Fargo determines not to participate in the transaction, any acceptance fee and any legal fees and expenses may be due and payable.

Northern States Power Company

- Legal counsel fees and expenses, any acceptance fee and any first year annual administrative fee are payable at closing.
- Any annual fee covers a full year or any part thereof and will not be prorated or refunded in a year of early termination.
- Should any of the assumptions, duties or responsibilities of Wells Fargo change, Wells Fargo reserves the right to affirm, modify or rescind this proposal.
- The fees described in this proposal are subject to periodic review and adjustment by Wells Fargo.
- Invoices outstanding for over 30 days are subject to a 1.5% per month late payment penalty.
- This fee proposal is good for 90 days.

Important information about identifying our customers

To help the government fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person (individual, corporation, partnership, trust, estate or other entity recognized as a legal person) for whom we open an account.

What this means for you: Before we open an account, we will ask for your name, address, date of birth (for individuals), TIN/EIN or other information that will allow us to identify you or your company. For individuals, this could mean identifying documents such as a driver's license. For a corporation, partnership, trust, estate or other entity recognized as a legal person, this could mean identifying documents such as a Certificate of Formation from the issuing state agency.

Northern States Power Company

EXHIBIT E

BILL OF SALE

THIS BILL OF SALE (this “**Bill of Sale**”) is entered into effective as of _____, 20__, by Benson Power, LLC, a Delaware limited liability company (the “**Company**”) and Northern States Power Company, a Minnesota corporation (the “**Buyer**”), pursuant to that certain Asset Purchase and Sale Agreement, dated as of February 3, 2017, between the Company and the Buyer (the “**Purchase Agreement**”). All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Purchase Agreement.

1. **Assets Transferred.** The Company hereby sells, transfers, conveys, assigns and delivers to the Buyer all of the Company’s right, title and interest in and to the Acquired Assets, free of any Security Interests (other than Permitted Liens), and the Buyer hereby accepts the sale, transfer, conveyance, assignment and delivery of all right, title and interest in and to all of the Acquired Assets.
2. **Excluded Assets.** Notwithstanding the provisions of Section 1 of this Bill of Sale, the Company is not selling, transferring, conveying, assigning or delivering to the Buyer any of the Company’s right, title and interest in and to the Excluded Assets.
3. **Further Assurances.** The Company agrees, upon the request of the Buyer, to take, or cause to be taken, such action, and to execute and deliver, or cause to be executed and delivered, such additional documents and instruments as may be reasonably necessary, proper or advisable to effect the provisions of this Bill of Sale.
4. **Governing Law; Notice.** This Bill of Sale shall be governed by and construed under the laws of the State of Minnesota without regard to its conflicts of laws principles. The notice provisions set forth in Section 12.7 of the Purchase Agreement shall govern this Bill of Sale.
5. **Binding Effect; Assignment.** This Bill of Sale shall be binding upon, and inure to the benefit of, the Company and the Buyer, and their respective successors and assigns. This Bill of Sale and the rights and obligations arising under this Bill of Sale may not be assigned by the Company or the Buyer without the other’s prior written consent, except that the Buyer may assign this Bill of Sale and its rights and obligations hereunder to any of its Affiliate (provided, that the Buyer shall remain responsible for its obligations hereunder to the extent such obligations are not performed by such Affiliate).
6. **No Modification; Conflicts.** Nothing contained in this Bill of Sale is intended to or shall be construed to modify, alter, amend, expand, interpret, supersede or otherwise change any of the terms, conditions, covenants, warranties, representations or any other provisions of the Purchase Agreement, and this Bill of Sale is subject, in all respects, to the terms and conditions of the Purchase Agreement. To the extent the terms and provisions of this Bill of Sale conflict with the Purchase Agreement, the terms and provisions of the Purchase Agreement shall govern.

Northern States Power Company

7. **Counterparts.** This Bill of Sale may be executed in any number of counterparts, and each such executed counterpart shall be deemed to be an original instrument, but all such executed counterparts together shall constitute one and the same agreement, and this Bill of Sale shall be deemed to have been made, executed, and delivered on the date written above, irrespective of the time or times when the same or any counterparts thereof may have actually been executed and delivered. Facsimile or PDF counterpart signatures to this Bill of Sale shall be acceptable and binding.

[THE REMAINDER OF THIS PAGE IS BLANK. SIGNATURE PAGE FOLLOWS.]

Northern States Power Company

IN WITNESS WHEREOF, the parties have executed this Bill of Sale effect as of the date first above written.

BENSON POWER, LLC,
a Delaware limited liability company

By: _____
Name:
Its:

NORTHERN STATES POWER COMPANY,
a Minnesota corporation

By: _____
Name:
Its:

Northern States Power Company

EXHIBIT F

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this “**Agreement**”) is made effective as of _____, 20__, by and between Northern States Power Company, a Minnesota corporation (the “**Buyer**”), and Benson Power, LLC, a Delaware limited liability the Company (the “**Company**”).

RECITALS:

- A. The Buyer and the Company have entered into that certain Asset Purchase and Sale Agreement, dated as of February 3, 2017 (the “**Purchase Agreement**”), pursuant to which the Company has agreed to assign and transfer to the Buyer all of the Acquired Assets, for the consideration described in the Purchase Agreement, including the Buyer’s assumption of the Assumed Liabilities. Terms used but not otherwise defined herein shall have the meanings set forth in the Purchase Agreement.
- B. Pursuant to the Purchase Agreement, the Company and the Buyer are required to execute and deliver this Agreement as a condition to the Closing.

NOW, THEREFORE, for good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Buyer and the Company hereby agree as follows:

- 1. **Assignment of Acquired Assets.** The Company hereby transfers, assigns, delegates and conveys to the Buyer all of the Company’s right, title and interest in and to all of the Acquired Assets, free and clear of any Security Interest (other than Permitted Liens). The Buyer hereby accepts the transfer, assignment, delegation and conveyance by the Company of the Acquired Assets. Notwithstanding the foregoing, any Restricted Acquired Contract shall not be deemed to be assigned to the Buyer unless and until such time as such third party consents in writing to the assignment of such Restricted Acquired Contract to the Buyer.
- 2. **Assumption of Liabilities.** The Company hereby delegates to the Buyer all of the Company’s liabilities and obligations with respect to the Assumed Liabilities. The Buyer hereby assumes and agrees to discharge all of the Assumed Liabilities. Notwithstanding the foregoing, any liabilities and obligations of the Company arising under any Restricted Acquired Contract shall not be deemed to be assumed by the Buyer unless and until such time as such third party consents in writing to the assignment of such Restricted Acquired Contract to Assignee.
- 3. **Excluded Assets and Liabilities.** Notwithstanding the provisions of Sections 1 and 2 of this Agreement, the Company is not transferring, assigning, delegating or conveying to the Buyer any right, title or interest in or to any of the Excluded Assets, and the Buyer is not assuming or agreeing to discharge any of the Excluded Liabilities.

