Appendix A

Attorney’s Discussion of Power Purchase Agreements
Basics of a Power Purchase Agreement

Windustry

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I. Introduction

A Power Purchase Agreement (“PPA”) is a long-term agreement between the seller of wind energy and the purchaser. Negotiating and signing a PPA is an important step in the development of any wind energy project because it secures a long-term revenue stream through the sale of energy from the project and provides evidence that the energy is needed by the purchaser. Power may be sold through a PPA to a local utility or electric cooperative, a more distant utility, or to a different wholesale or retail customer.

While price terms are often thought of as the most important element of a PPA, typical PPAs include many vital provisions addressing issues such as the length of the agreement, commissioning process, “take-or-pay” or curtailment agreements, early termination rights, construction milestones, defaults and penalties, and ownership of credit flowing to the project owner and power purchaser. This article discusses various elements of a PPA and provides examples of contract provisions in an effort to give interested parties a basic understanding of the key provisions in a typical agreement.

II. Length of the Agreement

A. Term

PPAs are long-term agreements. The initial term of most PPAs is 20 years, although an initial term ranging anywhere from 15 to 25 years is not unusual. The agreement is usually effective once it has been executed (signed) by representatives of both the seller and the purchaser. Termination, or end date, of the agreement may be measured from the date of commercial operation or the date the agreement was executed. The date of commercial operation is the date the seller has met all the conditions necessary to deliver wind energy to the purchaser.

The agreement may also provide the purchaser an opportunity to extend the contract to include a renewal term beyond the initial term. This option will often state that the price and terms included in the initial term will apply during the renewal term.

B. Early Termination

There are several common provisions often included in PPAs that allow one or both parties to terminate the agreement early if certain conditions occur. For example, the agreement may allow one or both parties to terminate the agreement if: 1) the federal production tax credit (PTC) is not available; 2) the seller’s or purchaser’s board members or managers do not approve the project; 3) permits necessary for the construction and operation of the project are not obtained; 4) the seller has not entered into an acceptable interconnection agreement; 5) financing is not available; 6) transmission access has not been secured; or 7) site control is not secured.

The early termination provisions will usually require the terminating party to give notice to the other party and allow for time to address the issue before the termination is effective.
III. Commissioning Process

There are a number of steps involved in the commissioning process of a wind project that must be completed before the facility can reach commercial operation. While some of these steps may be included in the milestone section of the PPA (discussed below), other PPAs include them elsewhere as conditions to commercial operation. Each of these steps is aimed at ensuring that the facility will be able to reliably deliver wind energy to the purchaser.

These conditions for commercial operation may require the seller to demonstrate to the purchaser that:

- the seller has completed all testing required by the financing documents, government permits, interconnection agreement, seller’s operating agreement, sellers’ engineering, procurement and construction agreement and any manufacturers’ warranties;
- an officer of the seller has certified that the equipment installed at the facility has a maximum designed output equal to the agreed megawatts;
- the facility has achieved initial synchronization with the interconnection provider’s system;
- the communications systems reliably communicates with the purchaser;
- an independent professional engineer has certified that the facility has been completed in all material respects in accordance with the PPA;
- the facility is performing under the interconnection agreement at a generation level acceptable to the interconnection provider without causing any abnormal or unsafe operating conditions on any interconnected system;
- a separate agreement is in effect to deliver energy to the facility to allow for turbine start-up and shut down and maintenance;
- security arrangements have been made;
- certificates of insurance have been obtained; and
- all permits, consents licenses, approvals and authorizations required by any government authority have been obtained.

IV. Sale and Purchase

A. Price

Price terms vary depending on the structure of the project financing, quality of the wind resource, available transmission resources and other issues. Price terms in may range anywhere from 2.4¢ per kilowatt hour (kWh) to 6.4¢ per kWh. Price terms are very important to project development, as the PPA allows investors to estimate the total revenue available over the life of the project. If the purchase price is too low, the project may not have a positive cash flow or the investors may be unable to earn a reasonable rate of return. If so, it unlikely the project will be financed. Conversely, purchasers (usually utilities) have an interest in keeping the price low to ensure the utility can deliver low-cost electricity to its customers and the public utilities commission will approve the PPA.

Prices terms may remain flat, escalate or deescalate over the life of the project. For example, Minnesota’ community-based energy development (“C-BED”) statute\(^1\), requires utilities to

\(^1\) See Minnesota Statutes, Section 216B.1612 for further information about requirements for C-BED tariffs.
develop a tariff with a higher rate during the first 10 years of the project, recognizing that wind projects have high upfront capital costs. C-BED power purchase agreements reflect this structure by providing a higher rate in the first ten years of the project and a lower rate in the later 10 years. In addition, the PPA may allow for an lower initial rate, or trial price, that is applied to energy delivered to the purchaser before the date of commercial operation.

B. Metering

In order to measure the amount of wind energy delivered to the purchaser, most agreements include provisions that require the seller to install, maintain and test metering equipment at the point of delivery. While these meters are owned by the seller, purchasers often require that the seller give the purchaser access to the meters or install equipment that allows the purchaser to read the meter remotely.

C. Billing

Most PPAs include an article specifying invoice and billing procedures. It is common that the agreement will require the seller to provide a monthly invoice detailing wind energy delivered or available capacity. Timelines for payment and agreements relating to billing disputes are often included as well.

V. Curtailment

A. Curtailment Right

Most PPAs require that the seller deliver and sell to the purchaser all the wind energy generated by the facility. However, many agreements recognize that there will be times when either the purchaser, transmission owner or transmission authority (such as the Midwest Independent Transmission System Operator (MISO) or the Mid-Continent Area Power Pool (MAPP)) may curtail the production of wind energy at the facility because of constraints on the system, emergency or other reasons. A curtailment right is simply the right to, from time-to-time, restrict the delivery of wind energy from the generator to the point of delivery. The following is and example of a curtailment provision:

(a) The Purchaser shall have the right to curtail the delivery of Energy and Capacity to Purchaser for any reason deemed sufficient by Purchaser in its discretion (“Purchaser’s Curtailment Right”). To exercise the Purchaser’s Curtailment Right, Purchaser shall give Seller prior notice of the maximum allowable energy to be delivered to the point of delivery during any period of curtailment pursuant to this section (which may, in Purchaser’s discretion, be zero MWs), when such curtailment will begin and when it will end (the ending point may be left open as indefinite and to be designated at a subsequent time by further notice from Purchaser to Seller). Notice of the exercise of the Purchaser’s Curtailment Right may be given by Purchaser to Seller via phone but promptly confirmed in writing. Upon receipt of notice from Purchaser of its exercise of the Purchaser’s Curtailment Right, Seller will operate the wind project so as to ensure that the amount of energy delivered to the point of delivery at any one time during the curtailment period will not exceed the maximum allowable energy specified by Purchaser in the notice.
(b) The Parties acknowledge that there may also be circumstances in which MISO, MAPP or another Person with authority will direct Seller to curtail deliveries of energy and capacity from the wind project in accordance with applicable law, tariffs or agreements.

B. Take-or-pay

During negotiation of a PPA, the parties must decide who will bear the financial risk for losses that arise when the purchaser, transmission owner or transmission authority exercises its curtailment right. Many PPAs are structured as “take-or-pay” agreements, which means that the purchaser will pay the seller for wind energy actually delivered to the point of delivery and for “available capacity,” or energy that would have been delivered but for the curtailment.

Agreements differ regarding the conditions under which the purchaser must pay for “available capacity” that was not delivered. For example, in some PPAs, the purchaser pays regardless of the reason for the curtailment. In other PPAs, the purchaser pays for available capacity only if the purchaser exercised its curtailment right, not if the wind energy was curtailed because of an emergency, force majeure event (discussed below) or another event that would have damaged the transmission system.

The parties usually agree to calculate available capacity based on wind data available during the curtailment period and the power curve data for the wind turbines. The seller is often required to construct and maintain a meteorological tower capable of measuring and recording representative wind data 24 hours a day, and this data can be used to calculate the payment owed by the purchaser for the curtailed energy.

C. Curtailment Payment Calculations

The amount the purchaser must pay to the seller because of curtailment includes both the agreed price for the megawatts of available capacity and an additional “grossed up” amount reflecting the federal production tax credit (“PTC”) value. To incorporate this into the PPA, the agreement may define “tax benefits” as follows:

**Tax Benefits.** An amount equal to: (a) the production tax credits to which the seller would have been entitled with respect to net energy that could have been delivered but for a qualifying production loss event; plus (b) a “gross up” amount to take into account the federal, state and local income tax to Seller on such payments in lieu of production tax credits so that the net amount retained by Seller after payment of federal, state and local taxes is equal to the amount set forth in clause (a) of this definition. For purposes of determining the foregoing, Seller shall be deemed to be subject to tax at the highest statutory corporate income tax rates for the highest income bracket (federal, state or local, as applicable) for the Seller, as appropriate, that are in effect or scheduled to be in effect for the tax years in which the receipt of such Tax Benefits payment is taxed.

These provisions are important because, if the curtailment had not occurred, the seller would have received the benefit of the PTC. Instead, the seller will pay applicable taxes on any
payments received from the purchaser because of the curtailment. To hold the seller harmless (or as close to it as possible), the purchaser is obligated to pay the agreed to price for the available energy plus the “gross up” amount to cover the benefit the seller would have received if the energy had not been curtailed.

VI. Transmission Issues

Transmission provisions are becoming an increasingly important part of PPAs. These provisions include allocating both responsibility for securing adequate transmission access and costs for transmission upgrades. The following is an example of transmission provisions that may be included in an agreement:

(a) Seller shall be solely responsible for obtaining and paying for transmission and delivery of any and all energy produced by the facility to the point of delivery. Seller shall further be solely responsible for applying for and obtaining designation of the facility from MISO as an Energy Resource. Subject to purchaser’s termination right set for below in paragraph (b), all cost allocations associated with designation of the facility as an Energy Resource shall be determined pursuant to, and governed by, the applicable MISO tariff, the Interconnection Agreement and applicable FERC rules and regulations. In the event that the facility has not reached commercial operation within the time frame set forth in the Milestone Appendix to this agreement, the Purchaser may terminate the agreement upon written notice to Seller without further obligation.

(b) In the event any Network Upgrades are necessary (in whole or in part) for the facility to be designated as an Energy Resource by MISO and it is determined by MISO, FERC, MPUC or other appropriate person that the Purchaser or its ratepayers will be responsible for the costs of such upgrades or charges, (either directly or indirectly through the operation of MISO tariffs or FERC policies), then the Purchaser shall have the right at its sole and absolute discretion to determine whether to agree to accept such costs. In the event the Purchaser decides not to accept the costs associated with the facility obtaining designation as an Energy Resource, the Purchaser may terminate this agreement upon written notice to seller within forty-five (45) days following Purchaser’s receipt of the Seller’s Energy Resource interconnection request. Seller shall provide the Interconnection Provider and any applicable transmission owner’s written permission to release transmission study results to Purchaser. Seller may be entitled to “financial transmission rights” under the MISO Open Access Transmission and Energy Markets Tariff for certain Network Upgrades necessary for the facility to be designated as an Energy Resource that are funded by Seller.

