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January 11, 2022

Steve Kahl
Director of Administration/Executive Secretary
North Dakota Public Service Commission
State Capitol
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0408

**PUBLIC DOCUMENT –
NOT PUBLIC (OR PRIVILEGED)
DATA HAS BEEN EXCISED**

**RE: In the Matter of the Application of Otter Tail Power Company, a Minnesota Corporation, for a Certificate of Public Convenience and Necessity for Otter Tail's Acquisition of Certain Generation Assets from Ashtabula Wind III, LLC
Case No. PU-22-
Initial Filing**

Dear Mr. Kahl:

Pursuant to N.D.C.C. Chapter 49-03-01 and N.D.A.C. § 69-02-02-04, Otter Tail Power Company (Otter Tail or the Company) respectfully submits this Application for a Certificate of Public Convenience and Necessity seeking approval of the North Dakota Public Service Commission (Commission) in order for Otter Tail to acquire from Ashtabula Wind III, LLC certain wind generation assets (collectively the "Purchased Assets"), comprising the wind generation facility commonly referred to as Ashtabula III, subject to regulatory approvals.

This CPCN Application corresponds with Otter Tail's recently filed Request for Approval of its 2022 Resource Cost Recovery Adjustment Factor. That filing was made on December 29, 2021. That filing (and this CPCN Application) detail the cost savings for Otter Tail's customers by Otter Tail owning and operating the Ashtabula Wind III generation facility rather than remaining in a Wind Energy Purchase Agreement for power generated from that facility.

The Company's Attachments 1, 2, and 3 contain trade secret information. In accordance with N.D. Admin. Code § 69-02-09-02, an Application for Trade Secret Protection is being provided along with a single copy of the trade secret version of the Application and supporting testimony in a sealed envelope marked **PROTECTED INFORMATION – PRIVATE**.

Mr. Kahl
January 11, 2022
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An original and seven copies of the Company's filing are being sent via mail. Please contact me at 218-739-8956 or cstephenson@otpc.com if you have any questions regarding this filing.

Very truly yours,

/s/ Cary Stephenson
Cary Stephenson
Associate General Counsel

sjw
Enclosures
By electronic filing and U.S. mail

**STATE OF NORTH DAKOTA
BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of the Application of Otter Tail
Power Company, a Minnesota Corporation,
for a Certificate of Public Convenience and
Necessity for Otter Tail’s Acquisition of Certain
Generation Assets from Ashtabula Wind III, LLC**

**Case No. PU-22-

APPLICATION**

Pursuant to N.D.C.C. Chapter 49-03-01 and N.D.A.C. § 69-02-02-04, Otter Tail Power Company (Otter Tail or the Company), a Minnesota Corporation, respectfully submits this application (Application) for a Certificate of Public Convenience and Necessity (CPCN) for approval of the acquisition (Proposed Acquisition) and for all other necessary regulatory approvals from the North Dakota Public Service Commission (Commission) for Otter Tail to acquire and own the following generation facilities, to be purchased from Ashtabula Wind III, LLC, a Delaware limited liability company as more fully described herein:

39 wind generators with an aggregate nameplate of 62.4 MW that were placed into service in 2010, real estate interests, substation assets, as well as licenses and permits necessary to own and operate the wind facility.¹

The sale of the above wind generation assets (the “Purchased Assets”),” is subject to closing and all applicable regulatory approvals, including the approval sought from the Commission through this instant Application.

The Proposed Acquisition will not extend service to retail customers and does not alter any currently defined service areas. Rather, the Proposed Acquisition is based on an existing Wind Energy Purchase Agreement (PPA) between Otter Tail and Ashtabula Wind III, LLC. Under the PPA Otter Tail has a binary and time sensitive choice to either remain in the PPA through 2037 or to exercise an option to purchase the wind generation facility commonly referred to as Ashtabula III. As noted herein, Otter Tail can provide its customers lower energy costs by

¹ A more detailed description of the Purchased Assets is set forth in the parties’ Purchase and Sale Agreement included as Attachment 1. The Purchased Assets include assets referenced in Schedule 2.01 – Material Assets; Schedule 3.07 (a) Real Property for Ashtabula III Project and Common Facilities; List of Land Contracts and Common Facilities Land Contracts; Schedule 3.07(e) Real Property: Rights of Possession; and Schedule 3.08 Contracts.

exercising its purchase option and owning and operating the Purchased Assets than by foregoing its option and remaining in the PPA.

I. STATUTORY PROVISIONS: PUBLIC CONVENIENCE AND NECESSITY

The statutory provision governing the requirement for an electric public utility to file for and obtain a CPCN is as follows:

N.D.C.C. § 49-03-01. Certificate of public convenience and necessity – Secured by electric public utility. No electric public utility henceforth shall begin construction or operation of a public utility plant or system, or of an extension of a plant or system...without first obtaining from the commission a certificate that public convenience and necessity require or will require such construction and operation. ...

Before the Commission may issue a CPCN, the electric public utility must file a certified copy of its articles of incorporation, and submit evidence that it has obtained, or will make application to obtain, the consent of any other public authority whose consent is required. N.D.C.C. § 49-03-02. After notice and opportunity for hearing, the Commission may: (i) issue the certificate; (ii) refuse to issue the certificate; (iii) issue the certificate for only portions of the proposed facilities; or (iv) issue the certificate subject to such terms and conditions the Commission determines the public convenience and necessity requires. The overall standard applied by the Commission pursuant to statute is whether the proposed system addition is appropriate under all the circumstances, and whether the applicant is qualified to implement the proposed system addition. N.D.C.C. § 49-03-02.² Consistent with N.D.C.C. § 49-03-02(2), Otter Tail respectfully requests the Commission approve the Proposed Acquisition without a hearing if no other interested party has requested a hearing on this Application after appropriate notice of the opportunity to do so.

Otter Tail believes the Proposed Acquisition requires approval by the Commission pursuant to N.D.C.C. § 49-03-02 as an electric public utility that seeks to extend its existing plant or system through acquiring the Purchased Assets. Furthermore, Otter Tail asserts the Proposed Acquisition is appropriate under all the circumstances and will be beneficial to the electric system and North

² Otter Tail is not serving any new customers and is not seeking any alteration or change in any services being offered, nor any alteration of any public utility or other service territory in connection with this Application.

Dakota customers, as is explained below. Otter Tail is an experienced, safe, responsible and reliable owner and operator of electric wind generation assets and systems, and is highly qualified to incorporate the Purchased Assets into its generation system in order to continue providing safe, reliable and cost-effective electric service for its customers.

II. DESCRIPTION OF THE APPLICANT AND COUNTER-PARTY

Applicant Otter Tail is an electric public utility and transmission owning member of the Midcontinent Independent System Operator, Inc. (“MISO”) and is headquartered in Fergus Falls, Minnesota. Otter Tail is engaged in the business of generating, transmitting, and selling electric power and energy and related services and provides electricity to residential, industrial, farm, commercial, and municipal customers over a 70,000 square-mile area within Minnesota, North Dakota, and South Dakota. Otter Tail presently serves more than 133,000 retail electric customers throughout its service territory. The Purchased Assets are to be purchased from Ashtabula Wind III, LLC, a Delaware limited liability company. Ashtabula III, LLC is wholly owned by NextEra Energy, Inc. NextEra Energy, Inc. is a leading renewable energy company headquartered in Juno Beach, Florida. NextEra Energy also owns a competitive clean energy business, NextEra Energy Resources, LLC, which, together with its affiliated entities, is the world's largest generator of renewable energy from the wind and sun and a world leader in battery storage. NextEra Energy has been recognized often by third parties for its efforts in sustainability, corporate responsibility, ethics and compliance, and diversity.

III. BACKGROUND AND OVERVIEW OF THE PROPOSED ACQUISITION

Otter Tail entered into a PPA with Ashtabula III, LLC in 2013 which included an option for Otter Tail to purchase the wind facility assets in 2023.³ If Otter Tail does not exercise this option the PPA continues through 2037. Consistent with the option to purchase in the PPA, in July 2021, Otter Tail entered into a Purchase and Sale Agreement (PSA), subject to regulatory approvals, for the purchase of the wind facility assets with an anticipated closing of January 2, 2023. As noted above, the PSA for Ashtabula III facility assets include 39 wind generators with an aggregate

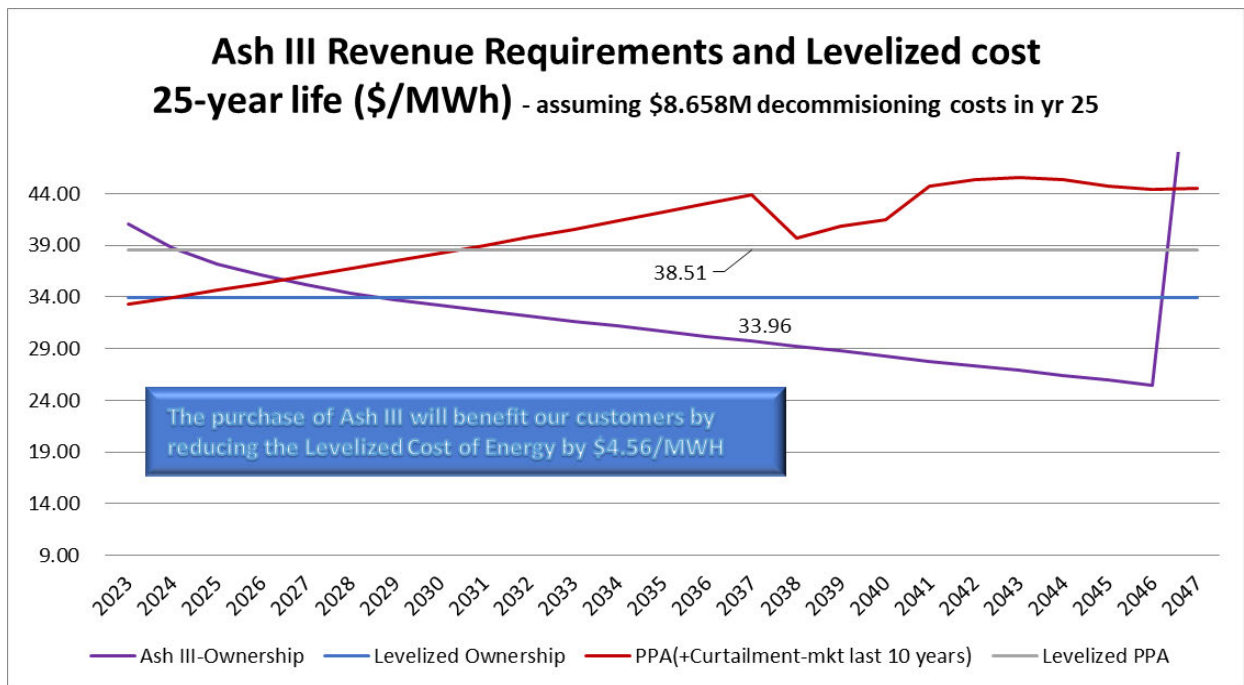
³ The Purchase Option (which is Attachment K to the PPA between Otter Tail and Ashtabula III, LLC) is included as Attachment 2.

nameplate of 62.4 MW that were placed into service in 2010, real estate interests, substation assets, as well as licenses and permits necessary to own and operate the wind facility.

Closing is contingent upon final regulatory approvals of this Commission and the Minnesota Public Utilities Commission. Otter Tail and Ashtabula III, LLC presently envision closing within a reasonable amount of time following receipt of these regulatory approvals. Currently Otter Tail anticipates a closing date of January 2, 2023

IV. BENEFITS OF THE PROPOSED ACQUISITION

The requested acquisition is in the public interest because it lowers energy costs to Otter Tail customers over the life of the wind facility. In simple terms, Otter Tail can provide its customers lower energy costs by exercising its purchase option and owning and operating the Purchased Assets than by foregoing its option and remaining in the PPA. Otter Tail’s analysis demonstrates that the purchase of the wind facility will benefit Otter Tail customers by reducing energy costs from the wind facility by over \$4.56 /MWh over the life of the wind facility. The graph below shows a comparison of continuing with the existing PPA (red line) to the purchase of the wind facility (purple line) on per MWh basis.



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The existing PPA price in 2023 would be [PROTECTED DATA BEGINS...
...PROTECTED DATA ENDS] with a 2 percent escalation with an ending price of
[PROTECTED DATA BEGINS... ...PROTECTED DATA ENDS] in 2037, the last
year of the PPA. Anticipated PPA curtailment payments add another [PROTECTED DATA
BEGINS... ...PROTECTED DATA ENDS] in 2023 growing to [PROTECTED
DATA BEGINS... ...PROTECTED DATA ENDS] in 2037, based on
[PROTECTED DATA BEGINS... ...PROTECTED DATA ENDS] MWh of curtailed
energy per year. After the PPA expires in 2037, the assumed replacement energy cost is based on
the market energy forecasted costs (Wood Mackenzie forecast).

The following ownership assumptions are used in calculating the ownership costs on a per MWh
basis (purple line)⁴:

- A. Project costs of \$51.1 million which consists of the purchase price of the assets and the costs associated with the purchase including legal and due diligence related items.
- B. Net Capacity factor of 40 percent which is based on historical 6-year average production of the facility.
- C. Remaining life of 25 years starting in 2023.
- D. Decommissioning costs of \$8.7 million in 2047 at the end of the useful life.
- E. Annual O&M costs of \$2.5 million in 2023 with escalations through the life of the project.

Lastly, the Purchased Assets addressed in this Application will be in good working order and suitable for providing continued reliable service to customers. As part of its due diligence on the Purchased Assets, Otter Tail has and continues to review past test records and performed on-site inspections to conclude that these facilities are in good working order, conform with Otter Tail's standards and are expected to continue to provide reliable service for many years into the future.

⁴ Attachment 3, ASH III Revenue Requirements and Levelized Costs Analysis, contains Otter Tail's detailed analysis of the ownership costs.

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In conclusion, the Proposed Acquisition offers several quantitative and qualitative benefits to Otter Tail and is in the best interest of continuing to provide safe, reliable and cost-effective service to Otter Tail’s customers.

V. COMMUNICATIONS AND SERVICE

Otter Tail respectfully requests that the following persons be placed on the Commission’s official service list for all official communications in this case:

Cary Stephenson
Associate General Counsel
Otter Tail Corporation
215 South Cascade Street
Fergus Falls, MN 56537
Tel. 218-739-8956

Brad Tollerson
Vice President Energy Supply
Otter Tail Power Company
215 South Cascade Street
Fergus Falls, MN 56537
Tel. 218-739-8865

VI. APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

Otter Tail respectfully submits this Application for a Certificate of Public Convenience and Necessity for the Proposed Acquisition and respectfully requests that the Commission issue a CPCN after a notice of opportunity for hearing is issued and addressed in this proceeding. Otter Tail believes the benefits of the Proposed Acquisition are such that, if no other interested party has requested a hearing on this Application, that the Commission should move expeditiously in granting a CPCN consistent with N.D.C.C. Section 49-03-02(2). In support thereof, the Company states as follows:

A. That Applicant’s full name and post office address are:

Otter Tail Power Company
P.O. Box 496
215 South Cascade Street
Fergus Falls, MN 56538-0496

B. Otter Tail is a Minnesota corporation duly authorized to do business in the State of North Dakota as a foreign corporation and is doing business in the State of North Dakota as a public utility subject to the jurisdiction of and regulation by the Commission under N.D.C.C. Title 49, as amended. Otter Tail maintains local offices in Jamestown, Wahpeton, Devils Lake and Rugby.

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- C. Otter Tail is a public utility corporation, subject to the jurisdiction of, and regulation by, the Public Service Commission of North Dakota, under Title 49, NDCC, as amended. Pursuant to N.D. Admin. Code § 69-02-02-04, Applicant Otter Tail's certified Articles of Incorporation and a Certificate of Good Standing are on file with the Commission in Commission Case No. PU-09-677, and an original certificate of good standing dated January 11, 2021, is attached hereto. Otter Tail's Annual Report and related financial statements and information are on file with the Commission as part of its annual electric report for 2020 in Case No. PU-21-215. Pursuant to N.D.A.C. § 69-02-02-04, such Articles, Certificate, most recent Annual Report and any Amendments thereto are hereby incorporated by reference, as though fully set forth herein.
- D. The date the Proposed Acquisition will take effect is at the close of the Purchased Assets.
- E. This Application is being made pursuant to the provisions of Chapter 49-03-01 of the North Dakota Century Code.
- F. Otter Tail seeks authorization to acquire the Purchased Assets on the terms and conditions contained in the Purchase and Sale Agreement. The Company is not extending retail service to any new electric customers in connection with the Proposed Acquisition.
- G. The Proposed Acquisition will provide financial benefits in support of North Dakota customers. The requested acquisition lowers energy costs to Otter Tail's customers over the life of the wind facility. In simple terms, Otter Tail can provide its customers lower energy costs by exercising its purchase option and owning and operating the Purchased Assets than by foregoing its option and remaining in the PPA. Otter Tail's analysis demonstrates that the purchase of the wind facility will benefit Otter Tail customers by reducing energy costs from the wind facility by over \$4.56 /MWh over the life of the wind facility.
- H. Otter Tail is an experienced and vertically integrated electric generation, transmission and distribution utility with the expertise and resources to own, operate and maintain the facilities that are the subject of the Proposed Acquisition as part of its electrical system serving the public.

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- I. There will be no change to Otter Tail’s retail electric service area. Otter Tail’s retail electric customers will continue to be served by Otter Tail under applicable tariffs, rules, and regulations on file with the Commission. The Proposed Acquisition is a reorganization of existing ownership, operational, and maintenance responsibilities concerning the Purchased Assets.
- J. As noted above, the Purchased Assets would be purchased from Ashtabula III, LLC and thus would be newly owned by Otter Tail as an addition to its existing system in North Dakota. To assist the Commission with its determinations of the Proposed Acquisition, Otter Tail notes that the Purchased Assets are generation-related assets, are not related to direct retail service, and will not extend the Company’s retail electric service. The Proposed Acquisition will not provide or impact direct retail service or otherwise be in competition with any other retail electric suppliers in the area.
- K. Otter Tail believes it is in the public interest that it be granted a CPCN for the authority it requests herein, and that public convenience and necessity is served by such acquisition and operation. Pursuant to N.D.C.C. § 49-03-02(2), Otter Tail requests the Commission grant the requested Application not more than 20 days after a notice of opportunity for hearing is issued in this proceeding, if no party requests a hearing.
- L. Supporting Documents: The following attachments are enclosed with this Application as required by N.D.C.C. § 49-03-01, *et seq.*
- Attachment 1 “Purchase and Sale Agreement” describes the assets to be purchased and the terms and conditions of sale.
 - Attachment 2 “Purchase Option” sets forth Otter Tail’s right to purchase the generation assets of the Ashtabula III wind generation facility.
 - Attachment 3 “Ash III Revenue Requirements and Levelized Cost Analysis” provides Otter Tail’s financial analysis in support exercising its option to purchase.

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WHEREFORE, Otter Tail respectfully requests that the Commission:

- A. Enter an Order and issue a Certificate of Public Convenience and Necessity authorizing the Otter Tail to acquire, own, operate and maintain the Purchased Assets and approve the Proposed Acquisition, as described herein; and
- B. Grant such other relief as the Commission shall deem appropriate.

Dated: January 11, 2022

OTTER TAIL POWER COMPANY

By: /s/ CARY STEPEHENSON
Cary Stephenson
Associate General Counsel
Otter Tail Corporation

State of North Dakota SECRETARY OF STATE



Certificate of Good Standing of OTTER TAIL POWER COMPANY

SOS Control ID#: 0000016296

Certificate #: 019457938

The undersigned, as Secretary of State of the state of North Dakota, hereby certifies that, according to the records of this office,

OTTER TAIL POWER COMPANY

a Corporation - Business - Foreign was formed under the laws of MINNESOTA and filed with this office effective February 24, 1914. This entity has, as of the date set forth below, complied with all applicable North Dakota laws.

ACCORDINGLY, the undersigned, as such Secretary of State, and by virtue of the authority vested in him by law, hereby issues this Certificate of Good Standing.

DATE: January 11, 2021

Handwritten signature of Alvin A. Jaeger in cursive script.

Alvin A. Jaeger
Secretary of State

[PROTECTED DATA BEGINS...