Northern States Power Company

4. **Further Assurances.** Each of the parties agrees, upon the request of the other party, to take, or cause to be taken, such action, and to execute and deliver, or cause to be executed and delivered, such additional documents and instruments as may be reasonably necessary, proper or advisable to effect the provisions of this Agreement.
5. **Complete Agreement.** This Agreement and the documents referred to herein (including the Purchase Agreement) constitute the entire agreement and understanding of the parties relative to the subject matter hereof.
6. **Governing Law; Notice.** This Agreement shall be governed by and construed under the laws of the State of Minnesota without regard to its conflicts of laws principles. The notice provisions set forth in Section 12.7 of the Purchase Agreement shall govern this Agreement.
7. **Binding Agreement; Assignment.** This Agreement shall be binding upon, and inure to the benefit of, the Company and the Buyer, and their respective successors and assigns. This Agreement and the rights and obligations arising under this Agreement may not be assigned by the Company or the Buyer without the other's prior written consent, except that Assignee may assign this Agreement and its rights and obligations hereunder to any of its Affiliate (provided, that Assignee shall remain responsible for its obligations hereunder to the extent such obligations are not performed by such Affiliate)
8. **Waiver; Amendment.** This Agreement may not be amended, waived, terminated, assigned, or transferred, except by the written agreement of the Company and the Buyer.
9. **No Modification; Conflicts.** Nothing contained in this Agreement is intended to or shall be construed to modify, alter, amend, expand, interpret, supersede or otherwise change any of the terms, conditions, covenants, warranties, representations or any other provisions of the Purchase Agreement and this Agreement is subject, in all respects, to the terms and conditions of the Purchase Agreement.. To the extent the terms and provisions of this Agreement conflict with the Purchase Agreement, the terms and provisions of the Purchase Agreement shall govern.
10. **Counterparts.** This Agreement may be executed in any number of counterparts, and each such executed counterpart shall be deemed to be an original instrument, but all such executed counterparts together shall constitute one and the same agreement, and this Agreement shall be deemed to have been made, executed, and delivered on the date written above, irrespective of the time or times when the same or any counterparts thereof may have actually been executed and delivered. Facsimile or PDF counterpart signatures to this Agreement shall be acceptable and binding.

[THE REMAINDER OF THIS PAGE IS BLANK. SIGNATURE PAGE FOLLOWS.]

Northern States Power Company

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first above written.

BENSON POWER, LLC,
a Delaware limited liability company

By: _____
Name:
Its:

NORTHERN STATES POWER COMPANY
a Minnesota corporation

By: _____
Name:
Its:

Northern States Power Company

EXHIBIT G

Form of Mutual Termination and Release Agreement

This Mutual Termination and Release Agreement (this “**Agreement**”), dated _____, is entered into by and between Benson Power, LLC, a Delaware limited liability company (the “**Company**”), and Northern States Power Company, a Minnesota corporation (the “**Buyer**”).

WHEREAS, the Buyer and the Company are parties to that certain Asset Purchase and Sale Agreement, dated as of February 3, 2017 (the “**Asset Purchase Agreement**”);

WHEREAS, the Buyer and the Company (as assignee of Fibrominn LLC) are parties to that certain Biomass Power Purchase Agreement, dated as of August 31, 2000, and amended as of June 7, 2004, and February 16, 2011, as assigned and modified by the Consent and Agreement dated as of August 20, 2015 (the “**Power Purchase Agreement**”);

WHEREAS, pursuant to the Power Purchase Agreement, the Company issued its invoice #[____], dated as of [____], in the amount of \$[____] (the “**Current Invoice**”), which Current Invoice remains outstanding;

WHEREAS, pursuant to the Power Purchase Agreement, the Buyer is obligated to reimburse the Company for certain pass-through costs, which amounts remains outstanding; and

WHEREAS, in connection with the closing of transactions contemplated by the Asset Purchase Agreement, the Buyer and the Company desire to terminate the Power Purchase Agreement in accordance with the terms of this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement and the Asset Purchase Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Termination of Agreement. Effective as of the date first set forth above and subject to the payment of the Current Invoice, the Final Payment Amount (described in Section 3.1 below), and the Final Special Pass-Through Amount (described in Section 3.2 below), the Power Purchase Agreement is hereby terminated and is of no further force and effect.

2. Mutual Release. Each party, on behalf of itself and its affiliates, officers, directors, shareholders, members, agents and representatives (collectively, “**Releasing Parties**”) hereby fully, finally and irrevocably releases, acquits and forever discharges the other party and its officers, directors, partners, general partners, limited partners, managing directors, members, stockholders, trustees, shareholders, representatives, employees, principals, agents, affiliates, parents, subsidiaries, predecessors, successors, assigns, beneficiaries, heirs, executors, personal or legal representatives, insurers and attorneys (collectively, the “**Released Parties**”) from any and all commitments, actions, debts, claims, counterclaims, suits, causes of action, damages, demands, liabilities, obligations, costs, expenses, and compensation of every kind and nature whatsoever, past, present, or future, at law or in equity, whether known or unknown, contingent or otherwise, which such Releasing Parties, or any of them, had, has or may have had at any time in the past until and including the date of this Agreement against the Released Parties, or any of them, which relate to or arise out of the Power Purchase Agreement; provided, however, that the foregoing release does not apply to the payment obligations set forth in Section 3 below.

Northern States Power Company

3. Outstanding Payments.

3.1. Current Invoice. The Buyer will pay the Current Invoice to the Company within twenty (20) days following the Closing Date.

3.2. Final Payment Amount. Within ten (10) Business Days following the Closing Date, the Buyer will deliver to the Company written notice of the meter data for the period (the “**Closing Billing Month**”) beginning with meter reading reflected in the Current Invoice and ending as of the effectiveness of the Closing (as provided in Section 2.3(a) of the Asset Purchase Agreement). Within ten (10) days after the delivery of such notice, the Company will deliver to the Buyer its final calculation of the Power Price of Electric Energy for the Closing Billing Month pursuant to Section 2.9 of the Power Purchase Agreement (the “**Final Payment Amount**”). The Buyer will pay the Final Payment Amount to the Company within twenty (20) days following such notice from the Company.

3.3. Final Special Pass-Through Amount. Within twenty (20) Business Days following the Closing Date, the Company will deliver to the Buyer a calculation of the Special Pass-Through Payment (as defined in the Power Purchase Agreement) calculated as though the final Billing Month (as defined in the Power Purchase Agreement) ended on the date of Closing (the “**Final Special Pass-Through Amount**”), which amount shall be calculated in accordance with Section 2.6 of the Power Purchase Agreement (including any amounts payable in arrears) using the same calculation methodologies as the Company historically used; provided, that the Buyer shall retain all rights to dispute the calculation of such Final Special Pass-Through Amount as are provided to the Buyer in the Power Purchase Agreement. The Buyer will pay the Final Special Pass-Through Amount to the Company on or prior to the later to occur of (a) twenty (20) days following delivery of such notice from the Company or (b) the final resolution of any such dispute of the Final Special Pass-Through Amount in accordance with the terms of the Power Purchase Agreement.

4. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Minnesota, including all matters of construction, validity, performance and enforcement, without giving effect to principles of conflicts of laws.

5. Binding Effect. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the successors and assigns of the parties hereto.

6. Counterparts. This Agreement may be executed in any number of original counterparts, all of which evidence only one agreement and only one full and complete copy of which need be produced for any purpose. A facsimile or copy of a signature will have the same legal effect as an originally drawn signature.

7. Severability. If any provision of this Agreement is held by the final judgment of any court of competent jurisdiction to be illegal, invalid or unenforceable, the validity of the remaining portions or provisions must not be impaired or affected, and the rights and obligations of the parties must be construed and enforced as if this Agreement did not contain that certain part, term or provision held to be illegal, invalid or unenforceable.

8. Entire Agreement. This Agreement embodies the entire agreement and understanding of the Parties in respect of the subject matter contained herein and supersedes all prior agreements and understandings between the Parties with respect to the subject matter hereof; provided, that nothing in this Agreement shall limit the rights and obligations of the Parties under the Asset Purchase Agreement.

Northern States Power Company

[THE REMAINDER OF THIS PAGE IS BLANK. SIGNATURE PAGE FOLLOWS.]

Northern States Power Company

IN WITNESS WHEREOF, the parties have caused this Mutual Termination and Release Agreement to be duly executed on the date first written above.

BUYER:

NORTHERN STATES POWER COMPANY

Name: _____

Title: _____

COMPANY:

BENSON POWER, LLC

Name: _____

Title: _____

Northern States Power Company

SIDE LETTER AGREEMENT

February 3, 2017

Benson Power, LLC
c/o Competitive Power Ventures, Inc.
50 Braintree Hill Office Park
Suite 300
Braintree, MA 02184
Attn: Donald Atwood

Ladies and Gentlemen:

Reference is hereby made to the Asset Purchase and Sale Agreement, dated as of February 3, 2017 (the “Agreement”), by and between Northern States Power Company (the “Buyer”) and Benson Power, LLC (the “Company”). Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in the Agreement.