As discussed in paragraph (a) above, the seller is often responsible for the costs of all transmission upgrades necessary to deliver the wind energy from the generation facility (the wind turbines) to the point of delivery. The point of delivery is a specific point in the transmission system where the wind energy is deemed to be delivered to the purchaser, and the purchaser assumes the risk of loss beyond that point. As discussed in paragraph (b) above, costs for transmission upgrades that are necessary to reliably deliver the wind energy from the point of
delivery to the ultimate customer are called “network upgrades,” and costs for these network upgrades are allocated following applicable MISO, FERC or state laws.\(^2\)

MISO’s determination as to whether a project is designated as an Energy Resource or a Network Resource significantly impacts the allocation of costs related to needed network upgrades. “Energy Resource” and “Network Resource” are terms defined in the MISO Open Access Transmission and Energy Markets Tariff. Designation as an Energy Resource makes the facility’s electric output eligible to interconnect with the transmission system using the existing firm or non-firm capacity on an “as available” basis. Designation as a Network Resource means that the facility must meet specific deliverability requirements, and then the transmission provider (e.g. MISO) will integrate the resource in the same manner as other large generating facilities already designated as Network Resources.

If a wind generator is designated as a Network Resource and other requirements are met, the seller will be reimbursed for fifty percent of the costs of network upgrades needed to interconnect the project to the transmission system. If, however, the wind generator is designated as an Energy Resource, the allocation of costs for network upgrades are not eligible for this reimbursement. Instead, allocation of costs is dependent upon who requests Network Resource Interconnection Service. Typically, the entity requesting the project move forward is responsible for the costs of necessary network upgrades.

At the time a PPA is negotiated and executed, it is common that the analysis and studies conducted by MISO or other transmission authority are not complete. Thus, there is no final determination as to the allocation of costs for network upgrades. As shown in paragraph (b) above, the seller or the purchaser may insist that they have the option to terminate the PPA if they determine that the costs for needed transmission upgrades are unreasonable.

VII. Defaults and Penalties

A. Milestones

Construction or development milestones are established to allow the purchaser and seller to track the project’s development progress. The agreement may name a variety of milestones, including: acquisition of all permits needed for construction; execution of a construction contract; commencement of construction; evidence of the seller’s purchase of wind turbines; and commercial operation.

The seller agrees to meet the dates established in the PPA for each of the milestones. Failure to meet a development milestone may trigger delay damages.

\(^2\) Discussion of network upgrades and cost allocation in this section is focused on Generator Interconnection Projects that are identified as necessary in the generator interconnection process pursuant to the Large Generator Interconnection Procedures (LGIP). This category of network upgrades includes any addition, modification or upgrade to the MISO Transmission System required at or beyond the first point of interconnection necessary to reliably accommodate the interconnection of a new generating facility.
B. Delay Damages

Delay damages are often calculated by multiplying a dollar amount (e.g. $5) by the number of MW of contracted capacity for each day the seller fails to meet a milestone. For example, if the seller is sixty days late performing a construction milestone on a 25 MW project, the delay damages would be $7,500 ($5 x 25 MW x 60 days). Failure to meet the construction milestone for commercial operations may trigger penalties that are much larger; penalties of $100 to $1000 per day are not uncommon.

The agreement may also include a provision that allows the seller to recover any delay damages paid to the purchaser for earlier missed milestones if the seller is able to deliver the project by the milestone for commercial operation. The following provision is an example:

Notwithstanding the foregoing, if Seller meets the commercial operation milestone, all delay damages paid by Seller to Purchaser based upon a failure to meet one or more earlier construction milestones, less any expense amounts incurred by Purchaser, shall be refunded to Seller, without interest, with payments due Seller for the first monthly billing period following the commercial operation date.

C. Events of Default

PPAs include detailed sections related to “events of default.” Events of default are situations where the action or inaction of one of the party significantly jeopardize the overall project. Many events of default are “curable,” which means there is an opportunity to resolve the issue. However, when one party is responsible for an “event of default,” the other party is typically entitled to damages if the default cannot be cured.

Events of default that may be considered “uncurable” include: liquidation or dissolution of either party; assignment of assets; voluntary bankruptcy; selling energy committed to the purchaser to a third party; fraud; waste; tampering with the purchaser’s facilities; misrepresentation; and misconduct. In the event that one of these situations occurs, the other party is usually entitled to specific damages under the agreement.

The PPA may also list specific events of default that are considered curable and provide a time period in which the defaulting party must cure. Examples of curable defaults include failure to: meet construction milestones; maintain security funds; maintain agreements required to deliver energy to the purchaser; comply with mortgage lien requirements; provide energy for sixty consecutive or ninety non-consecutive days in any 365 day period; or meet peak production requirements. Other curable defaults include: involuntary bankruptcy; abandonment of the facility, making false representations or warranties, or failure to comply with any other material obligation under the agreement which would have a material impact on the other party.

B. Force Majeure

When negotiating a PPA, the parties acknowledge that there may be circumstances beyond the parties’ control that could prevent them from performing under the contract. In order to recognize this within the agreement, the agreement will include a definition for “force majeure”
and one or more clauses excusing nonperformance if a party is unable to perform because of a force majeure event. The following is an example of a definition of force majeure.

**Force Majeure.** The performance of each party under the agreement may be subject to interruptions or reductions due to an event of Force Majeure. The term “Force Majeure” shall mean an event or circumstance beyond the control of the party claiming force majeure, which, by exercise of due diligence and foresight, could not reasonably have been avoided, including, but not limited to an emergency, a force majeure event on the interconnection provider’s system as defined in the Interconnection Agreement to the extent it causes the facility to be physically incapable of delivering energy or Purchaser from receiving energy to the point of delivery; a force majeure event (or comparable uncontrollable circumstances as may be defined in the applicable OATT) on the regional transmission system to the extent it causes the Purchaser to be unable to accept delivery of energy at the point of delivery or to transmit such energy from and after the point of delivery, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, sabotage, strike and act of God or any other cause beyond the control of the party claiming Force Majeure. However, the obligation to use due diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the party having such difficulty.

The definition of force majeure may also include items such as: high winds of sufficient strength or duration to materially damage a facility or significantly impair its operation for a period of time longer than normally encountered in similar businesses under comparable circumstances; long-term changes in renewable energy flows across the facility caused by climactic change; and actions or inactions of a government authority. The definition may also exclude certain items such as: the unavailability of wind, curtailment, litigation or failure to maintain permits.

If a force majeure event occurs, the agreement will excuse both parties from responsibility and liability related to any delay or failure to perform. Most agreements will require that the party asserting force majeure to provide the other party with notice.

**D. Remedies**

When an event of default occurs and remains uncured, the non-defaulting party may be entitled to actual damages or the right to terminate the agreement. Actual damages include any damages incurred as a result of the default. If the seller defaults, this will usually mean the purchaser can recover costs for purchasing replacement energy in addition to any other costs incurred. If the default remains uncured for more than 365 days, the non-defaulting party may be required to either 1) waive its rights to recover further damages or 2) elect to terminate the agreement.

Liability for damages due to a delay or event of default are often capped. The liability cap for delay damages may be formulaic, for example $75/MW times the nameplate capacity of all wind turbines. In contrast, liability for events of default are often a fixed amount like $10 million.
VIII. Insurance

The PPA will usually require that the seller maintain, at the seller’s expense, specific insurance policies. In some cases, the seller is required to list the purchaser as an additional insured under the policy. Policies typically required include: commercial general liability insurance; worker’s compensation insurance for seller’s employees; automobile liability insurance; builder’s risk insurance; all-risk property insurance; and business interruption and extra expense insurance. The business interruption and extra expense insurance covers lost revenues or increased expenses needed to resume operations after a claim under the property insurance policy.

IX. Environmental Attributes or Credits

Many PPAs include provisions that assign ownership of the “environmental attributes,” “environment credits,” “green tags,” or “renewable energy credits” to the purchaser. Environmental attributes or credits are generally defined as 1) credits, certificates, off-sets or other benefits assigned to the generation in a manner which reduces, displaces or off-sets air emissions resulting from fuel combustion at another location or 2) aggregates the total benefits or attributes of a renewable energy marketing program, green pricing program, environmental or renewable energy trading system, renewable energy portfolio standard or other program required by federal or state law.

Even if there is no state or federal tracking or trading system applicable for a specific wind project, many agreements are including provisions assigning ownership of such credits if a system is developed. For example, an agreement may include language stating:

The parties acknowledge that future legislation or regulation may create value in the ownership, use or allocation of environmental attributes. The Purchaser shall own or be entitled to claim all environmental attributes to the extent such credits may exist during the term of this agreement. Seller shall cooperate with Purchaser at the Purchaser’s sole cost and expense with data and other information reasonably requested by the Purchaser to obtain and assign to the Purchaser any and all environmental attributes.
IX. Conclusion

Negotiating a power purchase agreement is an essential step in developing a wind energy project. As shown by the general overview provided in this article, PPAs include many important provisions beyond just the negotiated price for wind energy generated by the project. Each provision in the PPA warrants careful analysis and consideration, and parties nearing negotiations on a PPA should discussed the proposed language with legal counsel to make sure it meets the needs of the specific project.

Daniel A. Yarano is a shareholder of Fredrikson & Byron, P.A. Dan works with wind energy developers, land owners, and investors in managing all aspects of acquiring, financing, and developing wind energy projects, including developing wind projects that qualify for Minnesota’s Community-Based Energy Development Tariff. We have over six years of experience in managing the development, financing, and acquisition of wind energy projects of all sizes throughout the Midwest (Minnesota, North Dakota, South Dakota, Iowa, Wisconsin, and Illinois) and Southwest. Currently, Fredrikson & Byron is representing wind energy developers, landowners and investors in the development of over 1,000 MW of wind energy capacity. Dan co-chairs the Energy Practice Group and is a member of the firm’s Corporate, Energy, Securities, Banking & Financial Services, and Mergers & Acquisitions Groups. Dan can be reached directly at 612-492-7149 or dyarano@fredlaw.com.

Christy Brusven is an associate with Fredrikson & Byron, P.A. Christy works in the Business, Energy, Renewable Energy and Government Relations groups. Christy can be reached directly at 612-492-7412 or cbrusven@fredlaw.com.
Appendix B

Sample Power Purchase Agreement (PPA)
February 27, 2001

The Honorable David P. Boergers
Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Badger Wind Power L.L.C.'s Filing of Redesignated Renewable Power Purchase Agreement; Docket No. ER01-1071-000

Dear Secretary Boergers:

Pursuant to the request of Commission Staff, attached is an original and 14 copies of the Renewable Power Purchase Agreement, filed in the above-captioned docket on January 26, 2001, redesignated in accordance with Order No. 614.

A copy of this filing has been mailed to all parties to whom the original filing was mailed. Please call me if there are any questions. Thank you for your attention to this matter.