Case No. PU-22-
Attachment 1 is CONFIDENTIAL
in its Entirety

...PROTECTED DATA ENDS]

EXHIBIT K (to PPA) OPTION AGREEMENT

OPTION AGREEMENT

This Option Agreement ("Agreement"), dated and effective as of May 9, 2013 (the "Effective Date"), is executed by and among Ashtabula Wind III, LLC a Delaware limited liability company ("Ashtabula III"), and Otter Tail Power Company ("OTP"), a Minnesota corporation. Ashtabula III and OTP are each referred to individually as a "Party" and collectively as the "Parties".

RECITALS

WHEREAS, Ashtabula III owns and operates a renewable wind-energy conversion electric generating facility with a nameplate capacity of approximately 62.4 MW located in Barnes County, North Dakota (including all of the equipment, real property, facilities and interests specified in the definitions of "Facility Property" and "Facility" in the PPA (as defined below), including but not limited to the Ashtabula III Substation and Ashtabula III Power Line Assets, the "Ashtabula III Project"); and

WHEREAS, Ashtabula III, as seller, and OTP, as purchaser, have entered into that certain Wind Energy Purchase Agreement, dated as of the date hereof (the "PPA") pursuant to which Ashtabula III will sell and OTP will purchase the energy generated by the Ashtabula III Project; and

WHEREAS, pursuant to Section 19.7 of the PPA, Ashtabula III desires to grant OTP, and OTP desires to accept from Ashtabula III, an option to purchase the Ashtabula III Project in accordance with the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein and other consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE I DEFINITIONS

The following terms, when used herein, shall have the meanings set forth below.

"Affected System Upgrade Costs – Excess Capacity and Final Excess Capacity" has the meaning provided therefor in the Settlement Agreement and LGIA.

"Affiliate" shall mean, with respect to any Party, any entity which directly or indirectly (i) controls such Party, (ii) is controlled by such Party, or (iii) is under common control with such Party. For purposes of this definition, "control" shall mean the power to direct the management or policies of such entity, whether through the ownership of voting securities, by contract or otherwise.

"Additional Capacity Costs" has the meaning provided therefor in the Settlement Agreement.

"Agreement" has the meaning set forth in the Preamble.

"Ashtabula Project" shall mean the renewable wind-energy conversion electric generating facility with a nameplate capacity of approximately 196.5 MW located in Barnes County, North Dakota, 148.5 MW of which is owned by Ashtabula Wind and 48 MW of which is owned by OTP.

"Ashtabula Wind" shall mean Ashtabula Wind, LLC, a Delaware limited liability company.

"Ashtabula III" has the meaning set forth in the Preamble.

"Ashtabula III Project" has the meaning set forth in the Recitals.

"Ashtabula Substation and Ashtabula Power Line Assets" shall mean the substation, approximately nine (9) miles of 230 kV power line and related equipment or materials for the Ashtabula Project or any contract or purchase order therefor, and any permits related to the foregoing. The Ashtabula Substation and Ashtabula Power Line Assets are depicted on Schedule A attached hereto.

"Ashtabula III Substation and Ashtabula III Power Line Assets" shall mean the substation, approximately 500 feet of 230 kV power line and related equipment or materials for the Ashtabula III Project or any contract or purchase order therefor, and any permits related to the foregoing. The Ashtabula III Substation and Ashtabula III Power Line Assets are depicted on Schedule A attached hereto.

"Closing Date" has the meaning provided in Section 2.3(a)(i) of this Agreement.

"Common Facilities Agreement" has the meaning provided in Section 2.3(d) of this Agreement.

"Definitive Agreements" shall mean the Purchase and Sale Agreement, the O&M Agreement, the Common Facilities Agreement and any other agreements deemed appropriate and designated a "Definitive Agreement" hereunder by the Parties.

"Document Completion Date" shall mean

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"Effective Date" shall mean the date of this Agreement as set forth in the Preamble.

"Excess Capacity" has the meaning provided therefor in the Settlement Agreement and the LGIA.

"Final Excess Capacity" has the meaning provided therefor in the Settlement Agreement and the LGIA.

"Initial Option Notice" has the meaning provided in Section 2.1 of this Agreement.

"LGIA" means (i) that certain Large Generator Interconnection Agreement entered into by Ashtabula III with Minnkota on December 14, 2010 and (ii) that certain

Large Generator Interconnection Agreement entered into by Ashtabula I with Minnkota on October 17, 2008, as partially assigned to Ashtabula III by that certain Assignment and Assumption Agreement, dated December 22, 2010, by and between Ashtabula I and Ashtabula III.

"Maple River Substation" shall mean the existing electrical substation facilities owned by Minnkota and located near Maple River, North Dakota, together with all upgrades thereof and improvements thereto. The Maple River Substation is depicted on Schedule A attached hereto.

"Minnkota" shall mean Minnkota Power Cooperative, Inc., a Minnesota cooperative corporation.

"Minnkota Network Upgrade Costs – Excess Capacity and Final Capacity" has the meaning provided therefor in the Settlement Agreement and LGIA.

"Minnkota Network Upgrade Costs – Existing Projects" has the meaning provided therefor in the Settlement Agreement and LGIA.

"Minnkota Transmission Service Agreement" shall mean that certain Service Agreement for Special Facilities Use Service entered into by Ashtabula III and Minnkota as of December 14, 2010.

"MW" shall mean a megawatt of capacity.

"MWh" shall mean a megawatt hour.

"NextEra Energy Resources" shall mean NextEra Energy Resources, LLC, a Delaware limited liability company.

"O&M Agreement" has the meaning provided in Section 2.3(c) of this Agreement.

"O&M Provider" has the meaning provided in Section 2.3(c) of this Agreement.

"O&M Services" has the meaning provided in Section 2.3(c) of this Agreement.

"Option" has the meaning provided in Section 2.1 of this Agreement.

"Option Exercise Notice" has the meaning provided in Section 2.1 of this Agreement.

"Option Expiration Date" shall mean [REDACTED].

"Option Initial Notice Date" shall mean [REDACTED].

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"OTP" has the meaning set forth in the Preamble.

"Party" has the meaning set forth in the Preamble.

"Parties" has the meaning set forth in the Preamble.

"Person" shall mean any natural person, firm, corporation, company, limited liability company, voluntary association, general or limited partnership, joint venture, trust, unincorporated organization, or any other entity, whether acting as an individual, a fiduciary or in another capacity.

"PSA Completion Period" has the meaning provided in Section 2.3(a) of this Agreement.

"Purchase and Sale Agreement" has the meaning provided in Section 2.3(a) of this Agreement.

"RES/PEAK" shall mean, collectively, Renewable Energy Systems Americas Inc. and PEAK Wind Development, LLC.

"Retained Liabilities" has the meaning provided in Section 2.3(f) of this Agreement.

"Second Amended and Restated Common Facilities Agreement" has the meaning provided in Section 2.3(d) of this Agreement.

"Settlement Agreement" shall mean that certain Settlement Agreement, dated January 13, 2010, by and among RES/PEAK, OTP, Minnkota, and NextEra Energy Resources (on behalf of itself and its respective affiliates, Ashtabula Wind, Ashtabula Wind II, LLC and Ashtabula III) and approved by the Federal Energy Regulatory Commission in Docket No. EL08-86-000.

"Transmission Provider Interconnection Facility Costs" has the meaning provided therefor in the Settlement Agreement and LGIA.

"Upgrade Costs" shall mean any costs allocated to Ashtabula III through the Settlement Agreement and the LGIA with respect to any of the following:

- (a) Transmission Provider Interconnection Facility Costs,
- (b) Minnkota Network Upgrade Costs – Existing Projects,
- (c) Minnkota Network Upgrade Costs – Excess Capacity and Final Excess Capacity,
- (d) Affected System Upgrade Costs – Excess Capacity and Final Excess Capacity or
- (e) Additional Capacity Costs;

provided, however, that (i) Upgrade Costs shall not include any costs incurred by Ashtabula III with respect to Ashtabula III's use of any of its rights to Excess Capacity or

Final Excess Capacity in excess of 50 MW and (ii) in the event that RES/PEAK (or any successor thereto or assign thereof) uses its share of Excess Capacity or Final Excess Capacity to develop a project, or Ashtabula III (or any successor thereto or assign thereof) exercises its right pursuant to Section 6 or Section 7, respectively, of the Settlement Agreement to use RES/PEAK's share of Excess Capacity or Final Excess Capacity, then Upgrade Costs associated therewith shall only include those costs Ashtabula III would have incurred if RES/PEAK (or any successor thereto or assign thereof) or Ashtabula III (or any successor thereto or assign thereof) had not so developed such share of the Excess Capacity or Final Excess Capacity.

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ARTICLE II OPTION

2.1 Option. Ashtabula III hereby grants to OTP (or an Affiliate thereof designated by OTP) a one-time option ("Option") to purchase from Ashtabula III all of Ashtabula III's right, title and interest in the Ashtabula III Project in accordance with the terms and conditions of this Agreement. OTP may exercise the Option as follows: (i) providing written notice to Ashtabula III in accordance with Section 5.6 no earlier than [redacted] and no later than the Option Initial Notice Date that OTP is considering exercising the Option (the "Initial Option Notice"); (ii) providing written notice to Ashtabula III in accordance with Section 5.6 no earlier than [redacted] and no later than the Option Expiration Date of OTP's intent to exercise the Option (the "Option Exercise Notice"); and (iii) closing on the purchase from Ashtabula III of Ashtabula III's right, title and interest in the Ashtabula III Project in accordance with the terms and conditions of this Agreement on the Closing Date.

2.2 [Intentionally Deleted]

2.3 Definitive Agreements. If OTP exercises the Option in accordance herewith, the Parties agree, in a manner designed to effect the goals set forth in the Recitals, to the following:

(a) Purchase and Sale Agreement. During the period commencing on the date of delivery to Ashtabula III of the Initial Option Notice and ending on the Document Completion Date (the "PSA Completion Period"), the Parties agree to finalize and execute and deliver (such execution and delivery subject to escrow until delivery to Ashtabula III of OTP's Option Exercise Notice in accordance with Section 2.1) a purchase and sale agreement ("Purchase and Sale Agreement") in substantially the form attached hereto as Exhibit A (except with respect to the exhibits and schedules thereto, which shall be prepared and finalized during the PSA Completion Period) that would provide for, upon the satisfaction of certain conditions to closing, the acquisition by OTP (or an Affiliate thereof) of the Ashtabula III Project. Without limiting the foregoing, the Purchase and Sale Agreement shall contain the following terms and conditions:

(i) The purchase price ("Purchase Price") for the Ashtabula III Project shall be \$ [redacted] as adjusted (A) downward for any capital

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expenditures reasonably anticipated to be incurred by OTP after the Closing Date in order to cause the Ashtabula III Project to be fully operational and capable of delivering the nameplate capacity of the Wind Turbines (as defined in the PPA) to the Point of Delivery (as defined in the PPA) in accordance with Good Utility Practices (as defined in the PPA) thereafter not to exceed \$ [redacted] in the aggregate, and (B) upward for (I) any Upgrade Costs incurred by or allocable to Ashtabula III after the Effective Date of this Agreement, ~~not to exceed \$ [redacted]~~ in the aggregate, and (II) the cost of any capital improvements made to the Ashtabula III Project prior to the Closing Date mutually agreed to in writing by the Parties (it being acknowledged and agreed that Ashtabula III shall have no obligation to make any capital improvements). The Purchase Price shall be payable on the closing date provided for in the Purchase and Sale Agreement (the "Closing Date").

(ii) Ashtabula III agrees that it will tender and OTP agrees to acquire, the Ashtabula III Project and OTP will assume all benefits, and obligations arising after the Closing Date, associated with the Ashtabula III Project as of the Closing Date, except as otherwise provided in the Purchase and Sale Agreement. The Ashtabula III Project shall be transferred on an "as is" basis, except that Ashtabula III shall make representations and warranties respecting title to the conveyed property and equipment and that the conveyed property rights provide that the subject land is available for use in a wind energy site for the Ashtabula III Project, and respecting other matters as set forth in the Purchase and Sale Agreement. For the avoidance of doubt, Ashtabula III shall not represent or warrant any wind availability.

(iii) Ashtabula III shall represent and warrant that (A) it holds of record and owns beneficially one hundred percent (100%) of the ownership interests of the Ashtabula III Project, free and clear of any Liens (except for Permitted Liens) (each as defined in Exhibit A) and (B) upon consummation of the sale and purchase contemplated hereby and in the Purchase and Sale Agreement, OTP will hold of record and own beneficially good and marketable title to all of the Ashtabula III Project, real property and equipment, free and clear of any and all Liens (except for Permitted Liens).

(iv) As a condition to closing of the acquisition of the Ashtabula III Project, each of the Definitive Agreements shall be executed and delivered by all parties thereto.

(b) [Intentionally Deleted]

(c) O&M Agreement. The Parties agree to negotiate in good faith to finalize by the Document Completion Date, and prior to the Closing Date execute and deliver an agreement ("O&M Agreement") for the performance by an

Affiliate of Ashtabula III ("O&M Provider") of certain operation and maintenance services ("O&M Services") for the Ashtabula III Project as described in Schedule B attached hereto. The O&M Agreement shall be in substantially the same form as that which was entered into by FPL Energy Operating Services, Inc. and OTP, effective as of October 9, 2008 (as amended and/or restated as of the Effective Date, the "Ashtabula I O&M Agreement"), and shall contain the following terms and conditions:

(i) The O&M Provider shall perform the O&M Services for five (5) years from the Closing Date, subject to OTP's right to terminate for convenience on 60 days' notice.

(ii) All costs incurred by the O&M Provider shall be allocated on a "Pro Rata Share" basis (as defined in the Ashtabula I O&M Agreement), as amended to reflect OTP's ownership in the Ashtabula III Project.

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(iii) In addition to reimbursement of costs, OTP shall pay the O&M Provider an annual fee equal to subject to annual escalation for changes in an agreed index of inflation, substantially similar to the escalation of the annual fee provided for in the Ashtabula I O&M Agreement.

(iv) The total aggregate liability of O&M Provider to OTP for all liability arising out of or in connection with the O&M Agreement shall be as set forth in Section 9.3 of the Ashtabula I O&M Agreement.

(v) The O&M Provider's obligations under the O&M Agreement shall be conditioned upon closing of the acquisition of the Ashtabula III Project.

(d) Common Facilities Agreement. The Parties agree to negotiate to finalize by the Document Completion Date and, prior to the Closing Date, execute and deliver, a mutually agreeable (i) amendment and restatement of that certain Amended and Restated Common Facilities Agreement, dated as of October 9, 2008 (the "Common Facilities Agreement"), by and between Ashtabula Wind and OTP (as amended and restated pursuant to the terms hereof, the "Second Amended and Restated Common Facilities Agreement") in order to: (A) incorporate a new defined term of "OTP III Project" (the "OTP III Project") comprised of the Ashtabula III Project, which OTP III Project shall be designated as utilizing the portion of the Common Facilities (as defined in the Common Facilities Agreement) described in Exhibit B attached hereto, (B) include the OTP III Project in the definitions of Licensee's Projects and Complete Wind Farm Site (each, as defined in the Common Facilities Agreement), as applicable, (C) modify Exhibit B-1 to the Common Facilities Agreement to include the OTP III Project and (D) make any other modifications necessary or desirable in order to include the OTP III Project as Licensee's Project under the Common Facilities Agreement

and permit the use by OTP of the Ashtabula Substation and Ashtabula Power Line Assets for the connection of the OTP III Project to transmission grid for the duration of the operating life of the OTP III Project (which may be beyond 25 years), and (ii) termination of that certain Shared Facilities Agreement, dated November 30, 2010 (the "Shared Facilities Agreement"), by and between Ashtabula I and Ashtabula III. The termination of the Shared Facilities Agreement and the effectiveness of the Second Amended and Restated Common Facilities Agreement shall be conditioned upon (i) the filing with and approval of the Federal Energy Regulatory Commission of the Second Amended and Restated Common Facilities Agreement, (ii) the termination of the Shared Facilities Agreement and (iii) the closing of the acquisition of the Ashtabula III Project.

(e) Reserved.

(f) LGIA. Ashtabula III shall assign to OTP all of its interests, rights and obligations in and under the LGIA, except for (i) any and all obligations and liabilities of Ashtabula III (or any successor thereto or assign thereof) under the LGIA or the Settlement Agreement arising from Ashtabula III's use of any of its rights to Excess Capacity or Final Excess Capacity in excess of 50 MW; (ii) any and all obligations and liabilities of Ashtabula III (or any successor thereto or assign thereof) under the LGIA or the Settlement Agreement in connection with Upgrade Costs incurred as a result of the use by RES/PEAK (or any successor thereto or assign thereof) of its share of Excess Capacity or Final Excess Capacity and (iii) any and all obligations and liabilities of Ashtabula III (or any successor thereto or assign thereof) under the LGIA or the Settlement Agreement in connection with Upgrade Costs incurred as a result of the use by Ashtabula III (or any successor thereto or assign thereof) of its right pursuant to Section 6 or Section 7, respectively, of the Settlement Agreement, to use RES/PEAK's share of Excess Capacity or Final Excess Capacity, which obligation and liabilities shall be retained by Ashtabula III (clauses (i), (ii) and (iii), collectively, the "Retained Liabilities"). In connection therewith, Ashtabula III agrees to indemnify OTP in respect of, and hold it harmless from and against (I) any claim by Minnkota or RES/PEAK arising out of or relating to the Retained Liabilities or the failure of Ashtabula III to discharge any Retained Liabilities and (II) any claim by RES/PEAK arising out of Section 11 or Section 13 of the Settlement Agreement, except to the extent of any act or omission of OTP related thereto.

2.4 Due Diligence. Following delivery to Ashtabula III of the Initial Option Notice, OTP may conduct due diligence of the type and scope customary for transactions of the nature set forth in this Agreement. During such time, Ashtabula III shall permit OTP, its Affiliates and advisors to have reasonable access during normal business hours to the Ashtabula III Project site leader and the business manager for the Ashtabula III Project and the regional wind site manager and the general manager for the region including the Ashtabula III Project, and all documents and other information and data in their possession related to the Ashtabula III Project, including raw met tower data related to the Ashtabula III Project but excluding any other wind data (other than as provided pursuant to written agreement with an Ashtabula III Affiliate). ASHTABULA III AND

ITS AFFILIATES MAKE NO WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, AS TO THE ACCURACY OR COMPLETENESS OF ANY DATA, INFORMATION OR MATERIALS FURNISHED TO OTP, ITS AFFILIATES AND ADVISORS, AND ANY RELIANCE ON OR USE OF THE SAME SHALL BE AT OTP'S SOLE RISK.

ARTICLE III CONFIDENTIALITY

3.1 Confidentiality. Prior to any closing under the Purchase and Sale Agreement, this Agreement, any information disclosed pursuant to this Agreement or the negotiation of the Definitive Agreements and any information disclosed pursuant any due diligence by OTP, its Affiliates or advisors related to the Ashtabula III Project shall be treated as "Confidential Information" pursuant to the terms and conditions of the PPA.

3.2 Tax Disclosure. The above part of Section 3.1 notwithstanding, the Parties or their representatives may disclose to any and all Persons, without limitation of any kind, the tax treatment and tax structure of the proposed transactions described in this Agreement and all materials of any kind (including opinions or other tax analyses) that are provided to any Party relating to the tax treatment and tax structure of the proposed transactions. Each Party intends that the proposed transactions not be treated as offered under "conditions of confidentiality" within the meaning of the Treasury Regulations promulgated under Internal Revenue Code Sections 6011 and 6111(d)(2). The authorization to disclose information in this Section 3.2 does not extend to disclosure of any other information including (without limitation) (i) the identities of participants or potential participants in the proposed transactions, (ii) the existence or status of any negotiations or (iii) any pricing information or any other term or detail not related to the tax structure or tax aspects of the proposed transactions.

3.3 Announcements. Without limiting the terms of Section 3.1, prior to any closing under the Purchase and Sale Agreement, no press release relating to the conveyance of the Ashtabula III Project from Ashtabula III to OTP shall be issued or made by OTP or Ashtabula III without the joint approval of both OTP and Ashtabula III (such approval not to be unreasonably withheld, conditioned or delayed); provided that a press release made without such joint approval shall not be in violation of this Section if it is made in order for the disclosing Party or any of its Affiliates to comply with applicable laws or stock exchange rules and in the reasonable judgment of the Party making such release or announcement, based upon advice of counsel, prior review and joint approval, despite reasonable efforts to obtain the same, would prevent dissemination of such release or announcement in a sufficiently timely fashion to comply with such laws or rules; and provided further that in all instances prompt notice from one Party to the other shall be given with respect to any such release.