The Buyer and the Company wish to enter into this letter agreement to clarify the Agreement as follows.

In its application for the PUC Approvals, the Buyer will, among other things, request approval to purchase and then close down the Facility following the Closing. For the avoidance of doubt, the Buyer and the Company hereby agree that failure to obtain approval of such requests from the applicable PUC (including approval of the Minnesota Public Utility Commission to close the Facility) on terms satisfactory to the Buyer in its reasonable discretion would constitute failure to obtain the PUC Approvals, permitting the Buyer to terminate the Agreement pursuant to Section 8.2(f) thereof.

As the nature of the request described in the preceding paragraph may encourage certain parties to deny a required consent, and notwithstanding anything set forth in Sections 6.3 or 8.2(h) of the Agreement to the contrary, to the extent that, notwithstanding commercially reasonable efforts to obtain such consent, any consent needed to assign or transfer any of the contracts set forth on Exhibit A hereto (each a “Designated Contracts”) to the Buyer has not been obtained on or prior to the Closing Date, then the Buyer hereby (a) waives, solely with respect to the Designated Contracts, the condition to the Closing set forth in Section 8.2(h) of the Agreement, (b) agrees, solely with respect to the Designated Contracts listed as items 2 and 3 on Exhibit A hereto, to cover any post-Closing costs incurred by the Company under such Designated Contracts as a result of or in connection with the closure of the Facility, to the extent such post-Closing costs would have been incurred by the Buyer had such Designated Contracts been assigned to the Buyer at the Closing; *provided*, that upon request of the Buyer, (i) the Company and the Buyer shall enter into contractual arrangements to transfer the benefits of such Designated Contracts to the Buyer at no additional cost to the Buyer, and

Northern States Power Company

Side Letter Agreement
Page 2

(ii) the Company will terminate such Designated Contracts (and the Company will not terminate such Designated Contracts prior to such request from the Buyer), and (c) agrees that neither the Buyer nor the Company shall have any further obligation to seek to obtain such consent or approval.

Except as expressly supplemented hereby, all terms and provisions of the Agreement shall be unmodified and remain in full force and effect. On and after the date hereof, each reference to the Agreement shall mean and be a reference to the Agreement as clarified hereby, and this letter agreement and the Agreement shall be read together and construed as a single instrument.

The following provisions of the Agreement are hereby incorporated by reference, *mutatis mutandis*: Section 12.4 (Succession and Assignment); Section 12.5 (Counterparts and Facsimile Signatures); Section 12.7 (Notices); Section 12.8 (Governing Law); Section 12.9 (Amendments and Waivers); Section 12.12 (Construction); and Section 12.16 (Submission to Jurisdiction; Waiver of Jury).


[Signature Page Follows]

Northern States Power Company

If the foregoing correctly reflects our agreement with respect to the subject matter hereof, please acknowledge the same by countersigning below.

Very truly yours,

NORTHERN STATES POWER
COMPANY

By: 
Name: Christopher Clark
Title: President

Acknowledged and agreed to:

BENSON POWER, LLC

By: _____
Name:
Title:

cc:

Gray, Plant, Mooty, Mooty & Bennett, P.A.
500 IDS Center
80 South 8th Street
Minneapolis, MN 55402
Attn: Mark D. Williamson, Esq.

Northern States Power Company

If the foregoing correctly reflects our agreement with respect to the subject matter hereof, please acknowledge the same by countersigning below.

Very truly yours,

NORTHERN STATES POWER
COMPANY

By: _____
Name:
Title:

Acknowledged and agreed to:

BENSON POWER, LLC

By: _____
Name: *Donald G Atwood*
Title: *President*

cc:

Gray, Plant, Mooty, Mooty & Bennett, P.A.
500 IDS Center
80 South 8th Street
Minneapolis, MN 55402
Attn: Mark D. Williamson, Esq.

Northern States Power Company

Exhibit A

Designated Contracts

1. Ash Sale Agreement between Fibrominn LLC and North American Fertilizer LLC, dated November 30, 2006, as amended by the First Amendment to Ash Sale Agreement, dated 2010, and the Second Amendment to Ash Sale Agreement, dated 2010 (as may be further amended, restated or replaced in accordance with the Agreement).
2. Eastern Division Long-Term Disposal Agreement between Fibrominn LLC and Jennie-O Turkey Store, Inc., dated November 1, 2001 (as may be further amended, restated or replaced in accordance with the Agreement).
3. Western Division Long-Term Disposal Agreement between Fibrominn LLC and Jennie-O Turkey Store, Inc., dated November 1, 2001 (as may be further amended, restated or replaced in accordance with the Agreement).
4. Amended and Restated Water Supply Agreement between Fibrominn LLC and the City of Benson, Minnesota, dated December 1, 2004 (as may be further amended, restated or replaced in accordance with the Agreement).
5. Amended and Restated Improvements Agreement between Fibrominn LLC and the City of Benson, Minnesota, dated December 1, 2004 (as may be further amended, restated or replaced in accordance with the Agreement).
6. Agreement for Backup Service between Fibrominn LLC and the City of Benson, Minnesota, dated April 12, 2004 (as may be further amended, restated or replaced in accordance with the Agreement).

LETTER AGREEMENT

May 1, 2017

City of Benson
1410 Kansas Avenue
Benson, Minnesota 56215
Attention: Rob Wolfington, City Manager

Re: Benson Power Biomass Plant

Ladies and Gentlemen:

This Letter Agreement (the “**Letter Agreement**”) is being entered into by and between Northern States Power Company (“**NSP**”) and the City of Benson (“**Benson**”) (NSP and Benson each individually a “**Party**” and jointly the “**Parties**”) in connection with NSP’s potential acquisition of the Benson Power Biomass Plant (the “**Facility**”) from Benson Power, LLC (“**BP**”). The Facility is a 55 MW electrical generating facility fired by poultry litter and other biomass located in Benson.

NSP intends to request approval from the Public Utilities Commission (the “**PUC Approval**”) to purchase the Facility and to shut the Facility down. NSP acknowledges that the Facility is an important economic presence in Benson and Benson is concerned that closure of the Facility would have adverse impacts on the community and its residents. Benson acknowledges that to ease the PUC Approval NSP is pursuing certain legislation (the “**Legislation**”) that relieves NSP of statutory biomass mandate sufficient to permit NSP to acquire and shut down the Facility and to include the associated costs in its rate base. If NSP acquires and shuts down the Facility, the Parties hereby agree that NSP shall take certain efforts to mitigate economic harm to Benson as specified in this Letter Agreement in consideration for certain support from Benson in connection with the Legislation and PUC Approval.

For valuable consideration, the receipt and sufficiency of which is acknowledged, NSP and Benson hereby agree as follows:

1. NSP Obligations.

- a. Public Safety. If NSP acquires and shuts down the Facility, NSP will prepare a site specific public safety plan and will provide Benson a copy of the draft plan with the Shutdown Notice (as defined below) for Benson’s review and comment. NSP will give reasonable and due consideration to any comments by Benson prior to shut down of the Facility, provided that NSP will retain sole discretion over the final provisions of such plan.

Notwithstanding the foregoing, the public safety plan will include obligations of NSP that: (i) until the controls for the well pump that provides the Facility its water are relocated, NSP will keep the Facility manned in a sufficient manner to provide adequate control to the well pumps; and (ii) so long as the Facility could require fire-fighting services, NSP will keep the water tank at the Facility sufficiently heated to prevent the water in the tank from freezing, provided that NSP will not be required to keep the water tank in place longer than it otherwise would in connection with the removal of the Facility.