Very truly yours,

Kurt W. Bilas
Attorney for Badger Windpower, L.L.C.

cc: Yolanda C. Hart-Harris
Badger Windpower, L.L.C.
Service Agreement No. 1
Under FERC Electric Tariff, Original Vol. No. 1

RENEWABLE POWER PURCHASE AGREEMENT

BETWEEN

BADGER WINDPOWER, LLC

AND

WISCONSIN ELECTRIC POWER COMPANY

Dated as of December 8, 2000

FERC DOCKSTED
FEB 27 2001

Effective Date: Upon Commercial Operation
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RENEWABLE POWER PURCHASE AGREEMENT
BETWEEN
BADGER WINDPOWER, LLC
AND
WISCONSIN ELECTRIC POWER COMPANY

This Renewable Power Purchase Agreement ("Agreement") is made this eighth day of December, 2000, by and between Wisconsin Electric Power Company, a Wisconsin corporation ("Buyer") and Badger Windpower, LLC, a Delaware limited liability company ("Seller"); and, together with Buyer, each individually referred to herein as a "Party" and collectively as the "Parties".

WITNESSETH:

WHEREAS, Buyer is one of four Eastern Wisconsin Utilities required by 1997 Wisconsin Act 204 to acquire renewable energy resources and has elected to procure from Seller the construction of 25.5 megawatts of new electric capacity that is generated from renewable energy sources; and

WHEREAS, Seller proposes to install a Facility for the generation of Renewable Power utilizing wind energy; and

WHEREAS, Buyer desires to purchase Renewable Power from the Facility; and

WHEREAS, Seller will construct the Facility to include not less than the Contract Capacity; and

WHEREAS, subject to the provisions set forth hereinafter, Seller shall operate and maintain the Facility in a manner to ensure the delivery to Buyer of an amount of Renewable Power that is not less than the Contract Energy Amount; and

WHEREAS, Buyer shall be obligated to take and pay for an amount of Renewable Power that is not greater than the Contract Energy Amount, subject to the provisions set forth hereinafter.

NOW, THEREFORE, the Parties hereto, each in consideration of the agreement of the other, agree as follows:

Section 1
DEFINITIONS

1.1 Definitions. As used in this Agreement, the following terms shall have the following meanings when capitalized:
(a) “Act” shall mean Section 27 of 1997 Wisconsin Act 204 creating Section 196.377(2) Wisconsin Statutes.

(b) “ATC” shall mean American Transmission Company, LLC.

(c) “After-Tax Basis” means, with respect to any payment received or deemed to have been received by any Person, the amount of such payment (the base payment) supplemented by a further payment (the additional payment) to that Person so that the sum of the base payment plus the additional payment shall, after deduction of the amount of all taxes required to be paid by such Person in respect of the receipt or accrual of the base payment and the additional payment (taking into account any credits or deductions arising from the underlying loss, the base payment and the additional payment and the timing thereof), be equal to the amount required to be received. Such calculations shall be made on the basis of the assumption that the recipient is subject to U.S. federal income taxation at the highest applicable statutory rate applicable to corporations for the relevant period or periods, and is subject to state and local income taxation at the highest applicable statutory rates applicable to corporations in the taxing jurisdiction of Iowa County, Wisconsin for the relevant period or periods.

(d) “Amendment” shall have the meaning set forth in Section 6.7.

(e) “Applicable Law” shall mean, with respect to either Party, all laws, statutes, codes, acts, treaties, ordinances, orders, rules, regulations, governmental approvals, licenses and permits, and requirements of all regulatory and other governmental authorities, in each case applicable to or binding upon such Party, the Facility, the Interconnection Facilities, and this Agreement.

(f) “Business Day” shall mean every day other than a Saturday or Sunday or any legal holiday under § 895.20, Wis. Stats.

(g) “Capacity” shall be the sum of the warranted nameplate capacities of all of the wind turbine generators installed in the Facility, representing the ability of the Facility to generate and deliver Renewable Power expressed in kilowatts (kW).

(h) “Commercial Operation” shall be deemed to have occurred when the number of wind turbine generators having a total capacity, as warranted by the wind turbine generators’ manufacturer, at least equal to the Contract Capacity have been installed at the Site and such wind turbine generators and the other equipment comprising the Facility have been tested, constructed, and interconnected with the Transmission Provider’s Transmission System, and the Facility is staffed and operational and capable of providing the Contract Capacity at the Point of Delivery. Testing of the wind turbine generators under various wind conditions which may not reasonably be performed prior to the date of Commercial Operation shall proceed in accordance with the manufacturer’s requirements without delaying the date of Commercial Operation.

(i) “Commercial Operation Date” shall mean the first day of the month following the date on which Seller delivers to Buyer written notice that the Facility has achieved Commercial Operation.
(j) “Commission” is the Public Service Commission of Wisconsin and its successor agencies.

(k) “Conditional Use Permit” shall mean the approvals by the local authorities that have jurisdiction over the Site, to allow construction and operation of the Facility.

(l) “Contract Capacity” shall mean 25,500 kilowatts.

(m) “Contract Energy Amount” shall mean 51,381,000 kWh per Contract Year that, subject to the provisions of this Agreement, Seller has agreed to deliver and sell and Buyer has agreed to accept and purchase under this Agreement.

(n) “Contract Year” is the twelve (12) month period beginning on the Commercial Operation Date and each succeeding twelve month period during the Term hereof.

(o) “Excess Renewable Power” shall have the meaning set forth in Section 2.4.

(p) “Facility” is all of Seller’s proposed electrical plant and equipment located at the Site used to generate Renewable Power utilizing wind energy, including Seller’s Interconnection Facilities, and further described in Exhibit A, including any and all additions, replacements or modifications.

(q) “FERC” shall mean the Federal Energy Regulatory Commission and its predecessor and successor agencies.

(r) “Force Majeure Event” shall mean any event which wholly or partly prevents or delays the performance of any obligation arising under this Agreement, but only if and to the extent (i) such event is not within the reasonable control, directly or indirectly, of the Party affected, (ii) such event, despite the exercise of reasonable diligence, cannot be or be caused to be prevented, avoided or removed by such Party, (iii) the Party affected has taken all reasonable precautions and measures in order to avoid the effect of such event on such Party’s ability to perform its obligations under this Agreement and to mitigate the consequences thereof, and (iv) such event is not the direct or indirect result of a Party’s negligence or the failure of such Party to perform any of its obligations under this Agreement. A Force Majeure Event shall include, but not be limited to, any of the following: (a) acts of God or the public enemy, war, whether declared or not, blockade, insurrection, riot, civil disturbance, public disorders, insurrection, rebellion, violent demonstrations, revolution, or sabotage; (b) any effect of unusual natural elements, including fire, subsidence, earthquakes, floods, lightning, tornadoes, unusually severe storms, or similar cataclysmic occurrence or other unusual natural calamities; (c) environmental and other contamination at or affecting the Site; (d) explosion, accident or epidemic; (e) general strikes, lockouts or other collective or industrial action by workers or employees, or other labor difficulties; (f) the unavailability of labor, fuel, power or raw materials, the breakdown of the Facility or other plant breakdown or equipment failure, and any event affecting the ability of any supplier (including under any engineering, procurement or construction agreement for the Facility) to the Facility to fulfill its obligations to Seller and the Facility so long as, in each case, the cause thereof otherwise would qualify as a Force Majeure Event; (g) accidents of navigation or breakdown or injury of vessels, accidents to harbors, docks, canals or other assistance to or adjuncts of shipping or navigation, or quarantine; (h) nuclear emergency, radioactive
contamination or ionizing radiation or the release of any hazardous waste or materials; and (i) air crash, shipwreck, train wrecks or other failures or delays of transportation; provided, however, that neither the lack of money or any event caused by a Party's inability to pay or fund any action or activity nor changes in market conditions shall constitute a Force Majeure Event.

(s) "Interconnection Agreement" shall mean the mutually agreed interconnection agreement among the Transmission Provider, Seller and ATC pursuant to which Seller's Interconnection Facilities and the Transmission Provider's Interconnection Facilities will be constructed and operated and maintained during the term of the Agreement.

(t) "Interconnection Agreement Execution Date" shall mean the date on which the last of Seller, Transmission Provider and ATC execute and deliver the Interconnection Agreement.

(u) "Interconnection Facilities" shall mean Seller's Interconnection Facilities and Transmission Provider's Interconnection Facilities.

(v) "Kilowatt-hours" or "kWh" means a unit of electrical energy equal to one kilowatt of power supplied or taken from an electric circuit steadily for one hour.

(w) "Lenders" shall mean any and all individuals or entities or successors in interest thereof lending money or extending credit (including any financing lease) (i) to Seller for the construction, term or permanent financing of the Facility; (ii) to Seller for working capital or other ordinary business requirements of the Facility (including the maintenance, repair, replacement or improvement of the Facility); (iii) to Seller for any development financing, bridge financing, credit support, credit enhancement or interest rate protection in connection with the Facility or (iv) for the purchase of the Facility and the related rights from Seller.

(x) "Meter" shall mean an instrument or instruments meeting applicable electric utility industry standards used to measure and record the volume and other required delivery characteristics of the Renewable Power delivered hereunder.

(y) "Partial Commercial Operation Date" shall mean the day following the date on which the Seller’s Interconnection Facilities and Transmission Provider’s Interconnection Facilities are installed and tested, and the Facility is able to produce and deliver Renewable Power to the Point of Delivery. Seller shall provide Buyer with advance written notice of the Partial Commercial Operation Date.

(z) "Person" shall mean an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, limited liability company or any other entity of whatever nature.

(aa) "Point of Delivery" is the point at which Seller’s Interconnection Facilities are interconnected with the Transmission Provider’s Interconnection Facilities and shall be on the Transmission Provider’s side of Seller’s disconnecting device.

(bb) "Prime Rate" shall mean the interest rate (sometimes referred to as the "base rate") for large commercial loans to creditworthy entities announced from time to time by
Citibank, N.A. (New York), or its successor bank, or, if such rate is not announced, the rate published in The Wall Street Journal as the “Prime Rate” from time to time (or, if more than one rate is published, the arithmetic mean of such rates), in either case determined as of the date the obligation to pay interest arises, but in no event more than the maximum rate permitted by Applicable Law.

(cc) “Prudent Operating Practices” shall mean the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the electric generation industry for facilities of similar size, type, and design, that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with law, regulation, reliability, safety, environmental protection, applicable codes, and standards of economy and expedition.

(dd) “Reasonable Commercial Efforts” shall mean, Site specific weather conditions permitting, ten (10) workers performing foundation construction work, eight (8) workers performing electrical work, twelve (12) workers performing turbine and tower mechanical erection work, in each case, for ten (10) hour per day shifts (December 24th and 25th as the only non-working days), and with workers commencing the trenching and laying of cables three (3) Business Days after the Interconnection Agreement Execution Date.