ARTICLE IV LIMITATION OF LIABILITY

4.1 Limitation. Notwithstanding any other provision of this Agreement, in no event shall any Party or any of their Affiliates, by reason of any of their respective acts or omissions relating to any of their obligations under this Agreement, be liable to the other Party, or any of their Affiliates whether by statute or common law, in contract or tort or otherwise, for any special, indirect, incidental, punitive or consequential damages or for lost profits or other business interruption damages or liability arising out of or in connection with this Agreement, or the performance, non-performance or breach thereof.

ARTICLE V MISCELLANEOUS

5.1 Representations and Warranties. Each Party represents and warrants that (a) it is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is organized and is qualified to do business in all jurisdictions where it is required to be qualified; (b) it has the necessary power and authority to enter into and perform its obligations under this Agreement; (c) it has duly authorized the person(s) signing this Agreement to execute this Agreement on its behalf; (d) this Agreement is the legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms (except as such enforcement may be limited by applicable bankruptcy, insolvency or similar laws affecting creditors' rights generally or by the application of general principles of equity); (e) the execution and delivery of this Agreement and its performance by such Party will not violate, require a consent in connection with (except as provided in the Purchase and Sale Agreement), result in a breach of or conflict with any law, rule, regulation, order or decree applicable to such Party, its organizational documents or the terms of any other agreement binding on such Party; and (f) it will negotiate in good faith to agree on the form of the Definitive Agreements by the Document Completion Date.

5.2 Governing Law. This Agreement shall be interpreted in accordance with and governed by the laws of New York, without regard to the conflicts of law principles thereof and any litigation arising out of or in connection in any way with this Agreement shall take place in a State or Federal court of competent jurisdiction in New York City, Borough of Manhattan, State of New York. The Parties irrevocably waive any objection which any of them may now or hereafter have to the bringing of any such action or proceeding in such respective jurisdictions, including any objection to the laying of venue based on the grounds of forum non conveniens and any objection based on the grounds of lack of in personam jurisdiction. EACH PARTY HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS OPTION AGREEMENT.

5.3 Relationship of Parties. Neither the execution nor delivery of this Agreement, nor consummation of the transactions contemplated hereby, shall create or constitute a partnership, joint venture or any other form of business organization or arrangement among the Parties.

5.4 Integration. Except for the PPA and that certain letter agreement, dated as of the date hereof, among Ashtabula Wind, Ashtabula III and OTP respecting the Common Facilities Agreement, the terms and provisions contained in this Agreement constitute the entire agreement between the Parties with respect to the subject matter hereof.

5.5 Binding Effect; Assignment. This Agreement shall be binding upon each Party, and its respective successors and assigns. This Agreement may not be assigned, in whole or in part, by any Party without the prior written consent of the other Party. Any assignment that is made without such consent shall be void and of no force and effect; provided that nothing contained herein shall in any way prevent a Party from assigning all or part of its rights hereunder to an Affiliate of such Party; and further provided that the assigning Party shall in all events remain liable to the other Parties with respect to the assigning Party's obligations hereunder. Notwithstanding the foregoing, either Party may, upon notice to the other Party but without the need for consent from the other Party, collaterally assign its rights under this Agreement to any Unaffiliated Facility Investor (as defined in the PPA), or any other lender or lenders, for collateral security purposes, provided, however, that such Party's obligations under this Agreement shall continue in their entirety in full force and effect and such Party shall remain fully liable for all of its obligations under or relating to this Agreement.

5.6 Notice. Any and all notices, consents and other communications that are required or permissible pursuant to this Option Agreement shall be in writing, and shall be deemed given (a) upon personal delivery, or (b) upon the sender's receipt of electronic confirmation of transmission, if sent by facsimile, or (c) upon receipt if sent by mail or courier. The Parties designate the following addresses for the foregoing legal effects:

If to Ashtabula III:

Ashtabula Wind III, LLC
700 Universe Boulevard
Juno Beach, Florida 33408
Attention: Business Manager

If to OTP:

Otter Tail Power Company
215 South Cascade Street
Fergus Falls, Minnesota 56538-0496
Attention: Harvey McMahon

The Parties, by like notice in writing, may designate, from time to time, another address or office to which notices may be given pursuant to this Agreement.

5.7 No Oral Modifications. This Agreement may not be amended or modified except by written agreement executed by each of the Parties hereto.

5.8 Severability. If any of the provisions, portions or applications of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, portions or applications of this Agreement, shall not be affected thereby.

5.9 Counterparts. This Agreement may be executed in any number of counterparts, each of which counterparts, when so executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same agreement.

5.10 Effectiveness of this Option Agreement; Termination. This Agreement shall become effective upon the Effective Date and shall automatically terminate in its entirety without any further notice or action being necessary upon the earlier to occur of: (a) the Option Initial Notice Date, in the event that OTP does not provide the Initial Option Notice in strict accordance with Section 2.1(i), (b) the Option Expiration Date, in the event that OTP does not provide the Option Exercise Notice in strict accordance with Section 2.1(ii), (c) the date of execution and delivery of the Definitive Agreements by the Parties thereto and (d) [REDACTED]. Upon termination of this Agreement after such effectiveness, the Parties shall not have any further obligation to each other by virtue of this Agreement except for Articles III and IV.

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5.11 Remedies. Upon the occurrence of a breach of this Agreement, the non-breaching Party shall have all remedies at law and in equity, including solely with respect to any failure of Ashtabula III to transfer the Ashtabula III Project as required pursuant to the terms of this Agreement and the Purchase and Sale Agreement, the remedy of specific performance, it being acknowledged and agreed that the remedy of specific performance or mandatory injunction shall not be available in any other circumstance.

5.12 Headings. Titles and headings of all Articles and Sections of this Agreement are for convenience of reference and do not form a part of this Option Agreement and shall not in any way affect the interpretation of this Agreement.

5.13 Recording. OTP shall have the right to file in the land records of Barnes County, North Dakota a memorandum of this Agreement in a form mutually acceptable to the Parties.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized officers as of the Effective Date.

OTTER TAIL POWER COMPANY

By: /s/ Charles S. MacFarlane
Name: Charles S. MacFarlane
Title: President and CEO

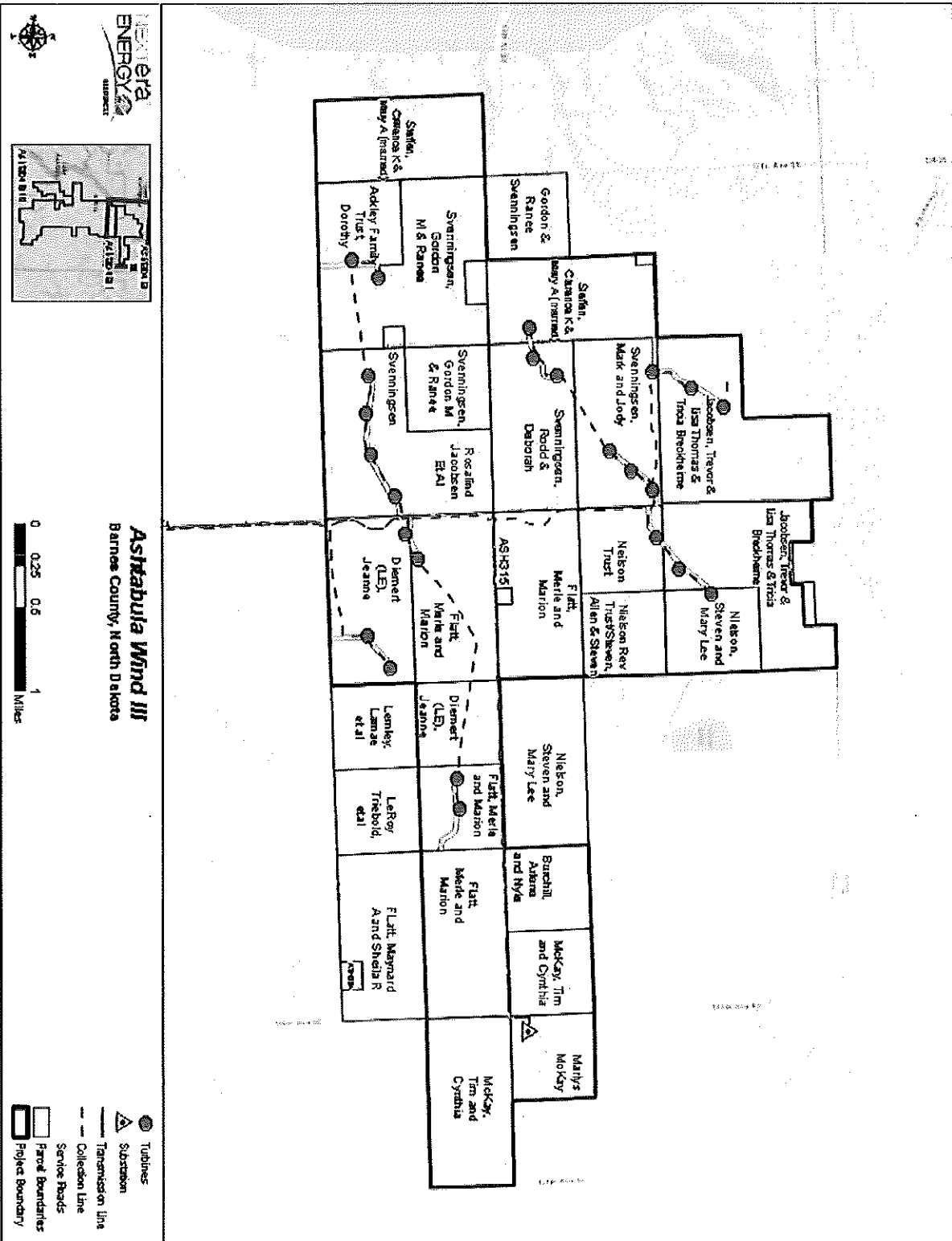
ASHTABULA WIND III, LLC

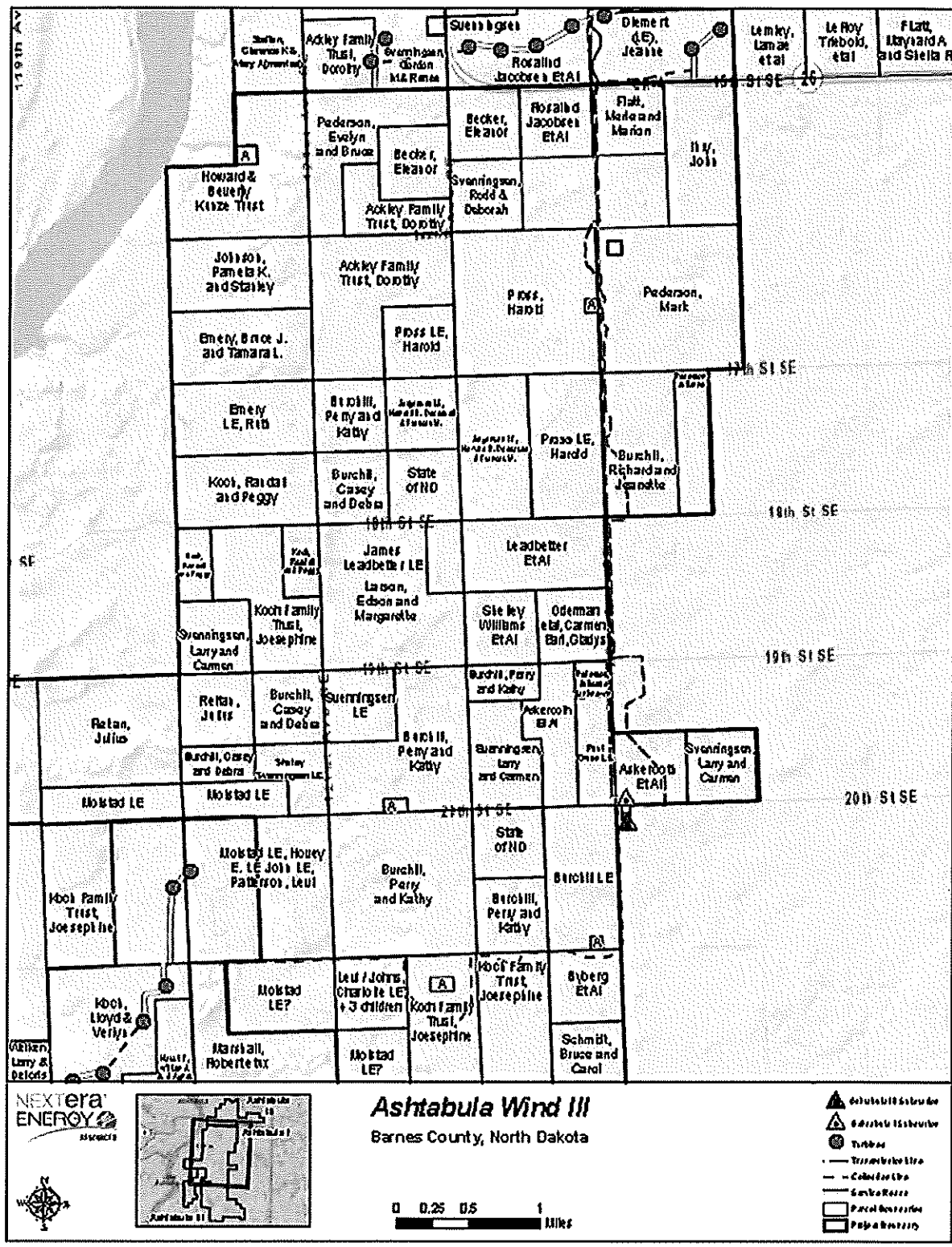
By: /s/ Michael O'Sullivan
Name: Michael O'Sullivan
Title: Senior Vice President

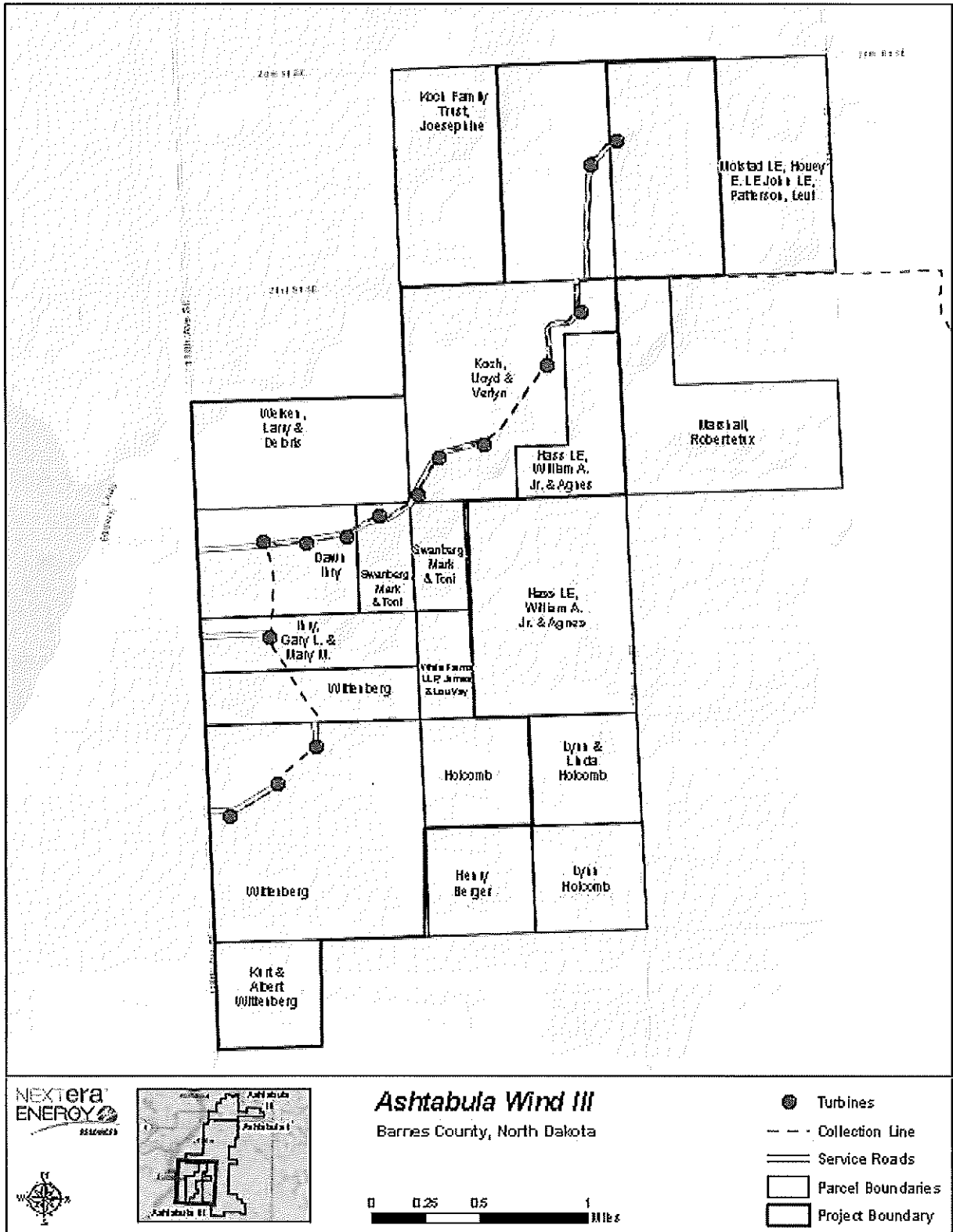
SCHEDULE A

MAP OF ASHTABULA III PROJECT

- **Depiction of the Ashtabula III Project, the Ashtabula III Wind Farm Substation and Ashtabula III Transmission Line Assets and the Lead Line substations (Luverne and Maple River)**







SCHEDULE B

O&M SCOPE OF WORK

The O&M Services shall be consistent with O&M services provided under the O&M Agreement entered into by FPL Energy Operating Services, Inc. and OTP, effective as of October 9, 2008 (as amended and/or restated as of the Effective Date).

EXHIBIT A

FORM OF PURCHASE AND SALE AGREEMENT

PURCHASE AND SALE AGREEMENT

dated as of [_____], 2022

by and between

Ashtabula Wind III, LLC, as Seller

and

Otter Tail Power Company,
as Purchaser

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EXHIBITS

<u>Exhibit A-1:</u>	Form of Assignment and Assumption Agreement
<u>Exhibit A-2:</u>	Form of Bill of Sale
<u>Exhibit B:</u>	Site Plan Depicting Ashtabula III Project and Common Facilities Area
<u>Exhibit C:</u>	Form of Seller's President/Vice President's Certificate
<u>Exhibit D:</u>	Form of Seller's Secretary's Certificate
<u>Exhibit E:</u>	Form of Purchaser's President/Vice President's Certificate
<u>Exhibit F:</u>	Form of Purchaser's Secretary's Certificate
<u>Exhibit G-1:</u>	Form of Wind Farm Easement Agreement
<u>Exhibit G-2:</u>	Form of Collection Easement
<u>Exhibit G-3:</u>	Form of Common Facilities Collection Easement
<u>Exhibit G-4:</u>	Form of Transmission Easement
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<u>Exhibit J:</u>	Reserved
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<u>Schedule 2.01:</u>	Material Assets
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PURCHASE AND SALE AGREEMENT

This PURCHASE AND SALE AGREEMENT dated as of [_____], 2022 (“Effective Date”) is made and entered into by and among Ashtabula Wind III, LLC, a Delaware limited liability company (“Seller”) and Otter Tail Power Company, a Minnesota corporation (“Purchaser”) (Purchaser and Seller individually a “Party” and collectively, the “Parties”). Capitalized terms used herein shall have the meanings set forth in Section 1.01.

WHEREAS, Seller owns a wind-powered electric generating project with a nameplate capacity of approximately 62.4 MWs located on the Ashtabula III Project Site, as depicted on Exhibit B attached hereto (including all of the equipment, facilities and interests specified in the definition of “Facility” and “Facility Property” in the PPA (as defined below), including but not limited to the Ashtabula III Substation and Ashtabula III Power Line Assets (the “Ashtabula III Project”));

WHEREAS, Seller desires to sell, and Purchaser desires to purchase, the Ashtabula III Project and the related Assets on the terms and subject to the conditions set forth in this Agreement; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I DEFINITIONS, INTERPRETATION

1.01 Definitions.

(a) Defined Terms. As used in this Agreement, the following defined terms have the meanings indicated below:

“Actions or Proceedings” means any action, suit, proceeding, arbitration or Governmental or Regulatory Authority investigation.