- b. Property Taxes. If NSP acquires and shuts down the Facility, NSP will make two (2) annual payments, one on each of the first and second anniversaries of the date of the Final Removal Notice (as defined below). Each such payment shall equal the amount of local county, city and school property taxes payable by the Facility with respect to the last full tax year prior to removal of the Facility.
- c. Benson Investments. NSP acknowledges that Benson has made certain investments on water, waste water and electric distribution assets as part of the arrangements to bring the Facility to Benson. If NSP acquires and shuts down the Facility, NSP will reimburse Benson for any verified stranded investment, provided that Benson will provide NSP with the information necessary for NSP to verify the existence and amount of any stranded investment claimed by Benson. NSP will reimburse Benson for such verified stranded investments no later than sixty (60) days following the delivery by NSP of the Final Removal Notice.
- d. Water Distribution and Controls. The Parties acknowledge that North American Fertilizer (“NAF”) owns a plant next to the Facility that currently obtains its water from the Facility, and, if the Facility is removed, (i) a new line will need to be installed between the NAF facility and municipal wells and (ii) controls for the wells will need to be relocated and reconfigured from their current location in the Facility control room. If NSP acquires and shuts down the Facility, NSP will pay the costs, up to \$200,000, for such new water line and relocation of such controls. NSP will make the payment provided for in this Paragraph 1(d) no later than thirty (30) days after receipt of an invoice from Benson for the costs incurred by Benson in performing the work contemplated in this Paragraph 1(d).
- e. Backup Station Power Service Agreement. Benson and BP are currently parties to that certain City of Benson Agreement for Backup Station Power Service. If NSP acquires and shuts down the Facility, NSP will honor all of its obligations under such agreement.
- f. Improvements Agreement. Benson and BP are parties to that certain Improvements Agreement of 2004 pursuant to which Benson agreed to provide certain services. If NSP acquires and shuts down the Facility, NSP agrees that such agreement will be terminated and NSP will have no rights to require services from Benson thereunder.

- g. Site Restoration. If NSP acquires and shuts down the Facility, NSP shall: (i) remove all above-ground improvements to grade; (ii) remove all foundations to a depth of four (4) feet below grade; and (iii) remediate environmental contamination, if any, in accordance with applicable law.
 2. Benson Obligations. Benson hereby agrees to support the Legislation and the PUC Approval. Benson and NSP will work cooperatively to: (a) advocate for the Legislation; (b) seek legislative changes allowing Renewable Development Funds in the amount of up to \$19.9 million to be redirected to assist Benson with development efforts for an industrial park replacement; and (c) advocate for PUC Approval
 3. Purchase Option. If NSP acquires and shuts down the Facility, Benson shall have an option to purchase the site pursuant to the following terms:
 - a. Benson must exercise its purchase option no later than six (6) months following the date of the Shutdown Notice;
 - b. Benson must close on its purchase of the site no later than thirty (30) days following the date of the Final Removal Notice; and
 - c. The purchase price shall be equal to the appraised value of the restored site (i.e., without the Facility) as determined pursuant to an appraisal obtained by NSP and provided to Benson with the Shutdown Notice.
- The Parties acknowledge that the purchase option set forth in this Paragraph 3 will be subject to the approval of the PUC and NSP agrees that it shall request such approval as part of the PUC Approval.
4. Transmission System. The Parties acknowledge that if NSP acquires and shuts down the Facility, NSP is obligated to complete and submit an Attachment Y (as defined in the Midcontinent Independent System Operator (“**MISO**”) tariff) to MISO, and the costs associated with any transmission system work identified by MISO as required to permit the Facility to shut down will be assigned to the benefiting MISO members in accordance with the MISO tariff.
 5. Termination. This Letter Agreement shall terminate upon the payment by NSP of the second annual payment required pursuant to Paragraph 1(b), provided that the provisions of Paragraph 7 shall survive such termination.
 6. Notices. NSP shall provide Benson with written the following written notices:
 - a. No later than thirty (30) days prior to the shutdown of the Facility, a notice (the “**Shutdown Notice**”) notifying Benson of the date the Facility will be shut down and removal activities will begin; and

- b. No later than thirty (30) days after completion of all removal activities at the Facility site, a notice (the “**Final Removal Notice**”) notifying Benson of the completion of removal.

7. Miscellaneous.

- a. Governing Law. This Letter Agreement and the rights of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Minnesota, exclusive of conflict or choice of law rules.
- b. Disputes. Any dispute, claim or controversy arising out of or relating to this Letter Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement, shall be determined in state court venued in Minneapolis, Minnesota. The Parties expressly waive their right to a jury in any such dispute. Each party shall be responsible for its own costs and expenses, including the cost of legal counsel, associated with the arbitration.
- c. Waiver. Notwithstanding anything contained in this Letter Agreement, any Party’s liability to any other party in connection with this Letter Agreement (or the transaction contemplated herein) shall be limited to direct damages and shall exclude any other liability, including without limitation liability for special, indirect, punitive or consequential damages in contract, tort, warranty, strict liability or otherwise.
- d. Expenses. Each Party shall pay its own costs and expenses in connection with the transactions herein contemplated, including the preparation and review of cost information and negotiation and execution of this Letter Agreement.
- e. Prior Agreements. This Letter Agreement supersedes all prior communications and agreements, oral or written, between the Parties regarding the subject matter herein contemplated.
- f. Counterparts. This Letter Agreement may be executed in counterparts, each of which is deemed an original but all constitute one and the same instrument.
- g. Severability. If any term, provision, covenant or restriction contained in this Letter Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the Letter Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

[Signature Page Follows]

If the foregoing correctly reflects our agreement with respect to the subject matter hereof, please acknowledge the same by countersigning below.

Very truly yours,

NORTHERN STATES POWER COMPANY

By: _____

Name:

Title:

Acknowledged and agreed to:

CITY OF BENSON

By: _____

Name:

Title:

PUBLIC DOCUMENT – PRIVILEGED DATA HAS BEEN EXCISED

Northern States Power Company

Docket No. E002/M-17-____
Initial Filing - Benson: 6-30-2017
Attachment D – Page 1 of 1

**NOT-PUBLIC DOCUMENT - NOT FOR PUBLIC DISCLOSURE
ENTIRE DOCUMENT IS NOT-PUBLIC**

Attachment D has been marked Not-Public in its entirety as it contains information the Company considers to be trade secret data as defined by Minn. Stat. §13.37(1)(b). The information contains sensitive modeling data and cost details and analysis that derive an independent economic value from not being generally known or readily ascertainable by others who could obtain a financial advantage from their use. Thus, Xcel Energy maintains this information as protected data pursuant to Minn. Rule 7829.0500, subp 3. This information was prepared by our Resource Planning department in June of 2017 for inclusion with and in support of the Company's initial filing.