(ee) “Renewable Power” is a term used to represent both electrical energy and capacity generated by the Facility, having the characteristics of three phase, 60 cycle per second alternating current at the nominal voltage of Seller’s interconnection with the Transmission Provider.

(ff) “Seller’s Interconnection Facilities” shall mean the interconnection facilities, control and protective devices and required metering facilities to connect the Facility with the Transmission Provider’s Interconnection Facilities in order to effectuate the purposes of this Agreement up to, and on Seller’s side of, the Point of Delivery.

(gg) “Shortfall Amount” shall have the meaning set forth in Section 2.4 hereof.

(hh) “Site” shall mean the real property located near Monfort, in the Township of Eden, Iowa County, Wisconsin on which the Facility is to be located.

(ii) “Station Usage” shall mean the amount of electricity produced by the Facility that is used in the operation or maintenance of the Facility.

(jj) “Transmission Provider” shall mean Alliant Energy-Wisconsin Power and Light Company, Inc. or any successor to the ownership or control of the transmission facilities which interconnect the Facility’s Point of Delivery to Buyer’s retail electric service territories.

(kk) “Transmission Provider’s Interconnection Facilities” shall mean the interconnection facilities, control and protective devices and metering facilities required to connect the Transmission Provider’s Transmission System with the Facility, up to the Point of Delivery.
(II) "Transmission Provider’s Transmission System" shall mean the facilities for the transmission of Renewable Power from the Facility’s Point of Delivery to Buyer’s retail electric distribution system.

1.2 Rules of Interpretation. Unless otherwise required by the context in which any term appears: (a) capitalized terms used in this Agreement shall have the meanings specified in this Section 1; (b) the singular shall include the plural and vice versa; (c) references to “Articles,” “Sections,” “Schedules,” “ Annexes,” “ Appendices” or “Exhibits” (if any) shall be to articles, sections, schedules, annexes, appendices or exhibits hereof; (d) all references to a particular entity shall include a reference to such entity’s successors and permitted assigns; (e) the words “herein,” “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular section or subsection hereof; (f) all accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied; (g) references to this Agreement shall include a reference to all appendices, annexes, schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time; and (h) the masculine shall include the feminine and neuter and vice versa. The Parties collectively have prepared this Agreement, and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

Section 2

SALE AND PURCHASE OF RENEWABLE POWER

2.1 Sale of Renewable Power. In accordance with the terms and conditions hereof, commencing on the earlier of the Partial Commercial Operation Date or the Commercial Operation Date, and continuing throughout the Term hereof, Seller agrees to sell and deliver to Buyer at the Point of Delivery the Renewable Power produced by the Facility (less any Station Usage).

2.2 Purchase of Renewable Power. In accordance with the terms and conditions hereof, commencing on the earlier of the Partial Commercial Operation Date or the Commercial Operation Date, and continuing throughout the Term hereof, Buyer shall purchase and accept Renewable Power produced by the Facility from Seller at the Point of Delivery as follows: (i) for the period on and after the Partial Commercial Operation Date to the Commercial Operation Date, all Renewable Power generated by Seller and delivered to the Point of Delivery pursuant to the terms hereof up to the Contract Energy Amount; (ii) for the period on and after the Commercial Operation Date, (x) all Renewable Power generated by Seller and delivered to the Point of Delivery pursuant to the terms hereof in any Contract Year up to the Contract Energy Amount, including any Shortfall Amount (as defined in Section 2.4 hereof) from the prior Contract Years and (y) any quantity of Renewable Power delivered to the Point of Delivery from the Facility that constitutes Excess Renewable Power as described in Section 2.4 hereof.

2.3 Purchase Price Prior to Commercial Operation Date. The price for the Renewable Power purchased from the Facility during the period on and after the date of the Partial Commercial Operation Date and until either the end of three months after the Partial Commercial Operation Date or until the Commercial Operation Date, whichever comes sooner, shall be the same price as is set forth in Schedule I for Contract Year One. If the time period between the
Partial Commercial Operation Date and the Commercial Operation Date exceeds three months, the price for the Renewable Power delivered between the date three months after the Partial Commercial Operation Date and the Commercial Operation Date shall be 1.4¢ per kWh.

2.4 Purchase Price On and After Commercial Operation Date. The price for Renewable Power on and after the Commercial Operation Date for an amount of Renewable Power up to the Contract Energy Amount deemed to be sold to Buyer with respect to each Contract Year (as hereafter determined) shall be the amount set forth in Schedule I hereto. In the event Seller fails to deliver to Buyer the Contract Energy Amount in a given Contract Year, the deficiency in Renewable Power delivered, herein called “Shortfall Amount,” shall be added to the subsequent Contract Year's Contract Energy Amount.

The price for the Renewable Power to meet said Shortfall Amount included in the subsequent Contract Year’s Contract Energy Amount during such subsequent Contract Year shall be that price which would have been paid per Schedule I had that Renewable Power been delivered in the Contract Year in which it was originally contracted to be delivered. Once the Shortfall Amount has been delivered, subsequent deliveries of Renewable Power shall be priced as shown in Schedule I for that Contract Year.

In the event Seller has delivered and Buyer has purchased in a Contract Year the Contract Energy Amount, including any Shortfall Amount from any previous Contract Years, the price for additional Renewable Power deliveries (“Excess Renewable Power”) during the balance of that Contract Year shall be Buyer’s Actual Annual Net Generation Cost per kWh as reported in Buyer’s December Fuel Cost Report to the Commission for the previous calendar year. If at any time hereafter such report is not filed with the Commission, the Parties shall determine in good faith a similar index for such price that is mutually agreeable to the Parties and, if the Parties are unable to agree to such an index, Buyer shall continue to calculate such average annual fuel cost and provide the same to Seller at the same times as such reports would have otherwise been filed.

In the event a Shortfall Amount exists at the end of the tenth (10th) Contract Year of this Agreement, Buyer shall have no responsibility to purchase said Shortfall Amount.

To avoid ambiguity regarding the above Shortfall Amount and Excess Renewable Power descriptions, examples of the application of the provisions of this Section 2.4 are set forth in Exhibit B hereto.

2.5 Billing and Payment. Billing and payment for the Renewable Power sold and purchased under this Agreement and other amounts due and payable hereunder shall be as follows:

(a) Seller shall calculate the Renewable Power delivered to the Point of Delivery from recordings produced by the Meter at or near midnight on or near the last day of each calendar month. No later than the tenth (10th) day of each month, (i) Seller shall deliver to Buyer a statement showing the amount of Renewable Power delivered to Buyer by Seller pursuant hereto during such billing period and Seller’s computation of the amount due to Seller in respect thereof determined pursuant to Section 2.3 or Section 2.4 hereof, and any other
amounts hereunder. Not more than twenty (20) days after receipt of such statement (unless such day is not a Business Day, in which case such payment shall be due on the next succeeding Business Day), Buyer shall pay to Seller the amounts due to Seller as set forth in such statement by wire transfer in immediately available funds to an account specified in writing by Seller, by check, or by another means agreed to by the Parties in writing from time to time.

(b) Within ninety (90) days after receipt of any statement or invoice under subparagraph (a) of this Section 2.5, Buyer may provide written notice to Seller of any alleged error therein. If Seller notifies Buyer in writing within thirty (30) days after receiving the notice from Buyer that Seller disagrees with the allegation of error in the invoice, the Parties shall meet, by telephone conference call or otherwise, within five (5) days after Seller’s response for the purpose of attempting to resolve the disagreement.

(c) Except as hereafter provided, all payments shall be made without set off or deduction. All late payments or amounts paid in error and refunded shall bear interest at an annual rate equal to the Prime Rate then in effect plus 200 basis points, but in no event more than the maximum rate permitted by law, from the date of payment through the date the refund is actually received. Any amount subject to being refunded and not refunded within 30 days may be set off against any amount then owing or which subsequently becomes due and owing.

After providing written notice in advance, Buyer may review billing, metering and related records in the possession of Seller regarding the sale and purchase of Renewable Power hereunder during Seller’s business hours at its offices where such records are maintained or are otherwise available. After providing written notice in advance, Seller may review Buyer’s metering records regarding the purchase of Renewable Power hereunder.

2.6 Taxes. Buyer shall pay, or cause to be paid, and shall indemnify and hold harmless the Seller on an After-Tax Basis for any new taxes on or with respect to the ownership, sale or transfer of Renewable Power delivered pursuant to this Agreement and from the Point of Delivery (including, without limitation, any sales, use, excise or other similar transfer taxes on the sale to Buyer and purchase from Seller of capacity and energy pursuant to this Agreement).

Section 3
INTERCONNECTION AND OPERATION

3.1 Construction Required. Seller agrees to use Reasonable Commercial Efforts to install the Facility and to interconnect it with the Transmission Provider’s Transmission System on a schedule that will allow Seller to achieve the Partial Commercial Operation Date on or before January 15, 2001; provided, Seller shall have no liability to Buyer if Seller fails to achieve the Partial Commercial Operation Date by such date. In the event Seller fails to achieve Commercial Operation by April 30, 2001, Buyer’s sole remedies for Seller’s failure to achieve Commercial Operation by such date shall be as described in Section 4.3 hereof. Seller shall provide Buyer with an anticipated construction schedule by the third Business Day after the Interconnection Agreement Execution Date.
3.2 Interconnection Service.

(a) Interconnection: Transmission Provider and Seller shall design, install, maintain and operate the Interconnection Facilities as required under the Interconnection Agreement. In the event (and to the extent) of a conflict between said Interconnection Agreement and the provisions of this Agreement, the provisions of the Interconnection Agreement on matters pertaining to the interconnection of the Facility to Transmission Provider’s Transmission System shall control.

(b) Transmission Service: Buyer shall be responsible for arranging for, and the payment for, all charges for any and all transmission services required to effectuate Buyer’s purchase of Renewable Power hereunder. The prices paid pursuant to Section 2 for Renewable Power do not include charges for such transmission service. Buyer will be responsible for handling any OASIS, tagging, transmission scheduling or similar protocols with the Transmission Provider during the term hereof. In addition, the Amendment will set forth certain obligations under the Interconnection Agreement that Seller and Buyer will agree that Buyer shall be responsible for timely performing on behalf of Seller, at Buyer’s cost and expense.

3.3 Facility Information. Seller shall assist and cooperate with Buyer in providing all operational information and reports (other than internal financial and economic data) relating to this Agreement, the Facility and the Seller’s Interconnection Facilities as are required from time to time by government agencies or Buyer. Following the earlier of the Partial Commercial Operation Date or the Commercial Operation Date, Seller shall also make available to Buyer at reasonable intervals output and other data relating to availability and generation output of the Facility as a whole. Except to the extent required by regulatory or other governmental authorities, Buyer shall maintain such information in confidence and shall not disclose any information provided to it by Seller under this Agreement to any other person without the prior written consent of Seller.