“Acquisition” means the sale and purchase of the Assets and all other actions that the Parties have agreed to take pursuant to this Agreement.

“Additional Agreements” means, collectively, the Bill of Sale, the General Assignment and Assumption Agreement, the Land Contract Assignment and Assumption Agreements, the O&M Agreement, the Common Facilities Agreement, the Common Facilities O&M Agreement and the Assignment and Assumption of LGIA Agreement.

“Affected System Upgrade Costs – Excess Capacity and Final Excess Capacity” has the meaning provided therefor in the Settlement Agreement and the LGIA.

“Affiliate” means any Person that directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the Person specified. For purposes of this definition, control of a Person means the power, direct or indirect, to direct or cause the direction of the management and policies of such Person whether by Contract or otherwise and, in any event and without limitation of the previous sentence, any Person owning

twenty-five percent (25%) or more of the voting securities of another Person shall be deemed to control that Person.

“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 federal, state and local income Taxes required to be paid by such Person in respect to the receipt or accrual of the Base Payment and the Additional Payment (taking into account the net present value of any reduction in such income Taxes resulting from Tax benefits realized by the recipient as a result of the payment or the event giving rise to the payment), be equal to the amount required to be received. Such calculations shall be made on the basis of the amounts of the highest generally applicable federal, state and local income tax applicable to a corporation for all relevant periods, and shall take into account the deductibility of state and local income taxes for federal income tax purposes.

“Agreement” means this Purchase and Sale Agreement and the Exhibits, the Appendices, the Disclosure Schedule and any other Schedules hereto and the certificates delivered in accordance with Sections 8.03 and 9.03, as any of the same shall be amended or supplemented from time to time.

“Alternative Proposal” has the meaning set forth in Section 5.11(a).

“Apportioned Obligations” has the meaning set forth in Section 10.01(a).

“Ashtabula Project” shall mean the renewable wind-energy conversion electric generating facility with a nameplate capacity of approximately 196.5 MW located in Barnes County, North Dakota, 148.5 MW of which is owned by Ashtabula Wind and 48 MW of which is owned by Purchaser.

“Ashtabula III Project” has the meaning set forth in the forepart of this Agreement.

“Ashtabula III Project Site” means that land located in Barnes County, North Dakota, upon which the Ashtabula III Project is located, as more specifically depicted on Exhibit B attached hereto.

“Ashtabula Substation and Ashtabula Power Line Assets” shall mean the substation, approximately nine (9) miles of 230 kV power line and related equipment or materials for the Ashtabula Project or any contract or purchase order therefor, and any permits related to the foregoing. The Ashtabula Substation and Ashtabula Power Line Assets are depicted on Exhibit B attached hereto.

“Ashtabula III Substation and Ashtabula III Power Line Assets” shall mean the substation, approximately 500 feet of 230 kV power line and related equipment or materials for the Ashtabula III Project or any contract or purchase order therefor, and any permits related to the foregoing. The Ashtabula III Substation and Ashtabula III Power Line Assets are depicted on Exhibit B attached hereto.

“Ashtabula Wind” shall mean Ashtabula Wind, LLC, a Delaware limited liability company.

“Assets” has the meaning set forth in Section 2.01.

“Assignment and Assumption of LGIA Agreement” means an assignment from Seller to Purchaser substantially in the form of Exhibit K relating to Seller’s rights and obligations, to the extent relating to the Ashtabula III Project, under the LGIA.

“Assumed Liabilities” has the meaning set forth in Section 2.04(a).

“Bill of Sale” means the Bill of Sale substantially in the form of Exhibit A-2.

“Breach” means any breach of, or any inaccuracy in, any representation or warranty or any breach of, or failure to perform or comply with, any provision, covenant or obligation, in or of this Agreement or any other Contract or agreement, or any event which with the passing of time or the giving of notice, or both, would constitute such a breach, inaccuracy or failure.

“Business Day” means a day other than Saturday, Sunday or any day on which banks located in the state of New York are authorized or obligated to close.

“Business or Condition of the Project” means the business, assets, financial condition, results of operations or prospects of the Ashtabula III Project taken as a whole.

“Claim Notice” means written notification pursuant to Section 12.02(a) of a Third Party Claim as to which indemnity under Section 12.01 is sought by an Indemnified Party, enclosing a copy of all papers served, if any, and specifying the nature of and basis for such Third Party Claim and for the Indemnified Party’s claim against the Indemnifying Party under Section 12.01, together with the amount or, if not then reasonably determinable, the estimated amount, determined in good faith, of the Loss arising from such Third Party Claim.

“Closing” has the meaning set forth in Section 2.05(a).

“Closing Date” has the meaning set forth in Section 2.05(a).

“Code” means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

“Common Facilities” has the meaning set forth in the Common Facilities Agreement.

“Common Facilities Agreement” means that second amendment and restatement of that certain Amended and Restated Common Facilities Agreement, as of October 9, 2008, by and between Ashtabula I and Purchaser, to be entered into by and between Purchaser and Ashtabula I (substantially in the form set forth at Exhibit H) providing for the use by Purchaser of the Ashtabula Substation and Ashtabula Power Line Assets for the connection of the Ashtabula III Project to transmission grid for the duration of the operating life of the Ashtabula III Project.

“Common Facilities Area” has the meaning set forth in the Common Facilities Agreement, and is generally depicted on Exhibit B attached hereto.

“Common Facilities Contract” means any agreement, lease, license, evidence of Indebtedness, mortgage, indenture, security agreement, Common Facilities Land Contracts or other contract relating to the Common Facilities or by which the Common Facilities are bound.

“Common Facilities Easements” has the meaning set forth in Section 3.07(a).

“Common Facilities Land Contract” means all Common Facilities Easements and other documents constituting or relating to current or anticipated Common Facilities Real Property Interests or Common Facilities Other Real Property Interests including, lease agreements, license agreements, easement agreements, option agreements and purchase agreements.

“Common Facilities Other Real Property Interest” means any easement, use, right-of-way, license or other non-exclusive right or option to use real property, but not including any leasehold interest that is included in the Real Property Interests, related to the Common Facilities.

“Common Facilities Real Property Interests” means any ownership, leasehold or other rights or interests in real property to the extent related to the Common Facilities or the Common Facilities Area (or options with respect thereto).

“Contract” means any agreement, lease, license, evidence of Indebtedness, mortgage, indenture, security agreement, Land Contracts or other contract relating to the Ashtabula III Project or by which the Ashtabula III Project or any of the Assets are bound.

“Determination Date” has the meaning set forth in Section 13.01(c).

“Disclosure Schedule” means the Disclosure Schedule attached to this Agreement, and dated as of the date hereof, containing all lists, descriptions, exceptions and other information and materials required to be included therein by either Party pursuant to this Agreement.

“Dispute Period” means the period ending sixty (60) days following delivery by an Indemnifying Party of either a Claim Notice or an Indemnity Notice.

“Easements” has the meaning set forth in Section 3.07(a).

“Effective Date” has the meaning set forth in the first paragraph of this Agreement.

“Environmental Laws” means all Laws that regulate or relate to (i) the protection or clean-up of the environment; (ii) the production, use, treatment, storage, transportation, generation, manufacture, processing, distribution, disposal, emission, discharge, Release or threatened Release of Hazardous Substances; (iii) the preservation or protection of waterways, groundwater, drinking water, air, wildlife, plants or other natural resources; and (iv) the health and safety of persons or property as it pertains to the environment, including protection of the health and safety of employees. Environmental Laws shall include the Resource Conservation & Recovery Act, Clean Water Act, Safe Drinking Water Act, Toxic Substances Control Act, Clean Air Act, Comprehensive Environmental Response, Compensation and Liability Act, Emergency Planning and Community Right-to-Know Act, Hazardous Materials Transportation Act, and all analogous or related Laws.

“Event of Default” has the meaning set forth in Section 13.03.

“Exceptions” has the meaning set forth in Section 5.12.

“Excess Capacity” has the meaning provided therefor in the Settlement Agreement and the LGIA.

“Excluded Assets” has the meaning set forth in Section 2.02.

“Existing Survey” has the meaning set forth in Section 5.12.

“FERC” means the Federal Energy Regulatory Commission.

“Final Excess Capacity” has the meaning provided therefor in the Settlement Agreement and the LGIA.

“GAAP” means generally accepted accounting principles in the United States of America, consistently applied throughout the specified period and in the immediately prior comparable period.

“General Assignment and Assumption Agreement” means the Assignment and Assumption Agreement substantially in the form of Exhibit A-1.

“Governmental Approval” means any authorization, approval, consent, License, exception, variance, Order, franchise, lease, ruling, permit, tariff, certification, exemption, filing, notice to, declarations of, or registration by or with any Governmental or Regulatory Authority or pursuant to any Laws.

“Governmental or Regulatory Authority” means any court, tribunal, arbitrator, authority, agency, commission, official or other instrumentality of the United States or any state, county, city or other political subdivision.

“Hazardous Substances” means all pollutants, contaminants, chemicals, wastes (including medical and infectious wastes), and any other carcinogenic, ignitable, corrosive, reactive, toxic, or otherwise hazardous substances or materials (whether solids, liquids or gases), including but not limited to any substances, materials, or wastes subject to regulation, control, or remediation under Environmental Laws. By way of example only, and without limitation, the term Hazardous Substances includes petroleum, formaldehyde, flammable, explosive, and radioactive materials, PCBs, pesticides, herbicides, asbestos, slag, acids, metals, and solvents.

“Indebtedness” means all obligations of a Person (a) for borrowed money; (b) evidenced by notes, bonds, debentures or similar instruments; (c) for the deferred purchase price of goods or services (other than trade payables or accruals incurred in the ordinary course of business), (d) under capital leases; or (e) in the nature of guaranties of the obligations described in clauses (a) through (d) above of any other Person.

“Indemnified Party” means any Person claiming indemnification under any provision of ARTICLE XII.

“Indemnifying Party” means any Person against whom a claim for indemnification is being asserted under any provision of ARTICLE XII.

“Indemnity Notice” means written notification pursuant to Section 12.02(b) of a claim for indemnity under ARTICLE XII by an Indemnified Party, specifying the nature of and basis for such claim, together with the amount or, if not then reasonably determinable, the estimated amount, determined in good faith, of the Loss arising from such claim.

“Information” has the meaning set forth in Section 14.05(a).

“Interconnection Point” means the 230kV terminal dead-end assembly located in the Maple River Substation physical point at which electrical interconnection is made between the Ashtabula III Project and MPC’s electric transmission system as defined in the LGIA.

“Land Contract” means all Easements and other documents constituting or relating to current or anticipated Real Property Interests or Other Real Property Interests including lease agreements, license agreements, easement agreements, option agreements and purchase agreements.

“Land Contract Assignment and Assumption Agreements” has the meaning set forth in Section 2.05(c).

“Laws” means all laws, statutes, treaties, rules, codes, ordinances, regulations, permits, official guidelines, certificates, orders, interpretations, licenses, leases and permits of any

Governmental or Regulatory Authority, Governmental Approvals, Environmental Laws, and judgments, decrees, injunctions, writs, orders or like action of any court, arbitrator or other judicial or quasi-judicial tribunal of competent jurisdiction and all requirements of law.

“Lead Line” means the 230 kV power line and related facilities owned and operated by MPC traversing approximately sixty (60) miles from and including the Pillsbury 230 kV Substation to the point of interconnection at MPC’s facilities in the Maple River Substation and interconnection rights, real property rights and obligations and any permits relating to the foregoing.

“LGIA” means (i) that certain Large Generator Interconnection Agreement entered into by Seller and MPC on December 14, 2010, and (ii) that certain Large Generator Interconnection Agreement entered into by Ashtabula Wind with MPC on October 17, 2008, as partially assigned to Seller by that certain Assignment and Assumption Agreement, dated December 22, 2010, by and between Ashtabula Wind and Seller.

“Liabilities” means any direct or indirect liability, Indebtedness, obligation, commitment, expense, deficiency or guaranty of any type, whether accrued, absolute, contingent, matured, unmatured, liquidated, unliquidated, known or unknown.

“Licenses” means all licenses, permits, certificates of authority, authorizations, approvals, registrations, franchises and similar consents granted or issued by any Governmental or Regulatory Authority.

“Liens” means any charge, claim, community or other marital property interest, condition, equitable interest, lien, levy, assessment, lease, option, pledge, security interest, mortgage, right of way, easement, encroachment, servitude, right of first option, right of first refusal or similar restriction, including any restriction on use, voting (in the case of any security or equity interest), transfer, receipt of income or exercise of any other attribute of ownership, any conditional sale contract, title retention Contract or other Contract to give any of the foregoing, or any other encumbrance or restriction of any kind.

“Loss” means any and all damages (including incidental and consequential damages incurred with respect to any claim by a third party but not by a Party except as expressly provided herein), fines, penalties, deficiencies, losses, interest, awards, judgments, expenses (including interest, court costs, reasonable fees of attorneys, accountants and other experts or other reasonable expenses of litigation or other proceedings or of any claim, default or assessment) and diminution of value, whether or not involving a third party claim, but excluding Taxes.

“Maple River Substation” means the existing electrical substation facilities owned by MPC and located near Maple River, North Dakota, together with all upgrades thereof and improvements thereto.

“Material Adverse Effect” means any effect, condition, fact, circumstance or event that is or is reasonably likely to be materially adverse to the Assets, the Ashtabula III Project or the Business or Condition of the Project, taken as a whole.

“Minnkota Network Upgrade Costs – Excess Capacity and Final Capacity” has the meaning provided therefor in the Settlement Agreement and the LGIA.

"Minnkota Network Upgrade Costs – Existing Projects" has the meaning provided therefor in the Settlement Agreement and the LGIA.

"MPC" means Minnkota Power Cooperative, Inc.

"MW" means a megawatt of capacity.

"NextEra Energy Resources" shall mean NextEra Energy Resources, LLC, a Delaware limited liability company.

"Non-Disturbance Agreements" has the meaning set forth in Section 5.12.

"O&M Agreement" means that agreement to be entered into by and between Purchaser and an Affiliate of Seller (substantially in the form set forth at Exhibit I) providing for the performance of certain operation and maintenance services for the Ashtabula III Project.

"Option Agreement" means that certain Option Agreement by and between Purchaser and Seller dated May [], 2013.

"Other Assets" means assets, properties, rights and interests of Seller (whether real, personal or mixed, whether tangible or intangible, and wherever situated), including the goodwill related thereto) not related to the Ashtabula III Project.

"Order" means any writ, judgment, decree, injunction or similar order of any Governmental or Regulatory Authority (in each such case whether preliminary or final).

"Other Real Property Interest" means any easement, use, right-of-way, license or other non-exclusive right or option to use real property, but not including any leasehold interest that is included in the Real Property Interests, related to the Ashtabula III Project.

"Party" or "Parties" has the meaning set forth in the forepart to this Agreement.

"Permitted Lien" means (a) any Lien for Taxes not yet due or delinquent or being contested in good faith by appropriate proceedings for which adequate reserves have been established in accordance with GAAP on the applicable financial statements; (b) any statutory Lien arising in the ordinary course of business by operation of Law with respect to a Liability that is not yet due or delinquent or the validity of which is being contested in good faith by appropriate proceedings; (c) mechanics', carriers', workers', repairers' and similar Liens arising or incurred in the ordinary course of business relating to obligations as to which there is no material default on the part of Seller; (d) zoning, entitlement and other land use and environmental regulations of any Governmental or Regulatory Authority; (e) such other Liens, imperfections in title, charges, easements, restrictions and encumbrances as do not, individually or in the aggregate, have a Materially Adverse Effect on the value or use of the Assets.

"Person" means any natural person, corporation, limited liability company, general partnership, limited partnership, proprietorship, other business organization, trust, union, association or Governmental or Regulatory Authority.

"Pillsbury 230 kV Substation" means the electrical substation facilities owned by MPC, located near Pillsbury, North Dakota, and interconnected with the Lead Line, together with all upgrades thereof and improvements thereto.

"PPA" means that certain Wind Energy Purchase Agreement, dated as of May [], 2013, by and between Seller and Purchaser.

“Purchase Price” has the meaning set forth in Section 2.03.

“Purchaser” has the meaning set forth in the forepart of this Agreement, and includes its successors and assigns.

“Purchaser Indemnified Parties” means Purchaser, its Affiliates and their respective successors and assigns, members, managers, shareholders, officers, directors, employees, partners and agents.

“Purchaser’s knowledge” means the actual knowledge of the current officers of Purchaser after reasonable inquiry with respect to the matter in question.

“Purchaser’s Update Certificate” has the meaning set forth in Section 6.05.

“Real Property Interests” means any ownership, leasehold or other rights or interests in real property to the extent related to the Ashtabula III Project (or options with respect thereto).

“Release” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment or the workplace of any Hazardous Substance, and otherwise as defined in any Environmental Law.

“Reports” means the Phase I Environmental Assessment, the Cultural Study, the Beam Path Study, Federal Aviation Administration screening study, the Wetlands Inventory Report, the Existing Survey, the Title Reports and, if applicable, the Wetlands Study, and any other study or report prepared by or for Seller in connection with the Ashtabula III Project.

“Representatives” means, with respect to any Person, its Affiliates, and such Person’s and its Affiliates’ officers, directors, partners, members, employees, counsel, accountants, financial advisors and consultants.

“RES/PEAK” shall mean, collectively, Renewable Energy Systems Americas Inc. and PEAK Wind Development, LLC.

“Retained Liabilities” has the meaning set forth in Section 2.04(b).

“Required Governmental Approvals” has the meaning set forth in Section 3.09(a).

“Schedules” shall mean the Disclosure Schedule and any other schedule attached hereto.

“Seller” has the meaning set forth in the forepart of this Agreement, and includes its successors and assigns.

“Seller Indemnified Parties” means Seller, its Affiliates, and their respective successors and assigns, members, managers, shareholders, officers, directors, employees, partners and agents.

“Seller’s knowledge” means the actual knowledge of the current officers of Seller after reasonable inquiry with respect to the matter in question.

“Seller’s Update Certificate” has the meaning set forth in Section 5.15.

“Settlement Agreement” shall mean that certain Settlement Agreement, dated January 13, 2010, by and among RES/PEAK, Purchaser, MPC and NextEra Energy Resources (on behalf of itself and its respective affiliates, Ashtabula Wind, Ashtabula Wind II, LLC and Seller) and approved by the Federal Energy Regulatory Commission in Docket No. EL08-86-000.

“Tax Returns” means any report, form, return, statement or other information (including any amendments) required to be supplied to a Governmental or Regulatory Authority by Seller with respect to Taxes related to the Project, including information returns, any amendments thereof or schedules or attachments thereto and any documents with respect to or accompanying requests for the extension of time in which to file any such report, return, document, declaration or other information.

“Taxes” means any income, gross or net receipts, property, sales, use, capital gain, transfer, excise, license, production, franchise, employment, social security, occupation, payroll, registration, governmental pension or insurance, withholding, royalty, severance, stamp or documentary, value added, or other tax, charge, assessment, duty, levy, compulsory loan, business or occupation (including any interest, additions to tax, or civil or criminal penalties thereon) of the United States or any state or local jurisdiction therein, or of any other nation or any jurisdiction therein.

“Third Party Claim” has the meaning set forth in Section 12.02(a).

“Title Insurer” has the meaning set forth in Section 5.12.

“Title Policy” shall have the meaning set forth in Section 8.10.

“Title Report” has the meaning set forth in Section 5.12.

“Transfer Taxes” has the meaning set forth in Section 10.01(f).

“Transmission Provider Interconnection Facility Costs” has the meaning provided therefor in the Settlement Agreement and the LGIA.

“Upgrade Costs” shall mean any costs allocated to Seller through the Settlement Agreement and the LGIA with respect to any of the following:

- (a) Transmission Provider Interconnection Facility Costs,
- (b) Minnkota Network Upgrade Costs – Existing Projects,
- (c) Minnkota Network Upgrade Costs – Excess Capacity and Final Excess Capacity,
- (d) Affected System Upgrade Costs – Excess Capacity and Final Excess Capacity or
- (e) Additional Capacity Costs;

provided, however, that (i) Upgrade Costs shall not include any costs incurred by Seller with respect to Seller’s use of any of its rights to Excess Capacity or Final Excess Capacity in excess of 50 MW and (ii) in the event that RES/PEAK (or any successor thereto or assign thereof) uses its share of Excess Capacity or Final Excess Capacity to develop a project, or Seller (or any successor thereto or assign thereof) exercises its right pursuant to Section 6 or Section 7, respectively, of the Settlement Agreement to use RES/PEAK’s share of Excess Capacity or Final Excess Capacity, then Upgrade Costs associated therewith shall only include those costs Seller would have incurred if RES/PEAK (or any successor thereto or assign thereof) or Seller (or any successor thereto or assign thereof) had not so developed such share of the Excess Capacity or Final Excess Capacity.