	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	Sum
Cost Recovery Detail													
Regulatory Asset													
1 Beginning Balance	\$0	\$89,108,312	\$87,545,952	\$77,476,769	\$67,407,586	\$57,338,403	\$47,269,220	\$37,200,037	\$27,130,854	\$17,061,671	\$6,992,488	\$0	
2 Purchase													
3 Transaction Price & NAF termination	\$95,000,000												\$95,000,000
4 Jennie-O contract termination	\$1,500,000												\$1,500,000
5 Title insurance	\$65,000												\$65,000
6 Escrow agent fee	\$3,500												\$3,500
7 HSR filing fee	\$37,500												\$37,500
8 Legal & other	\$1,394,000												\$1,394,000
9 Total	\$98,000,000	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$98,000,000
10 Additions													
11 Demolition and remediation	\$100,000	\$7,900,000											\$8,000,000
12 NAF water line relocation	\$200,000												\$200,000
13 City of Benson stranded investment		\$606,823											\$606,823
14 Total	\$300,000	\$8,506,823	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$8,806,823
15 Amortization	\$9,191,688	\$10,069,183	\$10,069,183	\$10,069,183	\$10,069,183	\$10,069,183	\$10,069,183	\$10,069,183	\$10,069,183	\$10,069,183	\$6,992,488	\$0	\$106,806,823
16 Amortization - MN Jurisdiction net of Interchange	\$6,766,865	\$7,412,871	\$7,412,871	\$7,412,871	\$7,412,871	\$7,412,871	\$7,412,871	\$7,412,871	\$7,412,871	\$7,412,871	\$5,147,827	\$0	\$78,630,532
17 Ending Balance	\$89,108,312	\$87,545,952	\$77,476,769	\$67,407,586	\$57,338,403	\$47,269,220	\$37,200,037	\$27,130,854	\$17,061,671	\$6,992,488	\$0	\$0	
18 Ending Balance - MN Jurisdiction net of Interchange	\$65,600,996	\$64,450,796	\$57,037,925	\$49,625,054	\$42,212,183	\$34,799,312	\$27,386,441	\$19,973,569	\$12,560,698	\$5,147,827	\$0	\$0	
Other Costs													
19 Total fuel transportation cost	\$5,035,989												\$5,035,989
20 Total fuel cost	\$1,073,302												\$1,073,302
21 Total cost to landfill ash	\$3,227												\$3,227
22 Property tax	\$949,290	\$970,079	\$791,324	\$813,034									\$3,523,727
23 O&M	\$3,972,877												\$3,972,877
24 Backup power agreement	\$99,000	\$99,000	\$99,000	\$99,000	\$99,000	\$99,000	\$99,000	\$99,000	\$99,000	\$33,000	\$0	\$0	\$924,000
25 Total	\$11,133,684	\$1,069,079	\$890,324	\$912,034	\$99,000	\$99,000	\$99,000	\$99,000	\$99,000	\$33,000	\$0	\$0	\$14,533,122
26 Total other costs - MN Jurisdiction net of Interchange	\$8,196,551	\$787,050	\$655,451	\$671,434	\$72,883	\$72,883	\$72,883	\$72,883	\$72,883	\$24,294	\$0	\$0	\$10,699,196

Proposed Journal Entries for Benson PPA Termination, Asset Purchase, and Shut-Down Transaction

(\$ thousands)

Yr.	FERC Acct.	Item	Debit	Credit	Description
2018	102 426.5 131	Electric Plant Purchased or Sold Other Deductions (PPA Termination Loss) Cash	\$52,778 42,222	\$95,000	Recognize payment for extinguishment of PPA and purchase of plant assets. ¹ See Attachment G, Line 3.
2018	421.2 102	Loss on Disposal of Property (Plant Impairment) Electric Plant Purchased or Sold	52,778	52,778	Recognize impairment loss on plant assets. ²
2018	426.5 131	Other Deductions (Other 2018 Transaction Costs) Cash	3,300	3,300	Recognize demolition/remediation and other 2018 cash transaction costs. See Attachment G, Lines 4-8 and 14.
2018	182.3 426.5 421.2 426.5	Other Regulatory Assets (Earning Portion) Other Deductions (PPA Termination Loss) Loss on Disposal of Property (Plant Impairment) Other Deductions (Other 2018 Transaction Costs)	98,300	42,222 52,778 3,300	Reclassify PPA termination loss, plant impairment, and other 2018 cash transaction costs to a Commission-approved regulatory asset.
2018	426.5 242	Other Deductions (Other 2019 Transaction Costs) Misc. Current & Accrued Liabilities	8,507	8,507	Recognize accrued transaction costs. ³ See Attachment G, Line 14.
2018	182.3 426.5	Other Regulatory Assets (Non-earning Portion) Other Deductions (Other 2019 Transaction Costs)	8,507	8,507	Reclassify accrued transaction costs to a regulatory asset.
2018	236 409.1 410.1 282/283	Current Tax Payable Current Tax Expense Deferred Tax Expense Deferred Tax Liability	40,667 40,667	40,667 40,667	Record tax benefit and deferred taxes on transaction (\$98,300 x 41.37% tax rate).
2018	407.3 182.3 409.1 236 282/283 410.1	Regulatory Debits (Reg. Asset Amortization) Other Regulatory Assets (Earning Portion) Current Tax Expense Current Tax Payable Deferred Tax Liability Deferred Tax Expense	9,192 3,803 3,803	9,192 3,803 3,803	Recognize amortization of the regulatory asset and impacts on deferred taxes (\$9,192 x 41.37% tax rate). ⁴ See Attachment G, Line 15.
2019	242 131 182.3 182.3	Misc. Current & Accrued Liabilities Cash Other Regulatory Assets (Earning Portion) Other Regulatory Assets (Non-earning Portion)	8,507 8,507	8,507 8,507	Make cash payments for accrued transaction costs and reclassify related non-earning regulatory asset amounts to an earning regulatory asset.
2019	407.3 182.3 409.1 236 282/283 410.1	Regulatory Debits (Reg. Asset Amortization) Other Regulatory Assets (Earning Portion) Current Tax Expense Current Tax Payable Deferred Tax Liability Deferred Tax Expense	10,069 4,166 4,166	10,069 4,166 4,166	Recognize amortization of the regulatory asset and impacts on deferred taxes (\$10,069 x 41.37% tax rate). See Attachment G, Line 15.

¹The approximate net book value of the property, plant and equipment at June 30, 2017 is estimated at \$52.8 million. Consistent with FERC guidelines, the prior asset owner's net book value will be recorded to FERC Account 102 *Electric Plant Purchased or Sold* upon asset purchase.

²Following cancellation of the PPA with NSPM, as the plant cannot operate profitably under a new PPA at market terms or as a merchant facility given its high production costs, the plant assets have a fair market value consistent with \$0, and will be written off.

³For GAAP accounting purposes, all costs of the transaction must be recognized immediately upon transaction execution. With Commission-approved recovery, it is appropriate to defer accrued costs of the transaction to a regulatory asset. However, NSPM is proposing to earn a cost of capital return only after costs of the transaction are paid in cash.

⁴The amortization of the regulatory asset would be recovered through the FCA along with NSPM's requested cost of capital return on the regulatory asset; the accounting entries related to use of the FCA mechanism have been omitted for the purpose of brevity. The presented income tax impacts reflect the transaction as immediately tax deductible, however, NSPM may utilize a different tax treatment for the entire transaction, or certain components of the transaction.

STATE OF MINNESOTA
ENVIRONMENTAL QUALITY BOARD

In the Matter of the Exemption
Application by Fibrominn LLC and the
City of Benson for the Fibrominn
Biomass Power Plant

**MINNESOTA ENVIRONMENTAL QUALITY
BOARD'S FINDINGS OF FACT,
CONCLUSIONS, AND ORDER GRANTING
EXEMPTION
FOR FIBROMINN BIOMASS
POWER PLANT**

**MEQB Docket No. 01-09-EXEM-FIBROMINN
October 18, 2001**

The above-entitled matter came before the Minnesota Environmental Quality Board at a regular meeting on October 18, 2001, pursuant to an application by Fibrominn LLC and the City of Benson for an Exemption from the Power Plant Siting Act for a 65 MW Large Electric Generating Plant known as the Fibrominn Biomass Power Plant.

STATEMENT OF ISSUE

Should Fibrominn LLC and the City of Benson be granted an Exemption from the Power Plant Siting Act for a 65 MW electric generation plant to be constructed in the city of Benson, Swift County, Minnesota.

Based upon all of the proceedings herein, the Minnesota Environmental Quality Board makes the following:

FINDINGS OF FACT

Project Description

1. Fibrominn LLC and the City of Benson propose to construct a Large Electric Power Generating Plant (LEPGP) known as the Fibrominn Biomass Power Plant. Fibrominn LLC is a subsidiary of Fibrowatt LLC, a U.S. subsidiary of Fibrowatt Ltd of Great Britain.
2. The project will burn approximately 700,000 tons of biomass fuel annually to generate electric power. It is anticipated that approximately 75 percent of the biomass fuel will come from poultry litter (approximately 500,000 tons). The remainder of the biomass will be secondary vegetative materials such as alfalfa stems and sunflower hulls. Natural gas or propane will be available as a backup fuel.
3. The project will entail the development of approximately 36 acres of an 83.7-acre site. The site is an established industrial park on the northwest edge of the city limits of Benson. The developed portion of the site will be enclosed with a perimeter security fence.