3.4 Operation and Maintenance of Facilities. Seller hereby covenants to operate and maintain Seller’s Interconnection Facilities and all other equipment and systems interconnecting with Transmission Provider’s Interconnection Facilities and Transmission Provider’s Transmission System in safe and reliable operating conditions and in accordance with Prudent Operating Practices and, to the extent not in conflict therewith, the electrical system rules and policies of Transmission Provider as in effect from time to time. Seller shall devise and implement a plan of inspection, maintenance and repair for the Facility and the components thereof in order to maintain such equipment in safe and reliable operating conditions and shall keep records with respect to inspections, maintenance and repairs thereto. The records of such activities shall be available at the Facility for inspection by Buyer during Seller’s regular business hours upon reasonable notice. Each Party shall use all reasonable efforts to avoid any interference with the other’s operations at the Facility and Seller’s Interconnection Facilities, or Transmission Provider’s Interconnection Facilities and Transmission Provider’s Transmission System.
Section 4
TERM, TERMINATION AND DEFAULTS

4.1 Term.

(a) The term shall commence on execution hereof and continue for a period of ten (10) years after the Commercial Operation Date (the “Term”). Subject to the provisions of Section 4.1(b) hereof, Buyer shall have the option, exercisable by providing Seller notice thereof no later than one hundred eighty (180) days prior to the expiration of the original Term, to extend the Term of the Agreement for an additional five (5) years at the prices as set forth in Schedule I hereto. Subject to the provisions of Section 4.1(b) hereof, at the end of such extension, Buyer shall have an option, exercisable by providing Seller notice thereof no later than one hundred eighty (180) days prior to the expiration of the extended term, to extend the term for no less than five (5) years and no more than ten (10) years at the prices set forth in Schedule I hereto. All other terms and conditions, including the Contract Energy Amount with respect to which the prices shall be paid (subject to a proportionate reduction of the Contract Energy Amount if less than the full amount of Contract Capacity during the original Term is available with respect to any extension of the Term), shall remain the same and an appropriate amendment of this Agreement shall be entered into to reflect the extension of the term and any reduction in Contract Capacity during such extended term.

(b) Seller retains the right to solicit, negotiate and enter into agreements with third parties with respect to all or any portion of the Contract Capacity (and/or the Renewable Power capable of being generated from such Contract Capacity) for any periods after the expiration of the original Term hereof, and for any periods after the expiration of any exercised option, that is otherwise subject to Buyer’s options to extend the Term as set forth in Section 4.1(a) unless and until Buyer has exercised its option to extend the Term pursuant to Section 4.1(a) hereof. Subject to Buyer’s right of first refusal set forth in Section 4.1(c) hereof, Seller’s execution of an agreement with a third party to sell such portion of the Contract Capacity and Renewable Power during a period of time otherwise subject to Buyer’s option to extend the Term hereunder shall be deemed to be an automatic revocation of Buyer’s option to purchase the Renewable Power from that portion of the Contract Capacity that has been contracted to a third party or third parties.

(c) If prior to the date that is one hundred eighty (180) days before the end of the Term (including any extensions thereof pursuant to Section 4.1(a) hereof) Seller enters into an agreement or proposes to enter into any agreement with a third party or third parties with respect to all or any portion of the Contract Capacity (and/or the Renewable Power capable of being generated from such Contract Capacity) that is subject to any option that continues to be available to Buyer pursuant to Section 4.1(a) hereof, Buyer shall have a right of first refusal for all or any portion of the Contract Capacity and Renewable Power that Seller proposes to sell or has agreed to sell. Seller agrees to provide Buyer with advance written notice of any such proposed sale of, or agreement entered in with respect to, all or a portion of the Contract Capacity and Renewable Power to a third party or third parties, which notice shall specify all the material terms thereof or, if applicable, include a copy of the agreement. Buyer shall have thirty (30) days to agree, by written notice to Seller, to match the terms thereof and purchase such Contract Capacity and Renewable Power. Should Buyer exercise its right of first refusal
hereunder to purchase such Contract Capacity and Renewable Power the Parties shall, within a reasonable time (but, in any event, prior to the end of the Term or any extension thereof), execute an agreement that memorializes the terms and conditions of such purchase. Such agreement shall supersede Buyer’s extension or renewal rights as to the portion of the Contract Capacity and Renewable Power affected thereby. Should Buyer fail to timely exercise its right of first refusal, Seller may proceed to enter into an agreement with a third party or third parties on material terms not more favorable to the third parties than those set forth in the written notice to Buyer or, if applicable, proceed with its performance under the agreement or under any modified agreement that has material terms that are not more favorable to the third party or third parties than those set forth in the agreement previously delivered to Buyer.

4.2 Regulatory Approval.

(a) Within thirty (30) days after the date hereof, Seller shall file this Agreement with FERC for acceptance pursuant to the Federal Power Act and shall apply for Exempt Wholesale Generator (EWG) status.

(b) Within thirty (30) days after execution hereof by both Parties, Buyer shall file this Agreement with the Commission pursuant to the Act and request an order from the Commission seeking the following:

(i) approval for Buyer that this Agreement fulfills 25.5 MW of Buyer’s obligation to construct or procure new electric capacity generated from renewable energy sources per Section 27(b) of the Act, and

(ii) approval for Buyer to recover all costs pursuant to or arising from this Agreement in its retail electric rates per Section 27(f) of the Act.

Failure of Buyer to obtain an order containing such approvals shall not permit Buyer to terminate this Agreement or require any modification of this Agreement.

(c) The obligations of Seller under this Agreement are subject to Seller being determined to be an EWG for purposes of this Agreement. Seller shall apply for such status within 30 days following execution of this Agreement.

4.3 Delay in Commercial Operation. Subject to the extensions of time otherwise allowed hereunder, if Commercial Operation has not been achieved on or before April 30, 2001, then Seller shall pay to Buyer, no later than the fifth (5th) day of each month following May 31, 2001 until the earlier of (i) the month in which Commercial Operations is achieved or (ii) November 15, 2001, the sum of Ten Thousand Dollars ($10,000) as liquidated damages and not a penalty; provided, however, that Seller’s failure to achieve Commercial Operation on or before November 15, 2001 shall be deemed a default under Section 4.5 hereof.

4.4 Early Termination. The Parties may terminate this Agreement prior to the expiration of the Term as specified below:
(a) By Seller, if the FERC order of acceptance contemplated by Section 4.2 is conditioned upon substantial modification of this Agreement, by written notice given within thirty (30) days following receipt by Seller of a copy of such order; or

(b) By Seller, if within one hundred-twenty (120) days after the date hereof, (i) Seller has not obtained a Conditional Use Permit and all other required zoning approvals and building permits necessary for the development, construction and operation of the Project (the “Permits”), (ii) all appeal periods with respect to the Permits have not expired, and (iii) Seller has not obtained favorable, non-appealable resolution of all administrative or judicial challenges, if any, to such Permits; provided, that Seller gives Buyer written notice of termination within fifteen (15) days after the one hundred twenty (120) days expires; or

(c) By Seller if the Interconnection Agreement is not executed by all parties thereto on or before December 31, 2000, provided that Seller gives Buyer written notice of termination within fifteen (15) days after such date. Seller shall use good faith efforts to cause the Interconnection Agreement to be executed on or before December 31, 2000 by all parties.

In the event of termination pursuant to this Section 4.4, the Parties shall be released and discharged from any obligations arising or accruing hereunder from and after the date of such termination (other than the indemnity obligations under Section 7 and the provisions of Section 10.14 hereof). Termination shall not discharge or relieve either Party from any indemnity obligations under Section 7 or the provisions of Section 10.14 hereof.

4.5 Defaults and Remedies. Upon (i) a failure by a Party to pay any material amount due hereunder, where such failure is not cured within ten (10) days after notice and demand for payment has been made; or (ii) any Party’s representations and warranties hereunder being found false or misleading in any material respect, or (iii) any other material default which has a material adverse impact on the non-defaulting Party, if such default has not been cured by the defaulting Party within thirty (30) days after receiving written notice from the non-defaulting Party setting forth, in reasonable detail, the nature of such material default; the non-defaulting Party shall have the following rights:

(a) to terminate this Agreement by written notice to the other Party;

(b) to suspend performance of its obligations and duties hereunder upon written notice to the defaulting Party; and

(c) to pursue any other remedy given under this Agreement or which is now or hereafter existing at law or in equity or otherwise; provided, that the maximum liability of Seller to Buyer for damages (including any damages paid pursuant to Section 4.3 hereof) as a result of an event of default described in Section 4.5 of this Agreement may not exceed the aggregate One Million Five Hundred Thousand Dollars ($1,500,000); provided, however, that, in the case of a material default under (iii) (other than Seller’s failure to achieve a Commercial Operation Date of November 15, 2001 or earlier) that is not reasonably capable of being cured within the thirty (30)-day cure period, the defaulting Party shall have additional time to cure the default if it commences to cure the default within such thirty (30)-day cure period, it diligently pursues such cure, and such default is capable of being cured and is cured by the defaulting Party
within no more than one hundred eighty (180) days after receiving such notice; and further provided, however, that in the case of an event of default by Seller, Buyer shall provide the Lenders (if any) with notice of such event of default and the Lenders shall each have the right (but not the obligation) for ninety (90) days after receipt of such notice either to cure the event of default on behalf of Seller, or, upon payment to Buyer of amounts due from Seller but not paid by Seller, to assume, all of the rights and obligations of Seller under this Agreement arising after the date of such assumption. In the event that any of the Lenders assumes this Agreement in accordance with this Section 4.5, Buyer shall continue this Agreement with such Lenders substituted in the place of Seller hereunder.

4.6 Specific Performance and Injunctive Relief. Each Party shall be entitled to seek a decree compelling specific performance with respect to, and shall be entitled, without the necessity of filing any bond, to seek the restraint by injunction of, any actual or threatened breach of any material obligation of the other Party under this Agreement. The Parties in any action for specific performance or restraint by injunction agree that they shall each request that all expenses incurred in such proceeding, including but not limited to reasonable counsel fees, be apportioned in the final decision based upon the respective merits of the positions of the Parties.

Section 5
METERING AND MEASUREMENT

5.1 Metering Equipment.

(a) Seller shall, or shall cause the Transmission Provider to (i) as part of the Facility, provide and install, at no cost to Buyer, appropriate meters and associated measuring equipment (Seller's Meters) necessary to permit an accurate determination of the quantities of the Renewable Power delivered under this Agreement, and (ii) exercise reasonable care in the maintenance and operation of any such Meters and equipment located on Seller's side of the Point of Delivery so as to assure to the maximum extent reasonably practicable an accurate determination of such quantities. Except as provided in Section 5.2, Seller's Meters shall be used for quantity measurements under this Agreement. Buyer, at its sole expense, may install and maintain check Meters and all associated measuring equipment necessary to permit an accurate determination of the quantities of Renewable Power delivered under this Agreement; provided, however, that such equipment shall be operated and maintained in a manner that does not interfere with the installation, maintenance and operation of Seller's Meters and associated measuring equipment or Seller's Interconnection Facilities.