1.02 Interpretation.

(a) Unless the context of this Agreement otherwise requires, (i) words of any gender include each other gender; (ii) words using the singular or plural number also include the plural or singular number, respectively; (iii) the terms “hereof,” “herein,” “hereby” and derivative or similar words refer to this entire Agreement; (iv) the terms “Article” or “Section” refer to the specified Article or Section of this Agreement; (v) the words “include” and “including” are not words of limitation and shall be deemed to be followed by the words “without limitation;” (vi) the use of the word “or” to connect two or more phrases shall be construed as inclusive of all such phrases (e.g., “A or B” means “A or B, or both”); and (vii) the phrase “ordinary course of business” refers to the business of Seller.

(b) Whenever this Agreement refers to a number of days, such number shall refer to calendar days unless Business Days are specified.

(c) All accounting terms used herein and not expressly defined herein shall have the meanings given to them under GAAP.

(d) Unless the context otherwise requires, a reference to any Law includes any amendment, modification or successor thereto.

(e) Any representation or warranty contained herein as to the enforceability of this Agreement, the Additional Agreements or any Contract shall be subject to the effect of any bankruptcy, insolvency, reorganization, moratorium or other similar law affecting the enforcement of creditors’ rights generally and to general equitable principles (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(f) In the event of a conflict between the body of this Agreement and any exhibit, schedule or appendix hereto, the body of this Agreement shall control.

(g) The paragraph headings have been used solely for convenience, and are not intended to describe, interpret, define or limit the scope of this Agreement.

(h) Conflicts or discrepancies, errors, or omissions in this Agreement or the various documents delivered in connection with this Agreement will not be strictly construed against the drafter of the contract language; rather, they shall be resolved by applying the most reasonable interpretation under the circumstances, giving full consideration to the intentions of the Parties at the time of contracting.

(i) A reference to a person or entity or governmental authority includes the successor or permitted assignee of that person or entity or governmental authority.

(j) A reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time.

(k) Any reference herein to a time of day means New York, New York local time.

**ARTICLE II
SALE OF ASSETS AND CLOSING**

2.01 Purchase and Sale.

Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, Seller shall sell, convey, assign, transfer and deliver to Purchaser, free and clear of all Liens other than Permitted Liens, and Purchaser shall purchase and acquire from Seller all of Seller's (or Seller's Affiliates') right, title and interest in and to all of Seller's (or Seller's Affiliates') property and assets, whether operated, owned or leased or that Seller or its Affiliates have a contractual right to use, to the extent that the foregoing are related to the Ashtabula III Project, including the following (collectively, the "Assets") (material Assets are set forth in Schedule 2.01):

(a) all Real Property Interests and Other Real Property Interests and all appurtenances thereto, together with all other constructions and other improvements (including all construction work in progress) relating to the Ashtabula III Project, including but not limited to the Ashtabula III Substation and the Ashtabula III Power Line Assets;

(b) all of the following, the purpose of which is to produce electricity and deliver such electricity to the Interconnection Point: Seller's equipment, buildings, all of the generation facilities, including generators, turbines, step-up transformers, output breakers, facilities necessary to connect to the Interconnection Point, protective and associated equipment, improvements, and other tangible assets, necessary for the construction, operation, and maintenance of the Ashtabula III Project, including but not limited to the Ashtabula III Substation and the Ashtabula III Power Line Assets;

(c) all Contracts and all outstanding offers or solicitations made by or to Seller to enter into any Contract;

(d) all Governmental Approvals and Licenses and all pending applications therefor or renewals thereof;

(e) all of the intangible rights and property of Seller to the extent related to the Ashtabula III Project;

(f) all interconnection rights under the LGIA applying to the Ashtabula III Project;

(g) all Reports including SCADA data related to each wind turbine included in the Ashtabula III Project;

(h) all claims of Seller against third parties relating to the Assets arising prior to the Closing whether choate or inchoate, known or unknown, contingent or noncontingent; and

(i) any other warranties or indemnities given by third parties with respect to any of the Assets.

2.02 Excluded Assets.

Notwithstanding anything to the contrary contained in Section 2.01 or elsewhere in this Agreement, the following assets of Seller (collectively, the "Excluded Assets") are not part of the

sale and purchase contemplated hereunder, are excluded from the Assets and shall remain the property of Seller after the Closing:

- (a) all rights of Seller under this Agreement and the Additional Agreements to which Seller is a party;
- (b) the Ashtabula Substation and Ashtabula Power Line Assets (other than those rights related to the Ashtabula Substation and Ashtabula Power Line Assets granted to Purchaser under the Common Facilities Agreement);
- (c) Intentionally Deleted;
- (d) information, processes, data, intangible property or intellectual property rights that have been developed by or the interests to which are owned or held by Seller or its Affiliates and not related to the Ashtabula III Project;
- (e) any real property, tangible property and intangible property (including intellectual property rights) that is used in the development of wind projects generally by Seller or its Affiliates and not related to the Ashtabula III Project;
- (f) personnel employed by Seller or its Affiliates;
- (g) cash, cash equivalents or receivables;
- (h) subject to Section 2.01(a) and 5.07, any FERC-jurisdictional assets, including any transmission, interconnection or generation-step-up facilities, wholesale electric energy sales contracts, FERC-filed tariffs or rate schedules, or FERC-jurisdictional books and records, and all rights of Seller (or its Affiliates) therein; and
- (i) all Other Assets.

2.03 **Purchase Price.**

Confidential Treatment

The consideration for the Assets shall be [REDACTED] Dollars (\$ [REDACTED]), as adjusted (a) downward for any capital expenditures reasonably anticipated to be incurred by Purchaser after the Closing Date in order to cause the Ashtabula III Project to be fully operational and capable of delivering the nameplate capacity of the Wind Turbines (as defined in the PPA) to the Point of Delivery (as defined in the PPA) in accordance with Good Utility Practices (as defined in the PPA) thereafter not to exceed \$ [REDACTED] in the aggregate, and (b) upward for (i) any Upgrade Costs incurred by or allocable to Ashtabula III after the Effective Date of this Agreement, not to exceed \$ [REDACTED] in the aggregate, and (ii) the cost of any capital improvements made to the Ashtabula III Project prior to the Closing Date mutually agreed to in writing by the Parties (it being acknowledged and agreed that Seller shall have no obligation to make any capital improvements) (the "Purchase Price"). The Purchase Price shall be payable in full on the Closing Date by Purchaser to Seller by wire transfer to the account of Seller designated in Section 14.01(b). The Purchase Price is nonrefundable.

Confidential Treatment

2.04 **Liabilities.**

(a) Subject to the terms and conditions of this Agreement, upon the Closing Purchaser agrees to assume and become responsible for all of the Assumed Liabilities (as hereinafter defined) as of and after the Closing Date. Purchaser shall not assume or have any responsibility with respect to any other obligation or Liabilities of Seller or any of its Affiliates not included within the definition of Assumed Liabilities. As used herein, "Assumed Liabilities"

means: (i) those liabilities or obligations relating to, or arising out of, the ownership of the Assets after the Closing Date; and, (ii) only those obligations of Seller or any of its Affiliates arising under all Contracts, Governmental Approvals and Licenses that pertain to the Ashtabula III Project, provided, however, that Purchaser shall not assume or be responsible for any such liabilities or obligations which arise from breaches thereof or defaults thereunder by Seller or any of its Affiliates, all of which liabilities and obligations shall constitute Retained Liabilities. Without in any way broadening the scope of Assumed Liabilities as described in the preceding sentence, Assumed Liabilities shall not include (i) any Liability of Seller or any of its Affiliates for Taxes accruing or arising before the Closing Date (unless subject to proration pursuant to the terms of this Agreement), (ii) any Liability of Seller or any of its Affiliates for taxes measured by income or gross receipts or the like and for the unpaid Taxes of any Person, as a transferee or successor, by contract, or otherwise, (iii) any Liability of Seller or any of its Affiliates for costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby (excluding any Transfer Taxes for which Purchaser is responsible pursuant to Section 10.01(f)), (iv) any Liability of Seller for Indebtedness owed by Seller or its Affiliates, (v) any Liens, other than Permitted Liens (excluding Permitted Liens or unpaid taxes or obligations which are being contested as provided in clauses (a) or (b) of the definition of Permitted Liens), (vi) any Liability or obligation of Seller or any of its Affiliates under this Agreement incurred on or after the Closing Date or under any Additional Agreement, (vii) any Liability or obligation for which Seller is obligated to indemnify Purchaser pursuant to Article XII, (viii) any and all obligations and liabilities of Seller (or any successor thereto or assign thereof) under the LGIA or the Settlement Agreement arising from Seller's use of any of its rights to Excess Capacity or Final Excess Capacity in excess of 50 MW, (ix) any and all obligations and liabilities of Seller (or any successor thereto or assign thereof) under the LGIA or the Settlement Agreement in connection with Upgrade Costs incurred as a result of the use by RES/PEAK (or any successor thereto or assign thereof) of its share of Excess Capacity or Final Excess Capacity, and (x) any and all obligations and liabilities of Seller (or any successor thereto or assign thereof) under the LGIA or the Settlement Agreement in connection with Upgrade Costs incurred as a result of the use by Seller (or any successor thereto or assign thereof) of its right pursuant to Section 6 or Section 7, respectively, of the Settlement Agreement, to use RES/PEAK's share of Excess Capacity or Final Excess Capacity.

(b) Any Liability that is not an Assumed Liability shall be deemed to be a Liability retained by Seller and shall be retained, paid, performed and discharged solely by Seller (the "Retained Liabilities").

2.05 Closing.

Confidential Treatment

(a) The closing of the transactions described in Section 2.01 (the "Closing") will take place at the offices of Seller, 700 Universe Drive, Juno Beach, FL 33408, or at such other place as the Parties mutually agree, at 10:00 A.M. local time, on [REDACTED] unless the closing conditions set forth in ARTICLE VIII and ARTICLE IX have not been satisfied by such date, in which event the Closing shall occur within three (3) Business Days following satisfaction or waiver of the conditions set forth in ARTICLE VIII and ARTICLE IX (subject to Section 13.01), or on such other date as the Parties mutually agree upon in writing. The date upon which the Closing occurs shall be referred to herein as the "Closing Date".

(b) At the Closing, Seller will assign and transfer to Purchaser all of its right, title and interest in and to the Ashtabula III Project and the Assets by delivering to Purchaser an

executed General Assignment and Assumption Agreement and Bill of Sale in substantially the form of Exhibits A-1 and A-2, respectively.

(c) At the Closing, Purchaser and Seller shall deliver such other agreements, certificates, documents, instruments and writings as are required to be delivered by Seller and Purchaser at or prior to the Closing Date pursuant to this Agreement or otherwise required in connection herewith, including, (i) commercially reasonable assignment and assumption agreements in recordable form relating to the Real Property Interests and Other Real Property Interests (the "Land Contract Assignment and Assumption Agreements"), (ii) an assignment and assumption agreement relating to Seller's assignment to Purchaser of Seller's interests in the LGIA with respect to the Ashtabula III Project in substantially the form of Exhibit K, and (iii) all other documents reasonably required for Purchaser to obtain the Title Policy.

(d) At the Closing, Purchaser and Seller shall execute and deliver (or cause the execution and delivery of by release from escrow or otherwise) the O&M Agreement and the Common Facilities Agreement.

(e) Except as otherwise specified herein, each Party hereto shall pay its own legal, accounting, out-of-pocket and other expenses incident to this Agreement and to any action taken by such Party in preparation, negotiation, execution and performance of this Agreement.

2.06 Further Assurances, Post-Closing Cooperation.

(a) Subject to the terms and conditions of this Agreement, at any time or from time to time after the Closing, (i) each of the Parties shall execute and deliver such other documents and instruments, provide such materials and information and take such other actions as may reasonably be necessary, proper or advisable, to the extent permitted by Law, to fulfill its obligations under this Agreement, including any filings that may be required under the Code; and (ii) upon the request of Purchaser, Seller will, and will cause its Affiliates to, execute and deliver such other documents and instruments and take such other actions as may reasonably be necessary, proper or advisable, to evidence the conveyance by Seller or its Affiliates to Purchaser of any and all rights, title and interests that Seller or any of its Affiliates holds relating to the Ashtabula III Project, or to assist in Purchaser being fully constituted with such rights.

(b) Following the Closing, each Party agrees to use commercially reasonable efforts to furnish or make available during normal business hours information, documents or records (or copies thereof) at the recipient's request, cost and expense to the extent reasonably required by the requesting Party in connection with (i) the preparation of Tax Returns or any audit, examination or contest relating to Taxes; (ii) the integration of the accounting books and records; (iii) the determination or enforcement of rights or obligations under this Agreement, any of the Additional Agreements or any Contract or offer constituting part of the Assets; (iv) compliance with the requirements of any Governmental or Regulatory Authority in connection with the transactions contemplated by this Agreement and each of the Additional Agreements; or (v) in connection with any actual or threatened Action or Proceeding. Further, each Party agrees for a period extending seven (7) years after the later of the Closing Date or the date of creation of such books, records or other data, not to destroy or otherwise dispose of any such books, records and other data not previously delivered to the other Party, unless such Party shall first offer in writing to surrender such books, records and other data to the other Party and such other Party shall not agree in writing to take possession thereof during the ten (10) day period after such offer is made.

(c) If, in order to properly prepare or defend its Tax Returns, prepare other documents or reports required to be filed with Governmental or Regulatory Authorities or prepare its financial statements or to fulfill its obligations hereunder, it is necessary that a Party be furnished with additional information, documents or records relating to the Assets, the Ashtabula III Project, or the Business or Condition of the Project not referred to in paragraph (b) above, and such information, documents or records are in the possession or control of the other Party, such other Party agrees to use commercially reasonable efforts to furnish or make available such information, documents or records (or copies thereof) at the recipient's request, cost and expense.

(d) Notwithstanding anything to the contrary contained in this Section 2.06, if the Parties are in an adversarial relationship in any litigation, arbitration or other Action or Proceeding, the furnishing of information, documents or records in accordance with any provision of this Section 2.06 will be subject to any applicable rules relating to discovery.

(e) Any information obtained by either Seller or its Affiliates in accordance with this Section shall be held confidential by the recipient in accordance with Section 14.05.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Purchaser as of the Effective Date and as of the Closing Date as follows:

3.01 Existence; Ownership.

Seller is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware. Seller has full power and authority to execute and deliver this Agreement and each of the Additional Agreements to which it is a Party and to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby, including to own, hold, sell and transfer the Ashtabula III Project and the Assets. Seller is duly qualified or licensed to do business as a limited liability company in North Dakota and each other jurisdiction where the failure to duly qualify or become licensed would materially and adversely affect Seller's ability to perform its obligations under this Agreement. Seller holds of record and owns beneficially one hundred percent (100%) of the ownership interests of the Assets, free and clear of any Liens (except for Permitted Liens). Seller has the full right, power, and authority to assign and sell to Purchaser at the Closing full ownership of, any and all rights, title and interest in, to and under, the Assets and, upon consummation of the sale and purchase contemplated hereby, Purchaser will hold of record and own beneficially good and marketable title to all of the Assets free and clear of any and all Liens (except for Permitted Liens).

3.02 Authority.

The execution and delivery by Seller of this Agreement and the Additional Agreements, and the performance by Seller of its obligations hereunder and thereunder, have been duly and validly authorized by Seller's members, with no other action on the part of Seller or its members being necessary. This Agreement has been and when executed and delivered the Additional Agreements to which it is a Party will have been each duly and validly executed and delivered by Seller and constitute legal, valid and binding obligations of Seller enforceable against Seller in accordance with their respective terms.

3.03 No Conflicts.

The execution and delivery by Seller of this Agreement and the Additional Agreements to which it is a party does not, and the performance by Seller of its obligations under this Agreement and the Additional Agreements to which its is a party and the consummation of the transactions contemplated hereby and thereby will not:

(a) conflict with or result in a violation or Breach of any of the terms, conditions or provisions of the organizational documents of Seller;

(b) subject to obtaining the consents, approvals and actions, making the filings and giving the notices disclosed in Schedule 3.03, conflict with or result in a violation or Breach of any term or provision of any Common Facilities Contract, Contract, Law or Order applicable to Seller or any of the Assets (other than such conflicts, violations or Breaches as would occur solely as a result of the identity or the legal or regulatory status of Purchaser or any of its Affiliates); or

(c) except as disclosed in Schedule 3.03, (i) conflict with or result in a violation or Breach of; (ii) constitute (with or without notice or lapse of time or both) a default under; (iii) require Seller to obtain any consent, approval or action of, make any filing with or give any notice to any Person as a result or under the terms of; (iv) result in or give to any Person any right of termination, cancellation, acceleration or modification in or with respect to; or (v) result in the creation or imposition of any Lien upon Seller or any of the Assets under, any Common Facilities Contract, Contract or License to which Seller is a party or by or to which Seller or any of the Assets is bound or subject.

3.04 Governmental Approvals and Filings.

Except as set forth in Schedule 3.04: no Governmental Approval on the part of Seller is required in connection with the execution, delivery and performance of this Agreement or the Additional Agreements or the consummation of the transactions contemplated hereby, except those as would be required solely as a result of the identity or the legal or regulatory status of Purchaser or any of its Affiliates.

3.05 Legal Proceedings.

Except as set forth in Schedule 3.05:

(a) there are no Actions or Proceedings pending or to Seller's knowledge threatened against, relating to or affecting Seller, the Common Facilities, the Ashtabula III Project, any of the Assets or the Other Assets which reasonably could be expected to (i) result in the issuance of an Order restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement; or (ii) individually or in the aggregate with any other such Actions or Proceedings, adversely affect the Business or Condition of the Project;

(b) there are no Orders outstanding against Seller which, individually or in the aggregate with any other such Orders, could adversely affect the Business or Condition of the Project; and

(c) there are no Actions or Proceedings pending or to Seller's knowledge threatened against, relating to or affecting the Settlement Agreement, the LGIA or the Reciprocal Agreement (as defined in the Settlement Agreement) which reasonably could be expected to (i)

result in the issuance of an Order restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement; or (ii) individually or in the aggregate with any other such Actions or Proceedings, adversely affect the Business or Condition of the Project.

3.06 **Bankruptcy; Solvency.**

(a) Seller has not filed any voluntary petition in bankruptcy or been adjudicated as bankrupt or insolvent, filed any petition or answer seeking any reorganization, liquidation, dissolution or similar relief under any federal bankruptcy act, insolvency, or other debtor relief law, nor sought or consented to or acquiesced in the appointment of any trustee, receiver, conservator or liquidator of all or any substantial part of its properties (including the Assets and the Other Assets). Seller has not been subject to any involuntary bankruptcy action or other petition by a third party seeking reorganization, liquidation, dissolution or similar relief under any federal or state bankruptcy act, insolvency, or other debtor relief law.

(b) Seller is not now insolvent and will not be rendered insolvent by the Acquisition. As used in this section, "insolvent" means that the sum of the debts and other probable Liabilities of Seller exceeds the present fair saleable value of Seller's assets. Immediately after giving effect to the consummation of the Acquisition: (i) Seller will be able to pay its Liabilities as they become due in the usual course of its business; (ii) Seller will not have unreasonably small capital with which to conduct its present or proposed business; (iii) Seller will have assets (calculated at fair market value) that exceed its Liabilities; and (iv) taking into account all pending and threatened litigation, final judgments against Seller in actions for money damages are not reasonably anticipated to be rendered at a time when, or in amounts such that, Seller will be unable to satisfy any such judgments promptly in accordance with their terms (taking into account the maximum probable amount of such judgments in any such actions and the earliest reasonable time at which such judgments might be rendered) as well as all other obligations of Seller. The cash available to Seller, after taking into account all other anticipated uses of the cash, will be sufficient to pay all such debts and judgments promptly in accordance with their terms.