4. The project will use a single conventional stoker boiler and a conventional steam turbine generator to generate electricity. Fibrominn has not finalized the equipment design for the facility. Until equipment design is finalized, Fibrominn cannot state the maximum gross design capacity for the facility. The maximum gross generating capacity of the facility will not exceed 65 MW. 50 MW of the project's output are under a long-term sales agreement with Xcel Energy, Inc. The plant will have a peak electric export capacity of 55 MW. The remainder of the power will be used on site by the project.
5. A 115 kV transmission line, running generally west from the project for approximately 600 feet, will connect the project with an existing Great River Energy 115 kV transmission line that terminates at the Benson substation. The applicants will seek local approval for this transmission line.
6. If natural gas is used as a back-up fuel, a natural gas service line will be constructed using existing natural gas lines in the area. The pipeline would be designed and constructed by Minnegasco, and would be subject to local approvals.
7. If propane is used as a back-up fuel, a 30,000 gallon propane storage tank will be constructed as part of the project. Consistent with United States Environmental Protection Agency regulations, the proposers will need to provide initial notification and annual reporting to the Minnesota Emergency Response Commission and the local fire department. This reporting identifies hazards that may result from propane releases and provided information on storage design and maintenance procedures necessary to prevent releases. Propane would be delivered to the facility in bulk transport trucks with a capacity of 9,000 to 9,500 gallons. Propane deliveries would result in approximately 22 roundtrips annually by the bulk transport trucks.

Project Proposers

8. Fibrominn and the City of Benson have applied jointly for an Exemption for the Fibrominn Biomass Power Plant.
9. The site and plant will be owned by the City of Benson and leased to Fibrominn. Fibrominn will design, construct, operate, and maintain the plant and will have exclusive use and control of the plant under terms of the site and facility leases with the City.
10. Fibrowatt Ltd., the parent owner of Fibrominn, operates three poultry litter fired power plants in England. These three plants have a combined output of approximately 65 megawatts. These plants have been successfully in operation for between three and nine years.

Human and Environmental Effects

11. Minnesota Rules, part 4400.3910, subp. 2 requires that an application for an Exemption must provide information necessary for the EQB to make an evaluation of those considerations listed in Minnesota Rules, part 4400.3310. Findings 12 through 23 address the siting considerations outlined in Minnesota Rules, part 4400.3310.
12. **Effects on human settlement.** This consideration requires an evaluation of issues relating to displacement, noise, aesthetics, community benefits, cultural values, recreation, and public services.
 - a. **Displacement.** The project will be in an industrial park, separated from residential areas. The Chippewa River and a grove of trees screen the site from the main part of Benson. The project will not displace any existing residences or businesses.
 - b. **Noise.** Residents in the area of the proposed facility are impacted by various noise sources presently, such as truck and rail traffic. The loudest potential noise sources associated with the Fibrominn facility will be generated during construction. The major noise sources during operation are the fans and cooling towers. The nearest residence is over 2,000 feet away from the proposed site. Fibrominn will implement various operational practices, such as keeping doors closed and conducting certain operations during normal business hours, to minimize the intrusion of noise on nearby residents. Fibrominn will measure the noise at nearby locations after operation begins to ensure compliance with state noise standards and will implement additional controls if necessary to abate the noise.
 - c. **Aesthetics.** The facility will entail a number of buildings resembling modern commercial buildings. The tallest building will be 140 feet above ground level. The cooling towers will be 70 feet tall at the most. The stack height will be 350 feet, and the stack will be equipped with obstruction lights to warn low-flying aircraft. The facility will be visible from certain vantage points in the nearby area, but a dense grove of trees to the east along the Chippewa River will shield the facility from the main part of town and residential areas near the river. Visible plumes from the facility may occur in certain weather conditions, principally during the winter, but on most days a plume will be visible for only a short distance from the stack.
 - d. **Community Benefits.** The project will be a benefit to the community of Benson. About 300 jobs will be created during construction, and 30-35 full-time jobs will be available after the project goes into operation. The facility will generate additional tax revenues for local taxing authorities.

- e. **Cultural Values.** Benson is the county seat of Swift County. The Swift County area is primarily an agricultural area. The facility will be located in an industrial park.
 - f. **Recreation.** The project will not interfere with any recreational facilities in the Benson area, including a nearby campground and the Benson golf course.
 - g. **Public Services.** The Benson area has the necessary public services to accommodate the project including roadways, utilities, and fire protection. The facility site is separated from residential areas and has good access to highways, reducing the need for truck traffic through the city. Delivery trucks bringing the litter to the facility will follow prescribed routes to the project and will not travel through the center of the city. Traffic to and from the project will increase as a result of the site's development. The site is well served by county and state highways. The project may result in minor roadway and railway improvements, such as turn lane extensions or upgraded railroad crossings.
13. **Effects on public health and safety.** No adverse impacts on public health and safety from operation of the Fibrominn facility have been identified. There will be impacts on the environment, of course, through air emissions and water usage, but these are discussed under Finding 16 below. There is a concern over the construction of a 350 foot stack within one-half mile of an airport. The Benson Municipal Airport is approximately one-half mile to the northwest of the site. There are no charter or commercial flights at the airport. The Federal Aviation Administration will require that lights be mounted on the stack and the Benson Airport Zoning Board will have to grant a variance for the stack to be 350 feet high. The variance has already been applied for.
14. **Effects on land-based economics.** The proposed site for the facility is within an industrial park on the northwest edge of town. No farmland will be taken out of production. The site is not near, and is not anticipated to affect, any commercially forested land or mining property. The Fibrominn facility will be the first facility of its kind in the United States and may actually entice visitors to the area to see the facility.
15. **Archaeological and historic resources.** The State Office of Historic Preservation stated in a letter dated October 11, 2000, that no known archaeological or historic resources will be affected by the project.
16. **Effects on the natural environment** The following environmental impacts have been identified and evaluated:
- a. **Air Emissions.** Combustion of poultry litter and other biomass materials will result in the emission of air pollutants to the atmosphere. The major pollutants will be particulate matter, carbon monoxide, nitrogen dioxides,

sulfur dioxide, volatile organic compounds (VOCs), sulfuric acid, and hydrogen fluoride. Some lead may be in the exhaust gases, and there may be other trace amounts of some metals, but no mercury is expected to be emitted because in analyses run by Fibrominn of poultry litter in Minnesota, no mercury was found. There will be a small amount of ammonia released from the use of urea as a reagent in the control system to remove nitrogen oxides. Fibrominn conducted an Air Toxics Review in accordance with procedures of the Minnesota Pollution Control Agency and found that the facility will be a major source of only one hazardous air pollutant, and that is hydrochloric acid.

Fibrominn and the City will install state of the art control equipment to remove a significant portion of the pollutants from the exhaust gases before discharge to the atmosphere. A fabric filter will be used to control particulate matter. A spray-dry absorber, which scrubs the pollutants from the exhaust gases, will remove the sulfur compounds, the hydrochloric acid and other organics before discharge. The removal efficiency of the scrubber is as high as 95% for some pollutants. In addition, during operation, urea or ammonia will be injected into the furnace to retard the formation of NO_x gases, and combustion practices such as maintenance of high temperatures will help to minimize carbon monoxide and organic discharges.

The facility will comply with all emission limitations established by imposition of Best Available Control Technology standards. All ambient air quality standards will be met in the surrounding area. Fibrominn will install continuous emission monitors to measure concentrations of certain gases in the exhaust and to ensure compliance with applicable permit limits.

- b. Odor.** Poultry litter is an odorous material, and the potential for odor cannot be disregarded. Several features in the plant design and operation should reduce the potential for noticeable odor from the plant. For example, all poultry litter handling and storage will be done indoors. The handling and storage buildings will be maintained under negative air pressure to minimize the escape to the outdoor air. Various operational practices will be instituted to minimize odor impacts. These operational practices include covering all trucks transporting poultry litter and washing all poultry litter delivery trucks before exiting the drop-off building. Also, air from the litter storage building will be used as combustion air in the process to burn off any odorous compounds.
- c. Water.** The Fibrominn plant will require about 1.1 million gallons per day of water. This water will come from three sources: (1) about 0.3 million gallons of treated effluent from the Benson wastewater treatment plant, (2) about 0.8 million gallons of untreated City well water, and (3) about 0.07 million gallons per day of treated City water for boiler make-up

water and for potable use such as drinking water.