(b) The Parties shall mutually agree upon the telemetering equipment that is appropriate to permit Buyer to determine the quantities of Renewable Power delivered under this Agreement and to permit Buyer to deliver such information to Buyer's energy management system. Seller, at no cost to Buyer, will install such telemetering equipment. Buyer shall be responsible for all costs to transmit such information from the Point of Delivery to Buyer's energy management system.

5.2 Measurements. Readings of Seller's Meters shall be conclusive as to the amount of Renewable Power delivered to Buyer hereunder; provided, however, that in the event any of Seller's Meters are out of service or are determined, pursuant to Section 5.3 hereof, to be
registering inaccurately, measurement of Renewable Power delivered hereunder shall be determined by:

(a) Alliant - Wisconsin Power and Light, Inc.’s or Buyer’s check Meter, if installed and registering accurately; or

(b) if Alliant - Wisconsin Power and Light, Inc.’s or Buyer’s check Meter is unavailable or unreliable, the computer monitoring system for each wind turbine generator that is part of the Facility, using a mathematical calculation to adjust the output thereof to the amounts of Renewable Power delivered therefrom to Seller’s Meter; or

(c) if Alliant - Wisconsin Power and Light, Inc.’s or Buyer’s check Meter and the computer monitoring system described in clause (b) above are unavailable or unreliable, making a mathematical calculation if upon a calibration test of Seller’s Meter or, secondarily, of Alliant - Wisconsin Power of Light, Inc.’s or Buyer’s check Meter, a percentage error is ascertainable; or

(d) in the absence of Alliant - Wisconsin Power and Light, Inc.’s or Buyer’s check Meter, the computer monitoring system described in clause (b) above and an ascertainable percentage of error, estimating by reference to quantities measured during periods of similar conditions when Seller’s Meter was registering accurately; or

(e) if no reliable information exists as to the period over which such Meter was registering inaccurately, it shall be assumed for correction purposes hereunder that such inaccuracy began at a point in time midway between the testing date and the last previous date on which such Meter was tested and found to be accurate, but not to exceed six (6) months prior to the testing date.

5.3 Testing and Correction. The accuracy of each of Seller’s Meters shall be tested and verified by Seller at least annually. Seller hereby grants Buyer the right to access, with reasonable notice to Seller and at reasonable times, Seller’s Meters in order to test and verify the accuracy of such Meters’ measurements and recordings. Such inspections and verifications shall be at Buyer’s sole expense. If Buyer has installed check Meters in accordance with Section 5.1 hereof, Buyer shall test and verify each such Meter at least annually. Each Party shall bear the cost of the annual testing of its own Meters. Each Meter shall be accurate within a two percent (2%) variance. If either Party disputes a Meter’s accuracy or condition, it shall so advise the owner of the Meter in writing. The owner of the Meter shall, within fifteen (15) days after receiving such notice, advise the disputing Party in writing as to its position concerning the Meter’s accuracy and reasons for taking such position. If the Parties are unable to resolve their disagreement through reasonable negotiations, then either Party may submit such dispute to an unaffiliated third-party engineering company mutually acceptable to the Parties to test the Meter. Should the Meter be found to be registering within the permitted two percent (2%) variance, the disputing Party shall bear the cost of inspection; otherwise, the cost shall be borne by the owner. Any repair or replacement shall be made at the owner’s expense as soon as practicable, based on the third-party engineer’s report. If, upon testing, any Meter is found to be accurate or to be in error by not more than the permitted two percent (2%) variance, previous recordings of such Meter shall be considered accurate in computing deliveries hereunder, but if in error, such Meter
shall be promptly adjusted to record correctly. If, upon testing, any Meter shall be found to be in error by an amount exceeding the permitted two percent (2%) variance, then such Meter shall be promptly adjusted to record properly and any previous recordings by such Meter shall be adjusted in accordance with Section 5.2 hereof. If, upon testing, any of Seller’s Meters is found to be in error by more than the permitted two percent (2%) variance, the payments for Renewable Power made since the previous test of such Meter shall be adjusted to reflect the corrected measurements determined pursuant to Section 5.2 hereof. If the difference of the payments actually made by Buyer minus the adjusted payment is a positive number, Seller shall pay the difference to Buyer; if the difference is a negative number, Buyer shall pay the difference to Seller. In either case, the Party paying such difference shall also pay interest at the Prime Rate from the date the original bill was due through the date of payment and such payment (including such interest) shall be made within thirty (30) days of receipt of a corrected billing statement.

5.4 Maintenance and Records. Seller shall, commencing on the earlier of the Partial Commercial Operation Date or the Commercial Operation Date, provide Buyer on a monthly basis, within ten (10) days after the completion of the month, reports indicating Seller’s daily delivery of Renewable Power. Each Party shall have the right to be present whenever the other Party reads, cleans, changes, repairs, inspects, tests, calibrates, or adjusts the equipment used in measuring or checking the measurement of the Renewable Power delivered hereunder. Each Party shall give at least forty-eight (48) hours’ notice to the other Party in advance of taking any such actions. The records from the measuring equipment shall remain the property of Seller or Buyer, respectively, but, upon request, each Party will submit to the other its records and charts, together with calculations therefrom, for inspection, verification and copying, subject to return within ten (10) days after receipt thereof.

Section 6
REPRESENTATIONS, WARRANTIES AND COVENANTS

6.1 Seller’s Representations and Warranties. Seller represents and warrants that it is a limited liability company, duly organized, validly existing, and in good standing under the laws of Delaware; that it is authorized to conduct business in the State of Wisconsin; and that it has the power and authority to enter into and perform this Agreement. Seller covenants that during the Term it shall remain a duly organized and validly existing legal entity with authority to conduct business in the State of Wisconsin and shall have the power and authority to perform this Agreement. Seller further represents and warrants that it and/or its construction contractor and operator is duly qualified to undertake the construction and operation of the Facility and that it will do so employing the level of skill and staffing customary in the utility industry.

6.2 Seller’s Covenants. Seller covenants that: (i) through the expiration or termination hereof, it will comply with this Agreement and all Applicable Laws, and further, from the Partial Commercial Operation Date through the termination hereof, the Facility and Seller’s Interconnection Facilities shall be operated and maintained in accordance with this Agreement and Applicable Laws, (ii) it shall require its employees to comply with the Occupational Safety and Health Act, and the rules promulgated thereunder by the U.S. Department of Labor, and all applicable Wisconsin statutes and regulations affecting job safety. Seller covenants not to support, and to cooperate with Buyer in opposing, any action of the Commission or any other regulatory body having jurisdiction thereover that could result in the vitiation of any of the terms or conditions hereof or have any other material adverse effect on this
Agreement, and (iii) it shall timely and properly file all tax returns in respect of transactions contemplated by this Agreement.

6.3 Buyer’s Representations and Warranties. Buyer represents and warrants that it is a corporation duly organized, validly existing, and in good standing under the laws of Wisconsin, and that it has the power and authority to enter into and perform this Agreement. Buyer covenants that during the Term it shall remain a duly organized and validly existing legal entity with authority to conduct business in Wisconsin and shall have the power and authority to perform this Agreement.

6.4 Buyer’s Covenants. Buyer covenants that: (i) from the Partial Commercial Operation Date through the expiration or termination hereof, Buyer shall comply with this Agreement and all Applicable Laws; (ii) it will not take any action before the Commission or other regulatory body opposing its approval of this Agreement; and (iii) it shall timely and properly file all tax returns in respect of transactions contemplated by this Agreement.

6.5 Construction on Tubular Towers. Seller agrees that its wind turbine generators shall be constructed on tubular towers of a design reasonably acceptable to Buyer.

6.6 Emissions Credits. Buyer shall be entitled to all emissions credits associated with the Contract Capacity of wind generation installed hereunder and any and all Renewable Power purchased by it during the Term of this Agreement and any renewal or extension (but, during such renewal or extension, only to the extent of the portion of the Contract Capacity that is purchased by Buyer pursuant to such renewal or extension). Seller will take all actions reasonably necessary to enable Buyer to receive such credits provided Buyer agrees to reimburse Seller for expenses incurred by Seller for action taken by Seller at Buyer’s request which are associated therewith.

6.7 PPA Amendment. Seller and Buyer agree that, promptly following the execution of this Agreement and the Interconnection Agreement, they will in good faith seek to negotiate an amendment to this Agreement (the “Amendment”) that (i) will set forth certain obligations under the Interconnection Agreement that Buyer shall be responsible for timely performing on behalf of Seller, at Buyer’s cost and expense, which obligations shall include those that Buyer will be in a better position to perform than Seller as a result of Buyer’s acceptance of the obligations under Section 3.2(b) hereof to arrange for all transmission services required to effectuate Buyer’s purchase of Renewable Power hereunder, and (ii) to incorporate certain understandings of Buyer and Seller, as outlined in summary terms on Exhibit C hereto, relating to the effect on Buyer’s and Seller’s obligations hereunder of curtailment of deliveries of Renewable Power hereunder.

Section 7

INDEMNIFICATION AND INSURANCE

7.1 General Indemnity. Each Party hereby protects, defends, indemnifies and holds harmless, on an After-Tax Basis, the other Party, its directors, officers, employees and agents, from and against all claims, demands, causes of action, judgments, liability and associated costs and expenses, including reasonable attorneys’ fees, arising from property damage, bodily injuries
or death suffered by any person (including, without limitation, employees of the indemnifying party), related to, arising from, or connected to the performance of the indemnifying party hereunder, or electricity, back-up power or other substances to be supplied or delivered hereunder by the indemnifying party. This indemnity provision shall apply notwithstanding the active or passive negligence of the indemnitee, but the indemnitor’s liability to indemnify the other Party shall be reduced proportionately to the extent that an act or omission of the indemnitee may have contributed to the loss, injury or property damage. Further, neither Party shall be indemnified hereunder for its loss, liability, injury and damage resulting from its sole negligence, fraud, or willful misconduct. The indemnitor, upon the other Party’s request, shall defend any suit asserting a claim covered by this indemnity and shall pay all costs, including reasonable legal fees, that may be incurred by the other Party in enforcing this indemnity. Each indemnity in this Agreement is a continuing obligation, separate and independent of the other obligations of each Party and survives termination hereof. It is not necessary for a Party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

7.2 Specified Coverages. During the Term of this Agreement, Seller or its contractors and subcontractors, as applicable, shall provide and maintain in full force and effect at no cost to Buyer the following insurance coverages with minimum limits as indicated (which may also be revised to reasonable amounts consistent with similar industry practice at Buyer’s discretion from time to time) at all times during the Term of this Agreement, and beyond, as required. For all types of coverages set forth below, any exclusions which are not standard for such coverages, or which are added by manual endorsements and restrict coverage, must be approved by Buyer, which approval shall not be unreasonably withheld.

(a) Seller shall maintain worker’s compensation and employer’s liability insurance as required by Wisconsin law as described below.

(i) The employers liability limits shall not be less than $1,000,000 each accident for bodily injury by accident or $1,000,000 each employee for bodily injury by disease.

(ii) The U.S. Longshore and Harbor Worker’s Compensation Act endorsement shall be attached to the policy where Seller will conduct activities on or in close proximity to navigable waterways.