3.07 **Real Property; Certain Other Assets.**

(a) Schedule 3.07(a) contains a true and correct list of (i) each Real Property Interest owned by Seller with respect to the Ashtabula III Project; (ii) each Real Property Interest granted to Seller with respect to the Ashtabula III Project (as grantee) ("Easements"); (iii) each Real Property Interest as to which Seller has an option to acquire an interest therein; (iv) each parcel of real property with respect to which Seller has any Other Real Property Interest; (v) all Liens (other than Permitted Liens, except for Permitted Liens for unpaid taxes or obligations which are being contested as provided in clauses (a) or (b) of the definition of Permitted Liens) relating to or affecting any Real Property Interest or Other Real Property Interest referred to in clause (i), (ii), (iii) or (iv), and (vi) the owner, lessor, lessee, and other tenants, as applicable, of each parcel of real property referred to in clauses (i), (ii), (iii) and (v). Schedule 3.07(a) also contains a true and correct list of (1) each Common Facilities Real Property Interest owned by Seller with respect to the Common Facilities; (2) each Common Facilities Real Property Interest granted to Seller with respect to the Common Facilities (as grantee) ("Common Facilities Easements"); (3) each Common Facilities Real Property Interest as to which Seller has an option to acquire an interest therein; (4) each parcel of real property with respect to which Seller has

any Common Facilities Other Real Property Interest; (5) all Liens (other than Permitted Liens) relating to or affecting any Common Facilities Real Property Interest or Common Facilities Other Real Property Interest referred to in clause (1), (2), (3) or (4), and (5) the owner, lessor, lessee, and other tenants, as applicable, of each parcel of real property referred to in clauses (1), (2), (3) and (4).

(b) The Real Property Interests and Other Real Property Interests conveyed to Purchaser are available for use in connection with a wind-powered electric generation facility. The Common Facilities Real Property Interests and Common Facilities Other Real Property Interests are available for use in connection with the Common Facilities.

(c) The Real Property Interests and Other Real Property Interests comprise all of the property interests and other rights necessary in connection with, and are sufficient and adequate to allow for the acquisition, development, construction, installation, completion, operation, interconnection and maintenance in a customary manner of the Ashtabula III Project. The Common Facilities Real Property Interests and Common Facilities Other Real Property Interests comprise all of the property interests and other rights necessary in connection with, and are sufficient and adequate to allow for the acquisition, development, construction, installation, completion, operation and maintenance in a customary manner of the Common Facilities and performance of the Common Facilities Agreement.

(d) The Real Property Interests and Other Real Property Interests provide legal and practical ingress and egress rights for any reasonable purpose in connection with the construction and operation of the Ashtabula III Project. The Common Facilities Real Property Interests and Common Facilities Other Real Property Interests provide legal and practical ingress and egress rights for any reasonable purpose in connection with the construction and operation of the Common Facilities and performance of the Common Facilities Agreement.

(e) Except as set forth in Schedule 3.07(e), there are no leases, tenancies, subleases, license, occupancies, co-tenancies, or other rights of possession entered into by Seller and in effect, oral or written, related to the Land Contracts or the Common Facilities Land Contracts, or any portion thereof, or to any improvements.

(f) To Seller's knowledge, there are no zoning or other land use proceedings, either instituted or planned to be instituted, that would detrimentally affect the use and operation of the Ashtabula III Project. To Seller's knowledge, there are no zoning or other land use proceedings, either instituted or planned to be instituted, that would detrimentally affect the use and operation of the Common Facilities in connection with the Ashtabula III Project or the performance of the Common Facilities Agreement.

(g) Except as set forth in Schedule 3.07(g), the Assets described in Section 2.01(b) are available for use in connection with a wind-powered electric generation facility and such Assets are sufficient and adequate to allow for the operation, interconnection and maintenance in a customary manner of the Ashtabula III Project.

3.08 Contracts.

Schedule 3.08 contains a true and complete list of (i) all Contracts (including the Land Contracts and the Common Facilities Contracts); and (ii) all non-binding Contracts (including Land Contracts and the Common Facilities Contracts) currently being negotiated by Seller with

respect to the Ashtabula III Project (“Draft Contract Documents”), and a true and complete copy of each such Contract (including all amendments thereto) and each such Draft Contract Document has been delivered by Seller to Purchaser.

With respect to each Contract identified on Schedule 3.08 and except as set forth on Schedule 3.08:

(a) the Contracts are legal, valid, binding, and enforceable against Seller in accordance with their terms, and in full force and effect;

(b) the consummation of the transactions contemplated by this Agreement (including the assignments and assumptions referred to herein) will not affect the legality, validity, binding nature or enforceability or force and effect of the Contract except with respect to the identity of the parties thereto as a result of the assignments and assumptions referred to in this Agreement;

(c) no party to such Contract is in breach or default, and, to Seller’s knowledge, no event has occurred which with notice or lapse of time would constitute a breach or default, or permit termination, modification, or acceleration, under the Contract;

(d) no Contract has been assigned, transferred, conveyed, mortgaged, deeded in trust, or encumbered by Seller;

(e) Seller has not repudiated any provision of any Contract and Seller has not received written notice from any party to any Contract that such other party has repudiated any provision thereof; and

(f) Seller has not received written notice of any disputes in effect for any Contract.

3.09 Governmental Approvals and Consents for the Ashtabula III Project.

(a) Schedule 3.09(a)(i) contains a true and complete list of all Governmental Approvals held by Seller or relating to the Ashtabula III Project and the Common Facilities, and Schedule 3.09(a)(ii) contains a true and complete list of all proposed Governmental Approvals relating to the Ashtabula III Project and the Common Facilities that have been applied for but have not yet been obtained (collectively, the “Required Governmental Approvals”).

(b) Except as set forth in Schedule 3.09(a)(ii), to Seller’s knowledge after reasonable due diligence, there are no other Governmental Approvals (including Governmental Approvals required under any Environmental Law) from any Governmental or Regulatory Authority other than the Required Governmental Approvals that are required for the design, development, construction, operation or maintenance of the Ashtabula III Project and the Common Facilities. To Seller’s knowledge, there are no facts or circumstances that would hinder, delay or restrict the ability of Purchaser to obtain the Required Governmental Approvals set forth in Schedule 3.09(b).

3.10 Environmental.

(a) Schedule 3.10 contains a true and complete list of all (i) Reports, studies, audits, tests, reviews, or other analyses conducted on behalf of, or that are in the possession of, Seller or any of its Affiliates related to the environmental condition of the Assets, the Ashtabula III Project or the Common Facilities Area; and (ii) currently outstanding written notice of any

material proceedings, action, or other claim or liability arising under any Environmental Law from any Governmental or Regulatory Authority regarding the Ashtabula III Project and the Common Facilities Area, and a true and complete copy of each such Report (including all amendments thereto) has been delivered by Seller to Purchaser.

(b) To Seller's knowledge the Ashtabula III Project and the Common Facilities Area are in material compliance with all Environmental Laws.

3.11 Due Diligence.

Seller has made available for Purchaser's review all information reasonably requested by Purchaser in connection with Purchaser's due diligence examination. None of the information provided to Purchaser contains any untrue or incorrect statement of fact, or omits to state any fact necessary to make the information not misleading, which such untrue or incorrect statement or omission could reasonably be expected to result in a Material Adverse Effect on Seller, the Ashtabula III Project, the Common Facilities, the Common Facilities Area, or Purchaser.

3.12 Legal Compliance.

Seller is in compliance in all material respect with all actions or orders from any Governmental or Regulatory Authority relating to its business, including with respect to the Common Facilities, the Common Facilities Area, the Ashtabula III Project and the Assets.

3.13 Brokers' Fees.

There are no fees or commissions payable to any broker, finder, or agent with respect to the transactions contemplated by this Agreement as a result of any Seller's actions for which Seller or Purchaser could become liable or obligated or which could result in the imposition of any Lien upon the Assets.

3.14 Interconnection.

Schedule 3.14 contains a true and complete list of all Reports conducted on behalf of, or that are in the possession of, Seller or any of its Affiliates related to the interconnection of the Ashtabula III Project with MPC, and a true and complete copy of each such document (including all amendments thereto) has been delivered by Seller to Purchaser.

3.15 Material Misstatements or Omissions.

None of the representations or warranties given by Seller in this Agreement or any Additional Agreement to which Seller is a party (including the Schedules hereto), or any document, exhibit, certificate, or Schedule furnished by or on behalf of Seller in connection with the transactions contemplated by this Agreement or any Additional Agreement (including any and all materials delivered to and statements made to any Governmental Authority), when taken as a whole, contains any untrue statement of a material fact, or omits to state any material fact necessary to make the statements or facts contained herein or therein, in light of the circumstances in which they were made, not misleading, which such untrue statement or omission could reasonably be expected to result in a Material Adverse Effect on Seller, the Ashtabula III Project, the Common Facilities, the Common Facilities Area or Purchaser.

3.16 Taxes.

Other than as set forth on Schedule 3.16, there are no Liens for Taxes on any Assets or the Common Facilities, other than for Taxes not yet due and payable as of the Closing Date. To

Seller's knowledge there are no pending or threatened proceedings with respect to Taxes relating to any Assets. To Seller's knowledge there are no matters under discussion between Seller and any Governmental or Regulatory Authority with respect to Taxes relating to the Assets, and no extensions of the statute of limitations have either been requested or granted with respect to Taxes relating to the Assets.

3.17 Wind Data.

The wind speeds and other relevant wind characteristics provided by Seller or any of its Affiliates to Purchaser at or with respect to the Ashtabula III Project were collected at the locations and during the times set forth in Schedule 3.17. Such wind data was measured, recorded and determined in accordance with the usual practices of Seller and its Affiliates. The information set forth on Schedule 3.17 is a true and complete list of the wind data collected by Seller with respect to the Ashtabula III Project. Seller has not omitted or failed to provide to Purchaser any wind data measured and recorded at the Ashtabula III Project on or before the dates specified on Schedule 3.17 by or on behalf of Seller or any of its Affiliates or, to the extent the same are in Seller's or its Affiliates possession or under Seller's or its Affiliates' control, prepared by or on behalf of any other Person. Seller makes no representation with respect to Seller's or Purchaser's use of such wind data or any assumptions, analysis or interpretations thereof prepared by Seller or its Affiliates, and furnished to Purchaser. Purchaser acknowledges that it has relied, or will rely, exclusively on its own employees and agents for analysis of such wind data and hereby expressly waives any and all claims (other than any claim arising from or relating to this Section 3.17) that Purchaser may have against Seller or its Affiliates in the respect of such wind data and any assumptions, analysis or interpretations thereof prepared by Seller or its Affiliates and furnished to Purchaser.

3.18 Seller's Disclaimer.

EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS ARTICLE III OR IN ANY ADDITIONAL AGREEMENT, NEITHER SELLER NOR ANY OF ITS REPRESENTATIVES, OFFICERS OR AFFILIATES, MAKES ANY REPRESENTATION OR WARRANTIES OR COVENANTS WITH RESPECT TO OR REGARDING SELLER'S CONDUCT OR ACTIVITY WITH RESPECT TO ITS OWNERSHIP OF THE ASHTABULA III PROJECT OR THE ASSETS. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS ARTICLE III OR IN ANY ADDITIONAL AGREEMENT, NEITHER SELLER OR ITS REPRESENTATIVES, OFFICERS OR AFFILIATES HAS MADE OR IS MAKING ANY REPRESENTATIONS OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WRITTEN OR ORAL, AND EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, AS TO THE TITLE, CONDITION, VALUE OR QUALITY OF THE ASHTABULA III PROJECT, THE ASSETS AND THE PROPERTIES CURRENTLY OR FORMERLY USED, OPERATED, OWNED, LEASED, CONTROLLED, POSSESSED, OCCUPIED OR MAINTAINED BY SELLER IN CONNECTION WITH THE ASHTABULA III PROJECT OR THE ASSETS, AND SELLER, ITS REPRESENTATIVES, OFFICERS AND AFFILIATES SPECIFICALLY DISCLAIM ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY, USAGE, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO SUCH ASSETS OR PROPERTIES, OR ANY PART THEREOF, OR AS TO THE WORKMANSHIP THEREOF, OR THE ABSENCE OF ANY DEFECTS THEREIN, WHETHER LATENT OR PATENT, AND FURTHERMORE, EXCEPT AS OTHERWISE

EXPRESSLY SET FORTH IN THIS ARTICLE III OR IN ANY ADDITIONAL AGREEMENT, SELLER, ITS REPRESENTATIVES, OFFICERS AND AFFILIATES MAKES NO REPRESENTATION OR WARRANTIES REGARDING ENVIRONMENTAL MATTERS, IT BEING UNDERSTOOD THAT SUCH SELLER'S INTEREST IN THE ASHTABULA III PROJECT AND ASSETS AND PROPERTIES RELATED TO OR USED IN CONNECTION THEREWITH ARE BEING ACQUIRED BY PURCHASER, "AS IS, WHERE IS" ON THE CLOSING DATE, AND IN THEIR PRESENT CONDITION, WITH ALL FAULTS AND THAT PURCHASER SHALL RELY ON ITS OWN DUE DILIGENCE AND EXAMINATION KNOWLEDGE AND INVESTIGATION THEREOF.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Seller as of the Effective Date and as of the Closing Date as follows:

4.01 Existence.

Purchaser is a corporation duly organized, validly existing and in good standing under the Laws of the State of Minnesota. Purchaser has full power and authority to execute and deliver this Agreement and each of the Additional Agreements to which it is a party, to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. Purchaser is duly qualified or licensed to do business as a corporation in each jurisdiction where the failure to duly qualify or become licensed would materially and adversely affect Purchaser's ability to perform its obligations under this Agreement.

4.02 Authority.

The execution and delivery by Purchaser of this Agreement and the Additional Agreements, and the performance by Purchaser of its obligations hereunder and thereunder, have been duly and validly authorized by all necessary corporate action on behalf of Purchaser. This Agreement and the Additional Agreements have each been duly and validly executed and delivered by Purchaser and constitute legal, valid and binding obligations of Purchaser enforceable against Purchaser in accordance with their respective terms.

4.03 No Conflicts.

The execution and delivery by Purchaser of this Agreement and the Additional Agreements do not, and the performance by Purchaser of its obligations under this Agreement and the Additional Agreements and the consummation of the transactions contemplated hereby and thereby will not:

(a) conflict with or result in a violation or Breach of any of the terms, conditions or provisions of the organizational documents of Purchaser;

(b) subject to obtaining the consents, approvals and actions, making the filings and giving the notices disclosed in Schedule 4.03, conflict with or result in a violation or Breach of any term or provision of any Law or Order applicable to Purchaser or any of its assets; or

(c) (i) conflict with or result in a violation or Breach of; (ii) constitute (with or without notice or lapse of time or both) a default under; (iii) require Purchaser to obtain any consent, approval or action of, make any filing with or give any notice to any Person as a result

or under the terms of; or (iv) result in the creation or imposition of any Lien upon Purchaser or any of its assets or properties under, any Contract or License to which Purchaser is a party or by which any of its Assets is bound.

4.04 Governmental Approvals and Filings.

Except as disclosed in Schedule 4.04, no Governmental Approval on the part of Purchaser is required in connection with the execution, delivery and performance of this Agreement or any of the Additional Agreements to which it is a party or the consummation of the transactions contemplated hereby or thereby.

4.05 Legal Proceedings.

There are no Actions or Proceedings pending or, to Purchaser's knowledge, threatened against, relating to or affecting Purchaser or any of its assets which could reasonably be expected to result in the issuance of an Order restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement or any of the Additional Agreements. There are no Orders outstanding against Purchaser, individually or in the aggregate with any other such Orders, restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement or any of the Additional Agreements.

4.06 Intentionally Deleted.

4.07 Bankruptcy.

Purchaser has not filed any voluntary petition in bankruptcy or been adjudicated as bankrupt or insolvent, filed any petition or answer seeking any reorganization, liquidation, dissolution or similar relief under any federal bankruptcy act, insolvency, or other debtor relief law, nor sought or consented to or acquiesced in the appointment of any trustee, receiver, conservator or liquidator of all or any substantial part of its properties. Purchaser has not been subject to any involuntary bankruptcy action or other petition by a third party seeking reorganization, liquidation, dissolution or similar relief under any federal or state bankruptcy act, insolvency, or other debtor relief law.

4.08 Material Misstatements or Omissions.

None of the representations or warranties given by Purchaser in this Agreement or any Additional Agreement to which Purchaser is a party (including the Schedules hereto), or any document, exhibit, certificate, or Schedule furnished by or on behalf of Purchaser in connection with the transactions contemplated by this Agreement or any Additional Agreement (including any and all materials delivered to and statements made to any Governmental Authority), when taken as a whole, contains any untrue statement of a material fact, or omits to state any material fact necessary to make the statements or facts contained herein or therein, in light of the circumstances in which they were made, not misleading, which such untrue statement or omission could reasonably be expected to result in a Material Adverse Effect on Purchaser, the Ashtabula III Project, the Common Facilities, the Common Facilities Area or Seller.

4.09 Independent Investigation.

In making the determination to enter into this Agreement and to consummate the Closing and the transactions contemplated hereby, Purchaser has relied solely upon (i) Purchaser's own independent investigation of the Ashtabula III Project; (ii) the information provided by Seller to

Purchaser; and (iii) the express representations, warranties, covenants and agreements set forth in this Agreement.

ARTICLE V COVENANTS OF SELLER

Seller covenants and agrees with Purchaser that, at all times from and after the date hereof until the Closing, Seller will comply and cause its Affiliates to comply with all covenants and provisions of this ARTICLE V, except to the extent Purchaser may otherwise consent in writing.

5.01 Regulatory and Other Approvals.

Seller shall (and shall cause its Affiliates, as necessary, to), as promptly as practicable (a) take all commercially reasonable steps necessary or desirable to obtain all Governmental Approvals, the Required Governmental Approvals and all consents, approvals or actions of, make all filings with any other Person required of Seller or an Affiliate to consummate the transactions contemplated hereby (including any consents required to assign any Contracts, including Land Contracts, to Purchaser); (b) provide such other information and communications to such Governmental or Regulatory Authorities or other Persons as such Governmental or Regulatory Authorities or other Persons may reasonably request in connection therewith; and (c) provide reasonable cooperation to Purchaser in connection with the performance of its obligations under Section 6.01. Seller will provide prompt notification to Purchaser when any such consent, approval, action, filing or notice referred to in clause (a) above is obtained, taken, made or given, as applicable, and will advise Purchaser of any communications (and, unless precluded by Law, provide copies of any such communications that are in writing) with any Governmental or Regulatory Authority or other Person regarding any of the transactions contemplated by this Agreement.

5.02 Investigation by Purchaser.

Seller shall (and shall cause its Affiliates, as necessary, to) furnish Purchaser with all such information and data concerning the Assets, the Ashtabula III Project and the Common Facilities as Purchaser reasonably may request in connection with such investigation, except to the extent that furnishing any such information or data would violate any Law, Order, Contract or Governmental Approval applicable to Seller or an Affiliate or by which any of the Assets are bound.

5.03 Fulfillment of Conditions.

Seller will (and shall cause its Affiliates, as necessary, to) proceed diligently and in good faith and will take all commercially reasonable steps necessary or desirable to satisfy each condition to the obligations of Purchaser and Seller contained in this Agreement and will not take or fail to take any action that could reasonably be expected to result in the nonfulfillment of any such condition.

5.04 Intentionally Deleted.

5.05 Duty to Notify.

Seller shall notify Purchaser as soon as practicable, and in any event not later than two (2) Business Days after acquiring Seller's knowledge thereof, of any actions, events or

circumstances that might have a Material Adverse Effect or which may result in a Breach by Seller of this Agreement.

5.06 Cooperation; Prohibited Actions.

Seller shall (or shall cause its Affiliates, as necessary, to) continue to cooperate reasonably with Purchaser to assist Purchaser's evaluation of the Ashtabula III Project and the Common Facilities; provided, however, that Seller shall not, without the prior written consent of Purchaser: incur any Liabilities or mortgage, pledge, or subject to any Lien (except Permitted Liens, except for Permitted Liens for unpaid taxes or obligations which are being contested as provided in clauses (a) or (b) of the definition of Permitted Liens) any of the Assets; enter into a Contract, including a Land Contract and a Common Facilities Land Contract (provided that Seller shall have the right to enter into Land Contracts and Common Facilities Land Contracts reasonably necessary for the operation of the Ashtabula III Project and the Common Facilities provided that each such Land Contract or Common Facilities Land Contract is on commercially reasonable terms consistent in all material respects with terms approved in writing in advance by Purchaser and with Seller's form Land Contract approved by Purchaser); waive any rights of material value, or terminate or amend any Contract, Land Contract or Common Facilities Land Contract; amend any Governmental Approval or any application relating to a Required Governmental Approval; engage any employees or consultants with respect to the Ashtabula III Project; sell, transfer, abandon, purchase, or otherwise dispose of any Assets; enter into any agreements, contracts, or the like with respect to the Ashtabula III Project involving total consideration throughout its term in excess of \$ [redacted] (other than Contracts entered into in the ordinary course of business that will be fully performed prior to Closing); consent to or acquiesce in the entry of any judgment, order, decree, or injunction by any court or Governmental or Regulatory Authority, or file, settle, or agree to settle any litigation, with respect to the Ashtabula III Project or the Common Facilities; or commit or agree to do any of the foregoing in the future. For the avoidance of doubt, all Common Facilities Easements shall contain Seller's standard recognition agreement set forth in Seller's standard "Wind Farm Easement Agreement".