The City of Benson will construct two new wells to meet the water needs of the Fibrominn plant. The City anticipates that the two new wells will be developed with a combined minimum capacity of 1.44 million gallons per day compared with the current average of 0.4 to 0.5 mgd for municipal use. The City applied to the Department of Natural Resources for an amendment to the City's existing Water Appropriation Permit (Permit No. 75-4194) in September, 2001, and the permit amendment is pending.

The plant will recycle water to the extent possible by using boiler blowdown, reverse osmosis effluent, and cooling tower blowdown in the process. The only discharge of wastewater from the plant will be the sanitary wastewater and wastewater from building floor drains that will go to the Benson municipal wastewater plant, about 32,000 gallons per day. The City has a permit to treat this wastewater before discharge. Fibrominn is not required to obtain a National Pollutant Discharge Elimination Permit (NPDES) from the Pollution Control Agency because there is no direct discharge to a surface water.

There will be increased stormwater runoff from the site because of the area that becomes covered by buildings or other impervious surface. This runoff will be collected and retained in an onsite runoff pond prior to discharge to the Chippewa River. Fibrominn will install an oil/sediment interceptor prior to the pond to remove and collect these materials, which will be disposed of in accordance with applicable requirements for such wastes. In addition, operations will be conducted indoors and good housekeeping practices will be followed to minimize the amount of oil and other contaminants that become spread around the site.

- d. **Wetlands.** The site contains approximately 25 acres of wetlands, although much of this area is dry during most of the growing season. The development of the power plant may impact up to 3.2 acres of these wetlands. The City of Benson and Swift County have identified a 13 acre wetland replacement project located approximately 4.5 miles northeast of the City. The City and the County are currently preparing a Wetland Mitigation Plan and the City will arrange for replacement of those wetlands that are lost in development of the project, as required by state law.
- e. **Related Effects of Burning Poultry Litter.** Two public commenters stated that a better use of turkey litter than burning it is to use it as a fertilizer material. They maintain that burning this material will result in the manufacture and use of higher amounts of chemical fertilizers than would otherwise be required. The commenters suggest that burning turkey litter will have an adverse impact on organic farmers who depend

on the poultry litter for fertilizer.

The power plant will burn approximately 525,000 tons of poultry litter per year as fuel for the project. Estimates of the amount of poultry litter produced annually in Minnesota range from 1.3 to 1.7 million tons. The project proposes to use approximately 31 to 40 percent of Minnesota's annual production of poultry litter. The project will, however, sell ash as a soil amendment.

The EQB finds that the repercussions of burning poultry litter to generate electricity on the organic farming business or on the environment from the manufacture of chemical fertilizers to replace the litter that is burned is beyond the scope of the impacts the EQB can consider in this Exemption proceeding on the Fibrominn project. The Legislature has determined that burning biomass for the generation of electricity is a legitimate use of biomass materials, and the Minnesota Public Utilities Commission has approved the power purchase agreement between Fibrominn and Xcel Energy for sale of the power to be generated.

17. **Rare and unique natural resources.** No rare or unique natural resources will be impacted by the project. Staff at the United States Fish and Wildlife Service and the Minnesota Department of Natural Resources have not identified any threatened or endangered plant or animal species at the site.

In a letter dated March 15, 2001, DNR staff identified a Black sandshell, a state-listed mussel species in the Chippewa River and requested that the project design include measures which ensure the health of the river. As proposed, stormwater runoff from the project will be routed through an onsite stormwater retention pond prior to discharging into the Chippewa River.

The DNR also indicates in its letter that a Wet Prairie Natural Community is found directly south of the project site, between the Great Northern Railroad and Trunk Highway 12. The area referred to, however, is not located within the industrial park and is not directly impacted by the project. Site management practices such as runoff prevention employed during the construction process will avoid any disturbance of this area.

18. **Cumulative present and future demands on air and water resources.** As presented in the application, there are no plans for expansion of the facility beyond the size and type proposed in the application. Cumulative present and future demands on air and water resources will not be significant. There is no information to suggest that additional development is under consideration for other parts of the City's industrial park.
19. **Application of design options which maximize energy efficiencies, mitigate adverse environmental effect, and could accommodate expansion of generating capacity.** There are no plans to add future capacity to the facility,

- although a large portion of the plant's site will remain undeveloped should the need for future expansion arise. The facility, as described in the application, will incorporate several design features to mitigate adverse environmental effects and various operational techniques will be instituted to minimize environmental impacts. These design and operational features, such as enclosed fuel storage buildings that will be maintained at a negative pressure to minimize odors, stormwater retention ponds to treat stormwater runoff, and air pollution control equipment, have been addressed in other findings.
20. **Use of existing LEPGP sites.** There are two existing coal-fired power plants within fifty miles of Benson, one at Granite Falls, Minnesota, and one on the South Dakota-Minnesota border. It is not feasible to utilize either of these sites for the new biomass plant.
21. **Use of existing transportation, pipeline, and electrical transmission systems.** The site's location minimizes the need for additional transportation, pipeline, and electrical transmission infrastructure. The additional infrastructure required is addressed in other findings.
22. **Costs of constructing, operating and maintaining the facility which are dependent on design and site.** This consideration can be important when comparing two possible sites for a proposed power plant under the EQB's siting authority, but is not significant when only one site is being considered for an exemption. The estimated capital cost for the facility is \$100 million. The applicants have not evaluated the project's cost at any other site. The applicants envision that the project will be financed by tax-exempt debt, although the financing options have not been established yet.
23. **Adverse human and natural environmental effects which cannot be avoided.** The project will produce unavoidable human and environmental effects. The project will produce air emissions, noise, traffic, and disturb approximately 36 acres of the entire 83.7 acre site. Unavoidable effects from the project are described in findings 12 through 22.

Exemption Standard

24. The Power Plant Siting Act (PPSA), Minn. Stat. §§116C.51-69, requires a permit for construction of electric generating plants capable of producing 50 MW or more.
25. Minn. Stat. §116C.57, subd. 5a permits a utility to apply to the Board to exempt the construction of an electric generating plant between 50 and 80 MW from the full siting requirements of the Power Plant Siting Act.
26. Under the PPSA if the Board determines that the proposed LEPGP will not create significant human or environmental impact, it may exempt the proposed generating plant with any appropriate conditions. If the Board denies the

exemption request, it must state the reasons for denial and indicate the project changes necessary for approval.

27. If the Board grants the exemption request, the utility must comply with any applicable state and local zoning, building and land use rules, regulations and ordinances.

Procedural

28. On July 31, 2001, Fibrominn LLC and the City of Benson. filed an application to exempt the Fibrominn Biomass Power Plant from the full siting requirements of the Power Plant Siting Act. In May 2001 the Legislature passed the Energy Security and Reliability Act, which substantially changed the Power Plant Siting Act, including the elimination of the exemption provision. That Act became effective on August 1, 2001, and does not apply to projects that were pending before the EQB on that date. Therefore, Fibrominn and the City of Benson were entitled to seek an exemption at their discretion. See the Energy Security and Reliability Act of 2001, Minnesota Session Laws 2001, chapter 212, article 7.
29. In accordance with Minn. Stat. § 116C.57, subd. 5a, the City of Benson and Fibrominn LLC published notice of the project in the *Swift County Monitor News* on August 1, 2001. The comment period began on August 1, and ended on September 29, 2001. Because September 29 fell on a Saturday, comments were accepted through October 1, 2001.
30. On July 31 and August 1, 2001, the City of Benson and Fibrominn LLC mailed copies of the application and letters explaining the exemption review process to twelve landowners near the site and to 23 political subdivisions in the surrounding area.
31. On August 14, 2001, MEQB staff distributed copies of the application and letters explaining the exemption review process to MEQB technical representatives and the EAW distribution list maintained by the MEQB.
32. Minn. Stat. §116C.57, subd. 5a states that if the Board receives an objection from any person who owns real property adjacent to the proposed site or any affected political subdivision within 60 days of the filing of the exemption application, the Board must either deny the application or order a hearing.. The MEQB received no objections to the project from adjacent property owners or affected political subdivisions.
33. MEQB staff provided a copy of the application to each Board member.
34. A Certificate of Need from the Minnesota Public Utilities Commission is not required for the proposed project but the Public Utilities Commission did approve a power purchase agreement between Fibrominn and Xcel Energy, Inc. on May 8, 2001.