(b) Seller shall maintain commercial general liability (CGL) insurance (or its equivalent satisfactory to Buyer) and, if necessary, commercial umbrella or excess insurance with a total limit of not less than $25,000,000 each occurrence as described below:

(i) CGL insurance shall cover liability arising from premises, operations, independent contractors, product-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract).

(ii) Buyer shall be included as an additional insured under CGL insurance, using an Insurance Services Office additional insured endorsement or a substitute providing equivalent coverage, and under the commercial umbrella or excess, if any. This insurance shall apply as primary insurance with respect to any other insurance or self-insurance programs
afforded to Buyer. There shall be no endorsement or modification of the insurance to make it exceed over other available insurance; alternatively, if the insurance states that it is excess or pro rata, the policy shall be endorsed to be primary with respect to the additional insured.

(iii) There shall be no endorsement or modification of the insurance limiting the scope of coverage for liability arising from pollution or employment-related practices beyond that which is consistent with current electric and/or gas utility practice of that time.

(c) Seller shall maintain automobile liability insurance (or its equivalent satisfactory to Buyer) and, if necessary, commercial umbrella or excess liability insurance with a combined single limit (or equivalent) of not less than $5,000,000 each accident as described below.

(i) Such insurance shall cover liability arising out of any auto (including owned, hired, and non-owned autos).

(ii) Buyer shall be included as an additional insured using the current Insurance Services Office endorsement or an equivalent form as described in subsection b. (ii) above.

(iii) Seller’s insurance shall be primary with respect to Buyer’s insurance or self insurance, and Seller’s policy shall not be written or endorsed contrary to this requirement.

(d) Seller shall maintain all risk, physical damage property insurance, on a replacement cost basis including comprehensive boiler and machinery coverage, for all real and personal property of Seller as a part of the Facility or Seller’s Interconnection Facilities as described below.

(i) Commercial property insurance shall at a minimum cover the perils insured as Insurance Services Office special causes of loss form (or its equivalent), commonly referred to as “all-risk.”

(ii) Flood coverage with a limit as close to the full replacement cost of the Facility as is reasonably available shall be provided.

(iii) The amount insured shall be a minimum of two (2) times the probable maximum loss for the Facility as determined by an agreed upon expert.

(iv) Any coinsurance requirement in the policy shall be eliminated through the attachment of an agreed amount endorsement, the activation of an agreed value option, or as is otherwise appropriate under the particular policy form.

(v) Boiler and machinery insurance shall cover exposure to mechanical and electrical breakdown of all machinery and equipment and boiler explosion.

(vi) A reasonable deductible may be carried by Seller and shall be the absolute responsibility of Seller.
(vii) All Risk Builder’s Insurance upon the entire work at the Site insuring against, but not limited to, the perils of fire, extended coverage, vandalism and malicious mischief.

(e) Seller shall maintain business interruption and extra expense insurance covering loss of revenues and/or the increased expense to resume operations attributable to the Facility by reason of total or partial suspension or delay of, or interruption in, the operation of the Facility as a result of an insured peril covered by subsection (d) above, to the extent available on commercially reasonable terms, subject to a reasonable deductible which shall be the responsibility of Seller.

(f) Seller waives all rights against Buyer and its agents, officers, directors employees for recovery of damages to the extent these damages are covered by any of the insurance required above.

(g) All insurance shall be placed and maintained with insurers authorized to do business in the State of Wisconsin or equivalent satisfactory to Buyer which have an A.M. Best rating of A-, VII, or better. Seller agrees to allow Buyer to review the above insurance policies upon request.

(h) Seller shall furnish Buyer with duly executed Certificates of Insurance certifying that such insurance has provided and that the insurance companies will give Buyer thirty (30) days prior written notice of any material change in, or cancellation of, such insurance coverage. Such certificates shall also specify the dates when such insurance commences and expires. Certificates should be delivered to Buyer at the address set forth in Section 9.1.

Section 8
GOVERNMENTAL APPROVALS

8.1 Seller’s Obligation. Except with respect to governmental approvals, licenses and permits which may be required to allow Buyer to perform its obligations hereunder (all of which shall be obtained and maintained by Buyer at its sole cost), Seller shall secure and maintain at no cost to Buyer all governmental approvals, permits (including environmental permits), licenses, easements, rights-of-way, releases and other approvals necessary for the construction and operation of the Facility and Seller’s Interconnection Facilities.

Section 9
NOTICES

9.1 Notices. Each notice, request, demand, statement or routine communication allowed or permitted by this Agreement or Applicable Law, or any notice or communication which either Party may desire to give to the other, shall be in writing and shall be considered as delivered when received by the other Party by certified United States mail or reputable overnight courier addressed to the other Party at its address indicated below or at such other address or telecopy number as either Party may designate for itself in a notice to the other Party, or when received by the other Party by telecopy at the number set forth below if immediately following a
hard copy is sent by one of the other methods of notice set forth herein to the Party to whom the telecopy is sent.

Buyer: Wisconsin Electric Power Company
Attention: Director of Power Marketing
231 West Michigan Street
P.O. Box 2046
Milwaukee, WI 53201-2046
Telecopy Number: (414) 221-4210

Seller: Badger Windpower, LLC
c/o FPL Energy, LLC
700 Universe Boulevard
Juno Beach, FL 33408
Attention: Vice President - Business Management
Telecopy Number: (561) 691-7309

Section 10
MISCELLANEOUS

10.1 Security. Not later than thirty (30) days following the date that the last of the regulatory approvals described in Section 4.2 hereof has been granted, Seller shall provide Buyer with security up to the amount set forth in this Section 10.1 for any damages that may become due to Buyer on account of Seller’s failure to perform its obligations hereunder. Such security shall be in the amount of One Million Five Hundred Thousand Dollars ($1,500,000) and may be in the form of (i) an irrevocable standby letter of credit from a bank or other financial institution acceptable to Buyer or with a credit rating of “A-” or better (or their equivalents) from Standard & Poor’s Rating Group and “A3” or better from Moody’s Investors Services, Inc. or (ii) a guarantee in a form reasonably satisfactory to Buyer from either FPL Group Capital Inc, FPL Energy, LLC or another guarantor reasonably satisfactory to Buyer. Seller shall have the right to exchange from time to time the form of security provided with any of the other forms of security listed in this Section 10.1. The security documents shall provide that Buyer will have the right to draw on such security if a default has occurred as described in clauses (i) through (iii) of Section 4.5 as a result of an action or inaction of Seller, such event of default has not been cured and a judgment that is final and no longer subject to appeal has been entered for damages in favor of Buyer and such judgment has not been satisfied within thirty (30) days following the date that such judgment became final and no longer subject to appeal. The security shall remain in full force and effect until the date that is six (6) months following the Commercial Operation Date, on which date the security shall be released or otherwise returned to Seller; provided, that, if prior to such date a default has occurred as described in clauses (i) through (iii) of Section 4.5 as a result of an action or inaction of Seller and such event of default has not been cured as of the date the security would otherwise have been released, the security shall remain in full force and effect until such default has been cured or all damages that may then be due or may become due to Buyer on account of such event of default have been satisfied or a judgment has been entered that is final and no longer subject to appeal that Buyer is not entitled to receive any damages as a result of such default. Upon the satisfaction of any such damages or if a final, non-appealable
judgment is entered that no damages are due to Buyer, the amount, if any, then remaining as security shall be released or otherwise returned to Seller.

10.2 Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF WISCONSIN.

10.3 Maintenance of Records. All records required to be provided or available hereunder shall be maintained for a period of no less than three (3) years after they are generated or produced.

10.4 Force Majeure. Except for obligations to pay money and other accrued rights and obligations, the performance of any obligation required hereunder shall be excused during the continuation of any Force Majeure Event suffered by the Party whose performance is required in respect thereof, and the time for performance of any obligation which has been delayed due to the occurrence of a Force Majeure Event shall be extended by the period of continuation of such Force Majeure Event; provided, however, that the Party experiencing the delay shall notify the other Party of the occurrence of such Force Majeure Event and the anticipated period of the delay within ten (10) days after the commencement of the Force Majeure Event and should the Force Majeure Event delay performance for more than eighteen (18) months, the Party not suffering the Force Majeure Event shall have the right to terminate this Agreement. Each Party suffering a Force Majeure Event shall take, or cause to be taken, such action as may be necessary to eliminate or nullify the Force Majeure Event, and the Parties agree to meet to seek appropriate measures, to mitigate in all material respects the effects of any Force Majeure Event suffered by either of them.

10.5 Successors and Assigns; Assignment. This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and assigns. This Agreement shall not be assigned by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, no consent shall be required for:

(a) any assignment to any Lenders as collateral security for Seller's obligations under the financing documents Seller has entered into with such Lenders. Buyer acknowledges that upon an event of default by Seller under any financing documents relating to the Facility, any of the Lenders may (but shall not be obligated to) assume, or cause its designee or a new lessor or purchaser of the Facility to assume, all of the interests, rights and obligations of Seller thereafter arising under this Agreement; or

(b) any assignment of this Agreement to an affiliate of FPL Energy, LLC; provided, however, that in the case of any such assignment, such assignee shall, at the request of the non-assigning Party, produce evidence of, or credit support for, as the case may be, its ability to make the payments required of it, and to otherwise perform its obligations, hereunder; provided, further, that the Parties acknowledge that, if the assignor is Seller under this subparagraph b., evidence that the assignee holds (or will hold concurrently with the assignment of this Agreement), the same interest in the Facility as was held by the assignor prior to such assignment shall satisfy the foregoing requirement.
10.6 Financing Liens. Seller, without approval of Buyer, may encumber its interest under this Agreement for the purposes of financing the construction and/or operation of the Facility and Seller’s Interconnection Facilities. Within ten (10) days after making such encumbrance, Seller shall notify Buyer in writing of the names, address, and telephone and facsimile numbers of the Lenders to which Seller’s interest under this Agreement has been encumbered. Such notice shall include the names of the account managers or other representatives of the Lenders to whom all written and telephonic communications may be addressed. After giving Buyer such initial notice, Seller shall promptly give Buyer written notice of any change in the information provided in the initial notice or any revised notice. If Seller encumbers its interest in this Agreement as permitted by this Section 10.6, the following provisions shall apply:

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

(b) the Lenders shall have the right, but not the obligation, as provided in Section 4.5 hereof, to perform any act required to be performed by Seller under this Agreement to prevent or cure a default by Seller, and such act performed by the Lenders shall be as effective to prevent or cure a default as if done by Seller;

(c) Buyer shall upon reasonable request by Seller execute statements certifying that this Agreement is unmodified (or, modified and stating the nature of the modification), in full force and effect and the absence or existence (and the nature thereof) of defaults hereunder by Seller and provide other reasonable documents of consent to such encumbrance and any assignment to such Lenders; and

(d) upon the receipt of a written request from any Lender(s), Buyer shall enter into reasonable agreements with such Lender(s) which agreements provide that Buyer recognizes the rights of the Lenders hereunder upon foreclosure of the Lender’s security interest, provided, however, that any such agreement shall not constitute a modification hereof unless Buyer otherwise agrees in its sole discretion.