Confidential Treatment

5.07 Interconnection.

In accordance with Section 5.06, Seller shall consult reasonably with Purchaser on all matters related to ongoing and future interconnection studies, study applications, contracts, and agreements for the Ashtabula III Project from and after the Effective Date. Seller shall not consent to any assignment, material amendment or modification of, or materially change any course of dealing with respect to, the LGIA between the Effective Date and Closing without Purchaser's prior approval, such approval not to be unreasonably withheld. Notwithstanding anything to the contrary contained herein, upon the Closing, Seller shall assign to Purchaser and Purchaser shall assume the rights and obligations of Seller under the LGIA to the extent relating to the Ashtabula III Project, except for any Retained Liabilities applicable thereto. Such assignment shall be in substantially the same form as Exhibit K attached hereto. The terms of this Section 5.07 shall survive the Closing Date.

5.08 Correspondence Regarding Assets.

From and after the Effective Date, Seller shall promptly advise Purchaser of any material notices, demands, claims, requests for information, or other communications received relating to

or in connection with the Assets or the Common Facilities and shall consult with Purchaser before responding thereto.

5.09 Additional Documents, Consents.

Seller covenants to use its commercially reasonable efforts to attempt to:

(a) obtain as soon as reasonably practicable (but in any event before the Determination Date) all Land Contracts, Common Facilities Land Contracts, and such other Real Property Interests, Common Facilities Real Property Interests, Other Real Property Interests and Common Facilities Real Property Interests, studies, permits, and Government Approvals as may be identified by Seller as reasonably necessary in connection with, and are sufficient and adequate to allow for the acquisition, development, construction, installation, completion, operation, interconnection and maintenance in a customary manner of the Ashtabula III Project and the Common Facilities. Seller shall be responsible for all costs associated with commencing, pursuing and attempting to obtain all Land Contracts, Common Facilities Land Contracts, and such other Real Property Interests and Other Real Property Interests incurred prior to the Closing Date. All Land Contracts relating to the Ashtabula III Project shall be in the form required under Section 8.15.

(b) cooperate with Purchaser to jointly cause any Contract that applies to both the Assets and the Excluded Assets to be bifurcated prior to Closing pursuant to documentation reasonably acceptable to Purchaser and the portion of such Contracts that relate to the Ashtabula III Project shall be deemed included as Assets; and

(c) cooperate with Purchaser to jointly obtain any consents of third parties and Governmental Authorities necessary or advisable in connection with the transactions contemplated by this Agreement.

5.10 Notification of Status of Pre-Closing Actions.

Seller shall keep Purchaser reasonably apprised with respect to the status of each of the actions set forth in this ARTICLE V undertaken by Seller. Seller also agrees to provide Purchaser with copies of revised and updated Reports when such Reports become available (with the final such Report ten (10) Business Days prior to Closing) and to provide Purchaser with any additional information and access to Seller's employees or any Person performing Seller's obligations under this ARTICLE V for Seller as may be reasonably requested by Purchaser. Notwithstanding the generality of the foregoing, Seller shall use its commercially reasonable efforts to provide to Purchaser a weekly status report that describes all actions completed by Seller with respect to the easements, the Reports and such other activities being performed by Seller in connection with this Agreement.

5.11 Exclusivity.

For the period from the Effective Date through the earlier to occur of the Closing Date or a termination of this Agreement, Seller agrees that it shall not, directly or indirectly, take any action the purpose, intent, or foreseeable effect or result of which would be:

(a) the solicitation of a submission of offers from any Person other than Purchaser relating to the sale, transfer, conveyance, lease, assignment, or other disposition of the Ashtabula III Project or any Assets (an "Alternative Proposal");

(b) to respond in any way to any Alternative Proposal other than to decline to pursue the same;

(c) to participate in any discussions or negotiations with, or furnish any non-public information to, any Person other than Purchaser regarding any Alternative Proposal; or

(d) to enter into any agreement or understanding, whether oral or in writing, with respect to an Alternative Proposal.

5.12 **Title Commitment.**

As soon as is reasonably practicable after the execution of this Agreement, Seller shall obtain and cause a copy to be delivered to Purchaser: (i) a title commitment, issued by a title insurance company reasonably satisfactory to Purchaser (the "Title Insurer"), indicating the condition of title to the Real Property Interests and the Common Facilities Real Property Interests (the "Title Report"), accompanied by copies of all recorded documents listed as exceptions to coverage in the Title Report; and (ii) a copy of an ALTA-ACSM survey of the Real Property Interests and the Common Facilities Real Property Interests (which will have a separate legal description of the Ashtabula III Project and the Common Facilities Area (the "Existing Survey")). Seller shall be responsible for costs associated with procuring the Title Report and the Existing Survey; provided, Purchaser shall be responsible for the cost associated with resolving any exceptions reported in such Title Report or matters shown on such Existing Survey (the "Exceptions") and for the cost associated with any Title Policy Purchaser desires to obtain at any time after execution of this Agreement. Seller shall cooperate reasonably with Purchaser in resolving any such Exceptions. In connection therewith, Seller shall (and shall cause its Affiliates, as necessary, to) use good faith reasonable efforts to obtain, for the benefit of Purchaser, from the mortgagees and other third parties identified by Purchaser, non-disturbance and attornment agreements or consents in a form reasonably acceptable to Purchaser and sufficient to enable the Title Company to remove the related Exceptions from the Title Report or to issue endorsements to the Title Policy affirmatively insuring the Purchaser against loss arising out of the mortgages or other encumbrances disclosed in such Exceptions addressed by such non-disturbance agreements (collectively, the "Non-Disturbance Agreements"). In the event that all of the pre-Closing requirements relating to the Title Policy are not satisfied in full at Closing, then Purchaser may in its sole discretion permit Seller to resolve the applicable Title Objections, and/or provide Non-Disturbance Agreements and/or other curative documents, as the case may be, within an agreed upon period of time following the Closing.

5.13 **Notification of Completion or Failure of Conditions.**

Seller shall keep Purchaser reasonably apprised with respect to the status of Seller's satisfaction of the Purchaser conditions contained in ARTICLE VIII below. If Seller fails to satisfy the conditions under this Agreement, Purchaser shall have the rights set forth in this Agreement.

5.14 **Intentionally Deleted.**

5.15 **Updated Certificates.**

At any time prior to Closing, Seller may revise and update the Disclosure Schedules attached to this Agreement and provide changes, additions or exceptions thereto by providing a written certificate (each, a "Seller's Update Certificate") to Purchaser setting forth such information. If the Closing occurs, any Seller's Update Certificate shall be effective for all

purposes (including for purposes of indemnification under ARTICLE XII) except as set forth herein. At Closing, all representations and warranties shall be deemed modified by all such Seller's Update Certificates. Seller shall be required to provide such Seller's Update Certificates to Purchaser not later than ten (10) Business Days prior to the proposed Closing Date. Purchaser shall have ten (10) Business Days from receipt of any Seller's Update Certificates to determine reasonably whether such Seller's Update Certificates disclose a Material Adverse Effect, to notify Seller of such determination and, at Purchaser's option, terminate this Agreement pursuant to Section 13.02, herein. Notwithstanding the foregoing and for the avoidance of doubt, in the event a Seller's Update Certificate delivered to Purchaser by Seller: (i) discloses a breach or default by Seller of any of the Contracts, Governmental Approvals or Licenses that pertain to the Ashtabula III Project, or (ii) is provided to correct an untrue or incorrect statement of fact or omission arising from the willful misconduct or fraud of Seller which such breach, default, untrue or incorrect statement of fact or omission causes a Material Adverse Effect, Purchaser shall have the rights set forth in Section 13.03 as its sole and exclusive remedy.

ARTICLE VI COVENANTS OF PURCHASER

Purchaser covenants and agrees with Seller that, at all times from and after the date hereof until the Closing, Purchaser will comply with all covenants and provisions of this ARTICLE VI, except to the extent Seller may otherwise consent in writing.

6.01 Regulatory and Other Approvals.

Purchaser will as promptly as practicable (a) take all commercially reasonable steps necessary or desirable to obtain all Governmental Approvals and all consents, approvals or actions of, make all filings with any other Person required, to Purchaser's knowledge, for Purchaser to consummate the transactions contemplated hereby; (b) provide such other information and communications to such Governmental or Regulatory Authorities or other Persons as such Governmental or Regulatory Authorities or other Persons may reasonably request in connection therewith; and (c) provide reasonable cooperation to Seller in connection with the performance of its obligations under Sections 5.01, 5.03, 5.07, 5.09 and 5.12.

6.02 Duty to Notify.

Purchaser shall notify Seller as soon as practicable, and in any event not later than two (2) Business Days after acquiring Purchaser's knowledge thereof, of any actions, events or circumstances that might have a Material Adverse Effect or which may result in a Breach by Purchaser of this Agreement.

6.03 Consents.

Purchaser covenants to use its commercially reasonable efforts to attempt to:

(a) cooperate with Seller to jointly cause any Contract that applies to both the Assets and the Excluded Assets be bifurcated prior to Closing pursuant to documentation reasonably acceptable to Purchaser and the portion of such Contracts that relate to the Ashtabula III Project shall be deemed included as Assets; and

(b) cooperate with Seller to jointly obtain any consents of third parties and Governmental Authorities necessary or advisable in connection with the transactions contemplated by this Agreement.

6.04 Fulfillment of Conditions.

Purchaser will proceed diligently and in good faith and will take all commercially reasonable steps necessary or desirable to satisfy each condition to the obligations of Seller and Purchaser contained in this Agreement and will not take or fail to take any action that could reasonably be expected to result in the nonfulfillment of any such condition.

6.05 Updated Certificates.

At any time prior to Closing, Purchaser may revise and update the Disclosure Schedules attached to this Agreement and provide exceptions thereto by providing a written certificate (each, a "Purchaser's Update Certificate") to Seller setting forth such information. If the Closing occurs, any Purchaser's Update Certificate shall be effective for all purposes (including for purposes of indemnification under ARTICLE XII) except as set forth herein. At Closing, all representations and warranties shall be deemed modified by all such Purchaser's Update Certificates. Purchaser shall be required to provide such Purchaser's Update Certificates to Seller not later than ten (10) Business Days prior to the proposed Closing Date. Seller shall have ten (10) Business Days from receipt of any Purchaser's Update Certificates to determine reasonably whether such Purchaser's Update Certificates discloses a Material Adverse Effect, to notify Purchaser of such determination and to terminate this Agreement pursuant to Section 13.02, herein. Notwithstanding the foregoing and for the avoidance of doubt, in the event a Purchaser's Update Certificate delivered to Seller by Purchaser is provided to correct an untrue or incorrect statement of fact or omission arising from the willful misconduct or fraud of Purchaser which such breach, default, untrue or incorrect statement of fact or omission causes a Material Adverse Effect, Seller shall have the rights set forth in Section 13.03 as its sole and exclusive remedy.

ARTICLE VII RESERVED

ARTICLE VIII CONDITIONS TO OBLIGATIONS OF PURCHASER

The obligations of Purchaser hereunder to purchase the Assets are subject to the fulfillment, at or before the Closing, of each of the following conditions (all or any of which may be waived in whole or in part by Purchaser in its sole discretion):

8.01 Representations and Warranties.

The representations and warranties made by Seller in this Agreement, individually and taken as a whole, shall be true and correct in all respects on and as of the Closing Date, as though made on and as of the Closing Date or, in the case of representations and warranties expressly made as of a specified date earlier than the Closing Date, on and as of such earlier date.

8.02 Performance.

Seller shall have performed and complied with the agreements, covenants and obligations required by this Agreement to be so performed or complied with by Seller at or before the Closing.

8.03 Officer's Certificates.

Seller shall have delivered to Purchaser a certificate, dated the Closing Date and executed in the name and on behalf of Seller by the President or any Vice President (or comparable officer) of Seller substantially in the form and to the effect of Exhibit C, and a certificate, dated the Closing Date and executed by the Secretary or any Assistant Secretary of Seller, substantially in the form and to the effect of Exhibit D. Seller shall also provide the following additional certificates: (a) an affidavit from Seller, stating, under penalty of perjury, Seller's United States taxpayer identification number and that Seller is not a foreign person, pursuant to Section 1445(b)(2) of the Code and Treasury Regulation 1.1445-2(b)(2)(iv)(B) (or any similar provision of state or other Tax Law), and (b) good standing certificates issued by the Secretaries of State of the respective states in which Seller is required to be qualified certifying that Seller is in good corporate and tax standing and is qualified to do business in such states.

8.04 Orders and Laws.

There shall not be in effect on the Closing Date any Order or Law restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement.

8.05 Regulatory Consents and Approvals.

All Governmental Approvals necessary to permit Purchaser and Seller to perform their obligations under this Agreement and to consummate the transactions contemplated hereby shall have been duly obtained, made or given and shall be in full force and effect, and all terminations or expirations of waiting periods imposed by any Governmental or Regulatory Authority necessary for the consummation of the transactions contemplated by this Agreement shall have occurred.

8.06 Required Governmental Approvals.

All Required Governmental Approvals set forth in the Schedule 3.09(a) are in full force and effect, and all terminations or expirations of waiting periods imposed by any Governmental or Regulatory Authority necessary for the consummation of the transactions contemplated by this Agreement shall have occurred. Such Required Governmental Approvals shall either run with underlying land or be otherwise freely assignable to Purchaser without consent or other action (other than such consent or action which Seller shall have obtained prior to Closing) required by the applicable Governmental or Regulatory Authority.

8.07 Changes in Governmental Regulation.

There shall not be any action taken by any Governmental or Regulatory Authority against, or any Law enacted, enforced against or deemed by any Governmental or Regulatory Authority to be applicable to, Seller or Purchaser, which could reasonably be expected to have a Material Adverse Effect on the Assets, the Ashtabula III Project, the Business or Condition of the Ashtabula III Project or the ability of Purchaser to own, operate or finance the Project.

8.08 Post Execution Actions.

Purchaser shall have received any and all Contracts and Governmental Approvals entered into or obtained after the date of this Agreement by Seller that is related to the Ashtabula III Project or by which Seller or any of the Assets or the Common Facilities is bound or subject.

8.09 Additional Agreements.

Purchaser shall have received each of the Additional Agreements duly executed and delivered by Seller or, as applicable, an Affiliate of Seller.

8.10 Title Policy.

Purchaser shall have obtained from the Title Insurer an ALTA owner's title insurance policy (or a marked title commitment or pro forma title policy executed on behalf of the Title Insurer) insuring title to (i) the easement interest in the Real Property Interests and (ii) the license interest in Common Facilities Real Property Interests (in amounts reasonably satisfactory to Purchaser), with (x) extended coverage over the general exceptions contained therein, free of all Liens except for Permitted Liens (except for liens relating to contested obligations as described in clauses (a) or (b) of the definition of Permitted Encumbrances), (y) such endorsements as Purchaser may require (at Purchaser's cost), and (z) the Non-Disturbance Agreements (collectively, the "Title Policy").

8.11 Material Adverse Effect.

No change or event shall have occurred that, individually or in the aggregate, have or could have a Material Adverse Effect.

8.12 Other Matters.

Purchaser shall have received such other documents, certificates and opinions as Purchaser, or its counsel, shall reasonably request by written notice to Seller given not less than ten days prior to the Closing Date.

8.13 Tax Matters.

Any document(s) that may be reasonably requested by Purchaser and required by any state taxing authority in order to relieve Purchaser of any obligation to withhold Taxes with respect to any portion of the payments to Seller pursuant to this Agreement.

8.14 Certificate of Site Compatibility.

Purchaser shall have received, in a form reasonably acceptable to Purchaser, an acknowledgment from the North Dakota Public Service Commission of Purchaser's rights under the Certificate of Site Compatibility.

8.15 Required Documents.

Seller or an Affiliate shall have obtained all Real Property Interests, Other Real Property Interests and Common Facilities Real Property Interests, Easements and Common Facilities Easements, substantially in the form of easement attached hereto as Exhibits G-1 through G-4 (as further designated below), necessary in connection with the acquisition, development, construction, installation, completion, operation and maintenance of the Ashtabula III Project and the Common Facilities. In addition, Seller or an Affiliate shall have delivered to all Landowners (as defined in the Common Facilities Agreement) all notices and documentation required under the Common Facilities Easements to designate Purchaser as an "Assignee" (as defined in the form Easements attached hereto as Exhibits G-1, G-3 and G-4) and the rights related thereto. Without limiting the foregoing, (i) all Easements relating to the Ashtabula III Project other than those Easements specifically described in the remainder of this sentence shall be obtained in substantially the form of the "Wind Farm Easement Agreement" attached hereto

as Exhibit G-1; (ii) all Easements relating to collection lines to be used solely by the Ashtabula III Project shall be obtained in substantially the form of the "Collection Easement" attached hereto as Exhibit G-2; (iii) all Common Facilities Easements relating to collection lines to be used by both the Ashtabula III Project shall be obtained in substantially the form of the "Collection Easement" attached hereto as Exhibit G-3; and (iv) all Easements and Common Facilities Easements relating to transmission lines to be used by the Ashtabula III Project shall be obtained in substantially the form of the "Transmission Easement" attached hereto as Exhibit G-4.

8.16 Estoppel Certificates.

Purchaser shall have procured an estoppel certificate of each respective individual land owner relating to the Land Contracts and the Common Facilities Land Contracts, in form and substance reasonably satisfactory to Purchaser, to the effect that, among other things, (i) the subject agreement is in full force and effect, and (ii) no event of default or event that, with the giving of notice or the passage of time or both, would become a default or give rise to a right of termination, under the subject agreement shall have occurred and be continuing, duly executed by each respective individual land owner. Seller shall provide Purchaser with reasonable assistance with respect to Purchaser's efforts to obtain such estoppel certificates.

8.17 Failure of the Conditions.

Upon the failure of any of the foregoing conditions, Purchaser shall have the option, in its sole discretion, to waive such condition in whole or in part and proceed to Closing (provided that (i) Seller agrees to waive any closing conditions set forth in ARTICLE IX, and (ii) Purchaser is not then in default, after the expiration of applicable notice and cure periods, under this Agreement); provided, however, that Seller shall continue to use good faith reasonable efforts to complete such conditions following Closing.

ARTICLE IX CONDITIONS TO OBLIGATIONS OF SELLER

The obligations of Seller hereunder to sell the Assets are subject to the fulfillment, at or before the Closing, of each of the following conditions (all or any of which may be waived in whole or in part by Seller in its sole discretion):

9.01 Representations and Warranties.

The representations and warranties made by Purchaser in this Agreement, individually and taken as a whole, shall be true and correct in all respects on and as of the Closing Date, as though made on and as of the Closing Date or, in the case of representations and warranties expressly made as of a specified date earlier than the Closing Date, on and as of such earlier date.

9.02 Performance.

Purchaser shall have performed and complied with the agreements, covenants and obligations required by this Agreement to be so performed or complied with by Purchaser at or before the Closing including payment of the Purchase Price at the Closing.

9.03 Officers' Certificates.

Purchaser shall have delivered to Seller a certificate, dated the Closing Date and executed in the name and on behalf of Purchaser by the President or any Vice President (or comparable

officer) of Purchaser, substantially in the form and to the effect of Exhibit E, and a certificate, dated the Closing Date and executed by the Secretary or any Assistant Secretary of Purchaser, substantially in the form and to the effect of Exhibit F.

9.04 **Orders and Laws.**

There shall not be in effect on the Closing Date any Order or Law restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement.