Comments

35. The MEQB received 27 comment letters from the public by the close of the comment period on October 1, 2001.
36. In a letter dated September 27, 2001, DNR staff stated that they had no objections to the project. No MEQB staff response was required.
37. In separate correspondence dated October 1, 2001, Neil Ritchie of the Institute for Agriculture and Trade Policy and David Morris of the Institute for Local Self-Reliance both requested that the MEQB reject the application for exemption. Both Mr. Ritchie and Mr. Morris requested further investigation into the use of poultry litter as a fuel source for the plant, based on the litter's existing use as a fertilizer, and into the possibility of mercury emissions from the poultry litter's combustion. As explained in earlier findings, the impact of using a substantial portion of the available poultry litter for generating electricity and the impact of replacing the nutrient value of the litter with chemical fertilizers are too remote to be factors to consider in determining whether to exempt the Fibrominn project, and there is no evidence to suggest that mercury will be emitted into the atmosphere from burning the litter.
38. The MEQB received 24 written comments from the public in addition to the Morris and Ritchie letters. These other commenters all expressed support for the project.

Based upon the foregoing Findings of Fact, the Minnesota Environmental Quality Board makes the following:

CONCLUSIONS

1. Any of the foregoing Findings more properly designated as Conclusions are hereby adopted as such.
2. The Minnesota Environmental Quality Board has jurisdiction over the exemption request pursuant to Minn. Stat. § 116C.57, subdivision 5a.
3. All relevant substantive and procedural requirements of law and rule have been fulfilled in order to grant an application for exemption from the Power Plant Siting Act.
4. The proposed project, when constructed in accordance with the proposed plans and the attached conditions, "will not create significant human or environmental impact" in any of the categories of impact examined under the terms of Minn. Rules, part 4400.1310.

5. The Applicants have demonstrated that the Fibrominn Biomass Power Plant meets the standards for exemption from the Minnesota Power Plant Siting Act process in Minn. Stat. § 116C.57, subd. 5a.

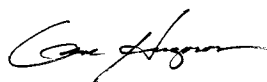
Based upon the foregoing Conclusions, the Minnesota Environmental Quality Board makes the following:

ORDER

The Minnesota Environmental Quality Board hereby grants an Exemption to the City of Benson and Fibrominn LLC from the requirements of the Minnesota Power Plant Siting Act (Minn. Stat. Sections 116C.51 - .69) for the Fibrominn Biomass Power Plant subject to the following conditions:

1. The applicants shall construct the facility in accordance with the description contained in the application and shall implement all mitigation strategies and operational practices described in the application designed to minimize the impacts of the project.
2. The applicants shall obtain all necessary permits from federal and state and local units of government before proceeding with construction.

STATE OF MINNESOTA
ENVIRONMENTAL QUALITY BOARD



Dated: October 18, 2001

Gene Hugoson, Chair

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CERTIFICATE OF SERVICE

I, Lynnette Sweet, hereby certify that I have this day served copies of the foregoing document on the attached list of persons.

xx by depositing a true and correct copy thereof, properly enveloped with postage paid in the United States mail at Minneapolis, Minnesota

xx electronic filing

**DOCKET Nos.: E002/M-00-1169, E002/M-11-198 AND MISCELLANEOUS
ELECTRIC SERVICE LIST**

Dated this 30th day of June 2017

/s/

Lynnette Sweet

[illegible]

First Name	Last Name	Email	Company Name	Address	Delivery Method	View Trade Secret	Service List Name
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Dean	Sedgwick	N/A	Itasca Power Company	PO Box 457 Bigfork, MN 56628-0457	Paper Service	No	OFF_SL_00-1169_1
Carl	Strickler	BADEMAILcarl.strickler@fibrowattusa.com	Fibrominn, LLC	One Summit Square, Suite 200 1717 Langhorne-Newtown Road Langhorne, PA 19047	Paper Service	No	OFF_SL_00-1169_1
Daniel P	Wolf	dan.wolf@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_00-1169_1

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Julia	Anderson	Julia.Anderson@ag.state.mn.us	Office of the Attorney General-DOC	1800 BRM Tower 445 Minnesota St St. Paul, MN 551012134	Electronic Service	Yes	OFF_SL_11-198_Official
Carl	Cronin	Regulatory.records@xcelenergy.com	Xcel Energy	414 Nicollet Mall FL 7 Minneapolis, MN 554011993	Electronic Service	Yes	OFF_SL_11-198_Official
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Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 551012198	Electronic Service	No	OFF_SL_11-198_Official
Daniel P	Wolf	dan.wolf@state.mn.us	Public Utilities Commission	121 7th Place East Suite 350 St. Paul, MN 551012147	Electronic Service	Yes	OFF_SL_11-198_Official

[illegible]

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Corey	Conover	corey.conover@minneapolismn.gov	Minneapolis City Attorney	350 S. Fifth Street City Hall, Room 210 Minneapolis, MN 554022453	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
Carl	Cronin	Regulatory.records@xcelenergy.com	Xcel Energy	414 Nicollet Mall FL 7 Minneapolis, MN 554011993	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
Joseph	Dammel	joseph.dammel@ag.state.mn.us	Office of the Attorney General-RUD	Bremer Tower, Suite 1400 445 Minnesota Street St. Paul, MN 55101-2131	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
Ian	Dobson	Residential.Utilities@ag.state.mn.us	Office of the Attorney General-RUD	1400 BRM Tower 445 Minnesota St St. Paul, MN 551012130	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
Ian	Dobson	ian.dobson@ag.state.mn.us	Office of the Attorney General-RUD	Antitrust and Utilities Division 445 Minnesota Street, BRM Tower St. Paul, MN 55101	Electronic Service 1400	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
John	Farrell	jfarrell@ilsr.org	Institute for Local Self- Reliance	1313 5th St SE #303 Minneapolis, MN 55414	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
Emma	Fazio	emma.fazio@stoel.com	Stoel Rives LLP	33 South Sixth Street Suite 4200 Minneapolis, MN 55402	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
Sharon	Ferguson	sharon.ferguson@state.mn.us	Department of Commerce	85 7th Place E Ste 280 Saint Paul, MN 551012198	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
Stephen	Fogel	Stephen.E.Fogel@XcelEnergy.com	Xcel Energy Services, Inc.	816 Congress Ave, Suite 1650 Austin, TX 78701	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric

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Edward	Garvey	edward.garvey@AESLconsulting.com	AESL Consulting	32 Lawton St Saint Paul, MN 55102-2617	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
Janet	Gonzalez	Janet.gonzalez@state.mn.us	Public Utilities Commission	Suite 350 121 7th Place East St. Paul, MN 55101	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
Michael	Hoppe	il23@mtm.org	Local Union 23, I.B.E.W.	932 Payne Avenue St. Paul, MN 55130	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
Julia	Jazynka	jjazynka@energyfreedomcoalition.com	Energy Freedom Coalition of America	101 Constitution Ave NW Ste 525 East Washington, DC 20001	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
Alan	Jenkins	aj@jenkinsatlaw.com	Jenkins at Law	2265 Roswell Road Suite 100 Marietta, GA 30062	Electronic Service	No	GEN_SL_Northern States Power Company dba Xcel Energy-Elec_Xcel Miscl Electric
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