10.7 Entire Agreement. This Agreement shall supersede all other prior and contemporaneous understandings or agreements, both written and oral, between the Parties relating to the subject matter of this Agreement.

10.8 Venue. Seller and Buyer each irrevocably consent that any legal action or proceeding arising under or relating to this Agreement or both shall be brought in any federal court of the United States of America located in the State of Wisconsin except to the extent the Commission or FERC has primary or exclusive jurisdiction over the subject matter of the action or proceeding, and hereby waives any objection which it now or may in the future have to any of such courts as the proper forum for any action arising under or relating to this Agreement.

10.9 Waivers. No delay or omission in the exercise of any right under this Agreement shall impair any such right or shall be taken, construed or considered as a waiver or
relinquishment thereof, but any such right may be exercised from time to time and as often as may be deemed expedient. In the event that any provision hereof shall be breached and thereafter waived, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereof. The rights and remedies provided by this Agreement shall be in addition to those rights and remedies available to the Parties in both law and equity.

10.10 Incorporation by Reference; Headings. All exhibits referred to in this Agreement are hereby made a part of this Agreement by this reference. The headings contained in this Agreement are solely for convenience and do not constitute a part of the Agreement between the Parties, nor should such headings be used to aid in any manner in the construction of this Agreement.

10.11 Third-Party Beneficiaries. This Agreement is intended solely for the benefit of the Parties hereto and any Lenders. Except as set forth in Sections 4.5, 7.1, 10.5 and 10.6, nothing in this Agreement shall be construed to create any duty to, or standard or care with reference to, or any liability to, or any benefit for, any person not a Party to this Agreement.

10.12 No Agency. This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or otherwise bind, the other Party.

10.13 Cooperation. The Parties acknowledge that they are entering into a long-term arrangement in which the cooperation of both of them will be required. If, during the Term hereof, changes in the operations, facilities or methods of either Party will materially benefit a Party without detriment to the other Party, the Parties commit to each other to make reasonable efforts to cooperate and assist each other in making such change.

10.14 Confidentiality and Publicity. Except as set forth in this Section, Buyer and Seller shall hold in confidence for the Term and for a period of either two (2) years from the date of termination, or two (2) years from the scheduled date of expiration hereof, as the case may be, any pricing information supplied by either Party to the other.

In addition, Seller may disclose such information to potential Lenders, other financing parties and any other financial institutions expressing interest in providing debt financing or refinancing and/or other credit support to Seller, and the agent or trustee of any of them. Neither Party shall issue any press or publicity release or otherwise release, distribute or disseminate any information for publication or electronic transmittal concerning this Agreement or the participation of the other Party in the transactions contemplated hereby without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, that such limitation on disclosure shall not apply to disclosures or reporting required by a governmental or regulatory authority if the Party seeking disclosure informs the other Party of the need for such disclosure and, if reasonably requested by the other Party, seeks, through a protective order or other appropriate mechanism, to maintain the confidentiality of confidential
information. Buyer shall have the right to have its name appended to any signs erected at the site of the Facility and Seller shall cooperate with Buyer to have Buyer’s association with the Facility appropriately indicated (but not more prominently than any other participant in the Facility) at the site of the Facility, in each case at no cost to Seller; provided, that only Seller shall be entitled to place its name or the name of any affiliate of Seller on the nacelle of any wind turbine generator.

10.15 **Equal Employment Opportunity.** Seller agrees that it and each contractor involved in the construction or operation of the Facility shall to the extent applicable:

(a) comply with the terms of the Equal Opportunity clause contained in 41 C.F.R. § 60-1.4(a), or its successors, which clause is hereby incorporated by reference as provided for in 41 C.F.R. § 60-1.4(d);

(b) comply with the Affirmative Action Compliance Program requirements contained in 41 C.F.R. § 60-1.40, or its successors;

(c) file Equal Opportunity Information Reports as required by 41 C.F.R. § 60-1.7, or its successors;

(d) file Federal Contractor Veterans’ Employment Reports as required by 41 C.F.R. § 61-250.10, or its successors, an comply with the terms of the Employment Reports on Special Disabled Veterans and Veterans of the Vietnam Era clause contained in 41 C.F.R. § 61-250.10, or its successors, which clause is hereby incorporated by reference;

(e) comply with the terms of the Affirmative Action for Disabled Veterans and Veterans of the Vietnam Era clause contained in 41 C.F.R. § 60-250.4, or its successors, which clause is hereby incorporated by reference as provided in 41 C.F.R. § 60-250.22;

(f) comply with the terms of the Affirmative Action for Individuals With Disabilities clause contained in 41 C.F.R. § 60-741.5(a), or its successors, which clause is hereby incorporated by reference as provided in 41 C.F.R. § 60-741.5(d);

(g) comply with the terms of the Utilization of Small, Small Disadvantaged and Women-Owned Small Business Subcontracting Plan clause contained in 48 C.F.R. §§ 1-19.708(a) and 1.52.219-9, respectively, or their successors, which clauses are hereby incorporated by reference; and

(h) comply with the terms of Executive Order 11141 concerning age discrimination and the procurement regulations issued thereunder.

10.16 **Counterparts.** This Agreement may be executed in several counterparts whether original or facsimile, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

10.17 **Waiver of Trial by Jury.** EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT ANY OF THEM MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED
HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

[Remainder of Page Intentionally Left Blank]
IN WITNESS WHEREOF the parties have executed this Agreement in the manner appropriate to each on the date set forth above.

BADGER WINDPOWER, LLC

By: ________________________________
Name: Robert T. Morrison
Title: Vice President

WISCONSIN ELECTRIC POWER COMPANY

By: ________________________________
Name: ______________________________
Title: ______________________________
IN WITNESS WHEREOF the parties have executed this Agreement in the manner appropriate to each on the date set forth above.

BADGER WINDPOWER, LLC

By: ____________________________

Name: __________________________

Title: __________________________

WISCONSIN ELECTRIC POWER COMPANY

By: ____________________________

Name: James R. Keller

Title: Director Power Marketing
# SCHEDULE I

## Contract Price Schedule

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</table>
EXHIBIT A

General Description of the Facility

The Facility shall be a wind energy generating facility comprised of approximately seventeen (17) wind turbine generators and related equipment (if the nameplate capacity of each wind turbine generator is of 1500 kilowatts), having a Capacity equal to the Contract Capacity as of the Commercial Operation Date, with an electrical collection and transmission system which shall deliver the wind generated electricity (Renewable Power) to the Point of Delivery and which shall be located at the Site.

Each wind turbine generator in the Facility shall be a three blade, upwind, active yaw, and active aerodynamic control-regulated wind turbine generator with power/torque control capability and placed on top of a sixty-five (65) meter high steel tubular tower.

The Facility will deliver to the Point of Delivery electrical energy of three-phase, 60 cycle per second alternating current at the nominal voltage of Seller’s interconnection with the Transmission Provider.
EXHIBIT B

Example of Shortfall Amount and Excess Renewable Power Determinations

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Contract Energy Amount</th>
<th>Renewable Power Delivered to Buyer</th>
<th>Shortfall Amount</th>
<th>Excess Renewable Power</th>
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<tr>
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</table>

In the Contract Year after a Shortfall Amount is recorded (e.g.: Contract Year 2), the Shortfall Amount from the previous year (881,000 kWh) is added to the base Contract Energy Amount (51,381,000 kWh/Contract Year) for the current Contract Year to establish the new Contract Energy Amount for that Contract Year (52,262,000 = 51,381,000 + 881,000 in Contract Year 2). The initial Renewable Power deliveries during the then current Contract Year (Contract Year 2) are priced at the price which applied, per Schedule 1, for the Contract Year when the Renewable Power was first due (Contract Year 1). Subsequent to delivering the Shortfall Amount of Renewable Power (881,000 kWh), the price for the remainder of the Contract Energy Amount for the then current Contract Year reverts to the current Contract Year’s price as shown in Schedule 1.

In a Contract Year in which Renewable Power delivered to Buyer exceeds that Contract Year’s Contract Energy Amount (e.g.: Contract Year 3), the excess Renewable Power delivered (357,000 kWh) is deemed to be Excess Renewable Power and is sold to Buyer at a price equal to Buyer’s December Fuel Cost Report filed with the Commission during the previous Contract Year. The Contract Energy Amount for the subsequent year (Contract Year 4) and all future Contract Years, unless a Shortfall Amount is recorded, reverts to the base Contract Energy Amount (51,381,000 kWh/Contract Year).

Buyer is not responsible to purchase the Shortfall Amount (262,000 kWh) remaining at the end of the Contract Year ten.
EXHIBIT C

Summary of Principles Regarding Transmission Related Curtailment of Deliveries

Under the Agreement, there are four situations during which deliveries of Renewable Power from the Facility to Buyer might be curtailed for transmission issues. These conditions are described as follows:

1. The Transmission Provider identifies a safety problem on Seller's side of the Point of Delivery and the Transmission Provider determines that it cannot accept Renewable Power until the problem is corrected.

2. Seller identifies a safety problem on the Transmission Provider's side of the Point of Delivery and Seller determines that it cannot deliver Renewable Power until the problem is corrected.


4. The Transmission Provider cannot provide transmission service to deliver all or a part of the Renewable Power to Buyer but continues to take delivery of the Renewable Power for delivery elsewhere.

Seller and Buyer will negotiate in good faith provisions in the Amendment to provide that the following will occur upon the occurrence of any of the foregoing conditions:

1. Under condition 1 above, Buyer will not be liable to Seller to pay for the Renewable Power which could have been generated and delivered.

2. Under conditions 2 and 3 above, Buyer will be liable to Seller to pay for the Renewable Power which could have been generated and delivered to the Point of Delivery. The Renewable Power which could have been generated will be calculated by applying contemporaneous wind speed data (metered during the time when the delivery is stopped) to the historic Renewable Power production versus wind speed curves for the Facility.

3. Under condition 4 above, Buyer remains liable to pay Seller for the Renewable Power which is metered at the Point of Delivery.
UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Badger Windpower, LLC ) Docket No. ER01-1071- ___

NOTICE OF FILING
(___________, 2001)

Take notice that on March 2, 2001, Badger Windpower, LLC ("Badger") tendered for filing an amendment to its application in the above-captioned docket. The amendment consists of a redesignated Renewable Power Purchase Agreement in accordance with Order No. 614.

Copies of this filing have been served on the Public Service Commission of Wisconsin, Florida Public Service Commission, Arkansas Public Service Commission, Mississippi Public Service Commission, Louisiana Public Service Commission, Texas Public Utility Commission, and the Council of the City of New Orleans.

Any person desiring to be heard or protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. §§ 385.211 and 385.214). All such motions or protests should be filed on or before ____________. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing also may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202-208-2222 for assistance).

David P. Boergers
Secretary