9.05 **Regulatory Consents and Approvals.**

All Governmental Approvals necessary to permit Seller and Purchaser to perform their obligations under this Agreement and to consummate the transactions contemplated hereby shall have been duly obtained, made or given and shall be in full force and effect, and all terminations or expirations of waiting periods imposed by any Governmental or Regulatory Authority necessary for the consummation of the transactions contemplated by this Agreement shall have occurred.

9.06 **Intentionally Deleted**

9.07 **Additional Agreements.**

Seller shall have received each of the Additional Agreements duly executed and delivered by Purchaser.

9.08 **Other Matters.**

Seller shall have received such other documents, certificates and opinions as Seller, or its counsel, shall reasonably request by written notice to Purchaser given not less than ten (10) days prior to the Closing Date.

9.09 **Failure of the Conditions.**

Upon the failure of any of the foregoing conditions, Seller shall have the option, in its sole discretion, to waive such condition in whole or in part and proceed to Closing (provided Seller is not then in default under this Agreement, after the expiration of all applicable notice and cure periods).

ARTICLE X TAX MATTERS

10.01 **Certain Taxes.**

(a) All real property Taxes, personal property Taxes and similar obligations that are due or become due with respect to the Assets or the Ashtabula III Project or the Business or Condition of the Project for tax periods within which the Closing Date occurs (collectively, the "Apportioned Obligations") shall be apportioned between Seller, on the one hand, and Purchaser, on the other hand, as of the Closing Date. Seller shall be responsible for the portion of such Apportioned Obligations attributable to the period or portion of period ending on or before the Closing Date. Purchaser shall be responsible for the portion of such Apportioned Obligations attributable to the period or portion of period ending after the Closing Date. Each Party shall cooperate in assuring that Apportioned Obligations that are the responsibility of

Seller pursuant to the preceding sentence are paid by Seller, and that Apportioned Obligations that are the responsibility of Purchaser pursuant to the preceding sentence shall be paid by Purchaser. If any refund, rebate or similar payment is received by Seller for any real property Taxes, personal property Taxes or similar obligations that are Apportioned Obligations, such refund shall be apportioned between Seller and Purchaser as aforesaid on the basis of each Party's respective ownership of the Ashtabula III Project and the Assets during the applicable tax period. If it is determined subsequent to the Closing Date that additional real property Taxes, personal property Taxes or similar obligations that are Apportioned Obligations are required to be paid for the applicable tax period in which the Closing Date falls, such additional taxes will be apportioned between Seller and Purchaser as aforesaid on the basis of each Party's respective ownership of the Ashtabula III Project and the Assets during the applicable tax period.

(b) For any Taxes with respect to which the taxable period of Seller ends on or before the Closing Date, Seller shall timely prepare and file with the appropriate authorities all Tax Returns required to be filed by Seller. Purchaser shall timely prepare and file with the appropriate authorities all other Tax Returns required to be filed by Purchaser following the Closing Date.

(c) Seller shall indemnify and hold Purchaser harmless, on an After-Tax Basis, from and against any and all Taxes which may be suffered or incurred relating to the Ashtabula III Project or the development, ownership, construction, sale, operation or use of the Assets for or with respect to (i) the period preceding the Closing Date (including any liability for taxes of Seller that becomes a liability of Purchaser under any bulk transfer law of any jurisdiction); (ii) any income Taxes imposed on Seller resulting from the sale of the Assets to Purchaser and any other transaction herein contemplated; (iii) any liability for Taxes attributable to the Breach by Seller of any covenant or representation; and (iv) any liability for Taxes which is imposed on Purchaser under Section 1.1502-6 of the U.S. Department of Treasury Regulations promulgated under the Code (or under any comparable provision of state or local Law imposing several liability upon members of a consolidated, combined, affiliated or unitary group). Other than in the case of Apportioned Obligations, any refunds or rebates of Taxes that relate to any period ending or prior to the Closing Date shall be for the account of Seller while all other refunds or rebates shall be for the account of Purchaser.

(d) Purchaser shall indemnify and hold Seller harmless, on an After-Tax Basis, from and against any and all Taxes which may be suffered or incurred relating to the Assets for the period following the Closing Date.

(e) Seller and Purchaser shall reasonably cooperate, and shall cause their respective Affiliates, employees and agents reasonably to cooperate, in preparing and filing all Tax Returns, including maintaining and making available to each other all records that are necessary for the preparation of any Tax Returns that the Party is required to file under this ARTICLE X, in resolving all disputes and audits with respect to such Returns and in the defense and settlement of contested taxes.

(f) All sales, use, transfer, real property transfer, recording, gains, stock transfer and other similar taxes and fees ("Transfer Taxes"), if any, arising out of or in connection with the transactions effected pursuant to this Agreement shall be borne by Purchaser. Purchaser shall indemnify, defend and hold harmless Seller on an After Tax Basis

with respect to Purchaser's Transfer Tax liability. Purchaser shall file all necessary documentation and Tax Returns with respect to such Transfer Taxes.

ARTICLE XI SURVIVAL, NO OTHER REPRESENTATIONS

11.01 Survival of Representations, Warranties, Covenants and Agreements.

The covenant and agreements of Seller and Purchaser contained in this Agreement will survive the Closing without limitation as to time. The representations and warranties of Seller and Purchaser contained in this Agreement will survive the Closing (it being understood that representations and warranties relate to the applicable date or period of time for which such representations and warranties are made and not to subsequent periods) for a period of twelve (12) months; provided, however, that in the event that a written notice of a claim for indemnification shall have been given herewith within the applicable survival period, the representations and warranties that are the subject of such claim shall survive with respect to such claim until such time as the claim is fully and finally resolved.

11.02 No Other Representations.

Notwithstanding anything to the contrary contained in this Agreement, Purchaser agrees that Seller is not making any representation or warranty whatsoever, express or implied, except those representations and warranties contained in ARTICLE III or in an Additional Agreement, and in any certificate delivered pursuant to Section 8.03. Notwithstanding anything to the contrary contained in this Agreement, Seller agrees that Purchaser is making no representation or warranty whatsoever, express or implied, except those representations and warranties contained in ARTICLE IV or in an Additional Agreement and in any certificate delivered pursuant to Section 9.03.

ARTICLE XII INDEMNIFICATION

12.01 Indemnification.

(a) Subject to the other Sections of this ARTICLE XII, Seller agrees to indemnify Purchaser Indemnified Parties in respect of, and hold each of them harmless from and against, any and all Losses (on an After-Tax Basis) suffered, incurred or sustained by any of them or to which any of them become subject, resulting from, arising out of or relating to: (i) any Breach by Seller of representation or warranty contained in this Agreement; (ii) any nonfulfillment of or failure to perform any covenant or agreement contained in this Agreement on the part of Seller; (iii) any Retained Liabilities or the failure of Seller to discharge any Retained Liabilities; (iv) any claim by MPC or RES/PEAK arising out of or relating to the Retained Liabilities or the failure of Seller to discharge any Retained Liabilities; or (v) any claim by RES/PEAK arising out of Section 11 or Section 13 of the Settlement Agreement, except to the extent of any act or omission of Purchaser related thereto.

(b) Subject to the other Sections of this ARTICLE XII, Purchaser agrees to indemnify Seller Indemnified Parties in respect of, and hold each of them harmless from and against, any and all Losses (on an After-Tax Basis) suffered, incurred or sustained by any of them or to which any of them becomes subject, resulting from, arising out of or relating to (i) any Breach by Purchaser of any representation or warranty contained in this Agreement; (ii) any

nonfulfillment of or failure to perform any covenant or agreement contained in this Agreement in on the part of Purchaser; or (iii) any Assumed Liabilities or the failure of Purchaser to discharge any Assumed Liabilities.

(c) Notwithstanding anything to the contrary contained in this Agreement, no amounts of indemnity shall be payable as a result of any claim in respect of a Loss arising under Section 12.01 by an Indemnified Party:

(i) Unless a claim is timely asserted during the survival period specified in Section 11.01;

(ii) If, and to the extent that, (A) in the case of claims by a Seller Indemnified Party, such Seller Indemnified Party and all other Seller Indemnified Parties would receive payments pursuant to this Agreement, including in respect of claims made under Section 12.01(b) hereof, in an aggregate amount that would exceed the Purchase Price (except in the event such claims arise (i) due to Purchaser's fraud or willful misconduct, or (ii) with respect any Assumed Liabilities or the failure of Purchaser to discharge any Assumed Liabilities); and (B) in the case of claims by a Purchaser Indemnified Party, such Purchaser Indemnified Party and all other Purchaser Indemnified Parties would receive payments pursuant to this Agreement, including in respect of claims made under Section 12.01(a) hereof, in an aggregate amount that would exceed the Purchase Price (except in the event such claims arise (i) due to Seller's fraud or willful misconduct, or (ii) with respect to any Retained Liabilities or the failure of Seller to discharge any Retained Liabilities);

(iii) If the Indemnified Party has failed to give the Indemnifying Party a Claim Notice or Indemnity Notice, as applicable, with respect to such claim and Loss, setting forth in reasonable detail the specific facts and circumstances pertaining thereto, within a reasonable period of time after which the Indemnified Party discovered or reasonably should have discovered such claim and the Indemnifying Party has been prejudiced by the delay in the delivery of such notice; or

(iv) To the extent it arises from or was caused by the Indemnified Party's fraud or willful misconduct.

12.02 Method of Asserting Claims.

All claims for indemnification by any Indemnified Party under Section 12.01 will be asserted and resolved as follows:

(a) If any claim or demand in respect of which an Indemnified Party might seek indemnity under Section 12.01 is asserted against or sought to be collected from such Indemnified Party by a Person other than Seller or Purchaser or any Affiliate of Seller or of Purchaser (a "Third Party Claim"), the Indemnified Party shall deliver a Claim Notice with reasonable promptness to the Indemnifying Party. The Indemnifying Party shall notify the Indemnified Party as soon as practicable within the Dispute Period whether the Indemnifying Party disputes its liability to the Indemnified Party under Section 12.01 and whether the Indemnifying Party desires, at its sole cost and expense, to defend the Indemnified Party against such Third Party Claim.

(i) If the Indemnifying Party notifies the Indemnified Party within the Dispute Period that the Indemnifying Party desires to defend the Indemnified Party with respect to the Third Party Claim pursuant to this Section 12.02(a), then the Indemnifying Party shall

have the right to defend, at the sole cost and expense of the Indemnifying Party, such Third Party Claim by all appropriate proceedings, which proceedings shall be vigorously and diligently prosecuted by the Indemnifying Party to a final conclusion or shall be settled at the discretion of the Indemnifying Party (but only with the consent of the Indemnified Party, which consent shall not be unreasonably withheld, conditioned or delayed in the case of any settlement that provides as its sole relief the payment of monetary damages as to which the Indemnified Party will be indemnified in full). The Indemnifying Party shall have full control of such defense and proceedings, including (except as provided in the immediately preceding sentence) any settlement thereof, provided, however, that the Indemnified Party may, at the sole cost and expense of the Indemnified Party, at any time prior to the Indemnifying Party's delivery of the notice referred to in the first sentence of this Section 12.02(a), file any motion, answer or other pleadings or take any other action that the Indemnified Party reasonably believes to be necessary or appropriate to protect its interests and is not prejudicial to the Indemnifying Party (it being understood and agreed that, except as provided in Section 12.02(a)(ii), if an Indemnified Party takes any such action that is prejudicial and causes a final adjudication that is adverse to the Indemnifying Party, the Indemnifying Party shall be relieved of its obligations hereunder with respect to the portion of such Third Party Claim prejudiced by the Indemnified Party's action), and provided further, that if requested by the Indemnifying Party, the Indemnified Party shall, at the sole cost and expense of the Indemnifying Party, cooperate with the Indemnifying Party and its counsel in contesting any Third Party Claim that the Indemnifying Party elects to contest, or, if appropriate and related to the Third Party Claim in question, in making any counterclaim against the Person asserting the Third Party Claim, or any cross-complaint against any Person (other than the Indemnified Party or any of its Affiliates). The Indemnified Party may retain separate counsel to represent it in, but not control, any defense or settlement of any Third Party Claim controlled by the Indemnifying Party pursuant to this Section 12.02(a), and the Indemnified Party shall bear its own costs and expenses with respect to such separate counsel except as provided in the preceding sentence and except that the Indemnifying Party will pay the costs and expenses of such separate counsel if (x) in the Indemnified Party's good faith judgment, it is advisable, based on advice of counsel, for the Indemnified Party to be represented by separate counsel because a conflict or potential conflict exists between the Indemnifying Party and the Indemnified Party which makes representation of both parties inappropriate under applicable standards of professional conduct or (y) the named parties to such Third Party Claim include both the Indemnifying Party and the Indemnified Party and the Indemnified Party determines in good faith, based on advice of counsel, that defenses are available to it that are unavailable to the Indemnifying Party. Notwithstanding the foregoing, the Indemnified Party may retain or take over the control of the defense or settlement of any Third Party Claim the defense of which the Indemnifying Party has elected to control if the Indemnified Party irrevocably waives its right to indemnity under Section 12.01 with respect to such Third Party Claim.

(ii) If the Indemnifying Party fails to notify the Indemnified Party within the Dispute Period pursuant to Section 12.02(a) that the Indemnifying Party desires to defend the Third Party Claim or if the Indemnifying Party gives such notice but fails to prosecute vigorously and diligently or settle the Third Party Claim, then the Indemnified Party shall have the right to defend, at the sole cost and expense of the Indemnifying Party, the Third Party Claim by all appropriate proceedings, which proceedings will be vigorously and diligently prosecuted by the Indemnified Party to a final conclusion or will be settled at the discretion of the

Indemnified Party (with the consent of the Indemnifying Party, which consent will not be unreasonably withheld, conditioned or delayed). The Indemnified Party will have full control of such defense and proceedings, including (except as provided in the immediately preceding sentence) any settlement thereof, provided, however, that if requested by the Indemnified Party, the Indemnifying Party shall, at the sole cost and expense of the Indemnifying Party, cooperate with the Indemnified Party and its counsel in contesting any Third Party Claim which the Indemnified Party is contesting, or, if appropriate and related to the Third Party Claim in question, in making any counterclaim against the Person asserting the Third Party Claim, or any cross-complaint against any Person (other than the Indemnifying Party or any of its Affiliates). Notwithstanding the foregoing provisions of this Section 12.02(a)(ii), if the Indemnifying Party has notified the Indemnified Party within the Dispute Period that the Indemnifying Party disputes its liability hereunder to the Indemnified Party with respect to such Third Party Claim and if such dispute is resolved in favor of the Indemnifying Party in the manner provided in Section 12.02(a)(iii), the Indemnifying Party shall not be required to bear the costs and expenses of the Indemnified Party's defense pursuant to this Section 12.02(a)(ii) or of the Indemnifying Party's participation therein at the Indemnified Party's request, and the Indemnified Party shall reimburse the Indemnifying Party in full for all reasonable costs and expenses incurred by the Indemnifying Party in connection with such litigation. The Indemnifying Party may retain separate counsel to represent it in, but not control, any defense or settlement controlled by the Indemnified Party pursuant to this Section 12.02(a)(ii), and the Indemnifying Party shall bear its own costs and expenses with respect to such participation.

(iii) If the Indemnifying Party notifies the Indemnified Party that it does not dispute its liability to the Indemnified Party with respect to the Third Party Claim under Section 12.01 or fails to notify the Indemnified Party within the Dispute Period whether the Indemnifying Party disputes its liability to the Indemnified Party with respect to such Third Party Claim, the Loss arising from such Third Party Claim shall be conclusively deemed a liability of the Indemnifying Party under Section 12.01 and the Indemnifying Party shall pay the amount of such Loss to the Indemnified Party on demand following the final determination thereof.

(b) If any Indemnified Party should have a claim under Section 12.01 against any Indemnifying Party that does not involve a Third Party Claim, the Indemnified Party shall deliver an Indemnity Notice with reasonable promptness to the Indemnifying Party. If the Indemnifying Party notifies the Indemnified Party that it does not dispute the claim described in such Indemnity Notice or fails to notify the Indemnified Party within the Dispute Period whether the Indemnifying Party disputes the claim described in such Indemnity Notice, the Loss arising from the claim specified in such Indemnity Notice shall be conclusively deemed a liability of the Indemnifying Party under Section 12.01 and the Indemnifying Party shall pay the amount of such Loss to the Indemnified Party on demand following the final determination thereof. If the Indemnifying Party disputes the claim described in the Indemnity Notice, the Indemnified Party may proceed to take any and all actions available to it in law or equity to recover any amounts due to it pursuant to this ARTICLE XII.

ARTICLE XIII TERMINATION AND DEFAULT

13.01 Termination.

This Agreement may be terminated, and the transactions contemplated hereby may be abandoned:

(a) at any time before the Closing, by mutual written agreement of Seller and Purchaser;

(b) at any time before the Closing by Seller or Purchaser if any Order or Law becomes effective restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement, upon notification of the non-terminating Party by the terminating Party;

(c) by Purchaser if all of the conditions set forth in ARTICLE VIII shall not have been satisfied in full or waived by Purchaser on or before [_____], 2022 (or such later date as mutually agreed upon between the Parties) (the “Determination Date”), or if any such conditions that shall not have been waived by Purchaser could not reasonably be expected to be satisfied in full on or before such date, in either such case, other than through the failure of Purchaser to fully comply with its obligations hereunder; provided that Purchaser may waive such failure to satisfy a condition and elect to close on the acquisition of the Assets hereunder for the Purchase Price; or

(d) by Seller if all of the conditions set forth in ARTICLE IX shall not have been satisfied in full or waived by Seller on or before the Determination Date (or such later date as mutually agreed upon among the Parties), or if any of such conditions that shall not have been waived by Seller could not reasonably be expected to be satisfied in full on or before such date, in either such case, other than through the failure of Seller to fully comply with its obligations hereunder.

13.02 Effect of Termination.

If this Agreement is validly terminated pursuant to Section 13.01, this Agreement will forthwith become null and void, and there will be no liability or obligation on the part of Seller or Purchaser (or any of their respective officers, directors, employees, agents, partners, members, managers or other Representatives or Affiliates); except that the provisions set forth in ARTICLE XII and Sections 14.03, 14.04, 14.08, 14.11, 14.12, 14.13, 14.14 and 14.15 will continue to apply following any such termination.

13.03 Default.

In the event that (a) either Party (i) fails to use its commercially reasonable efforts to cause the conditions to Closing listed in ARTICLE VIII or ARTICLE IX, as applicable, to occur, if and to the extent, such Party is required to do so under this Agreement, or (ii) following or upon satisfaction of the conditions of such Party’s performance hereunder, such Party fails to perform, (b) if Seller delivers to Purchaser a Seller’s Update Certificate: (i) disclosing a breach or default by Seller of any of the Contracts, Governmental Approvals or Licenses that pertain to the Ashtabula III Project, or (ii) to correct an untrue or incorrect statement of fact or omission which such breach, default, untrue or incorrect statement of fact or omission causes a Material Adverse Effect, or (c) if Purchaser delivers to Seller a Purchaser’s Update Certificate to correct

an untrue or incorrect statement of fact or omission which such breach, default, untrue or incorrect statement of fact or omission causes a Material Adverse Effect, it shall constitute an "Event of Default" hereunder. Upon the occurrence of an Event of Default, the non-defaulting Party shall have all remedies at law and in equity, including solely with respect to any failure of Seller to transfer the Assets at Closing or to comply with its obligations to consummate the Closing as contemplated herein, the remedy of specific performance, it being acknowledged and agreed that the remedy of specific performance or mandatory injunction shall not be available in any other circumstance. Except for fraud or willful misconduct, in no event shall Seller's or Purchaser's total liability for damages under this Section 13.03 exceed the Purchase Price in the aggregate.

ARTICLE XIV MISCELLANEOUS

14.01 Notices; Payments.

(a) All notices, requests and other communications hereunder must be in writing and will be deemed to have been duly given only if delivered personally, by facsimile transmission, by reputable national overnight courier service or mailed (first class postage prepaid) to the Parties at the following addresses or facsimile numbers, as applicable:

If to Purchaser, to:

Otter Tail Power Company
215 South Cascade Street
Fergus Falls, Minnesota 56538-0496
Attention: Harvey McMahon

If to Seller, to:

Ashtabula Wind III, LLC
700 Universe Boulevard
Juno Beach, Florida 33408
Attention: General Counsel
Fax: 561-691-7305

(b) All payments due to Seller hereunder shall be made by wire transfer to the following account:

[Bank of America,
100 West 33rd Street
New York, NY 10001
ABA: 0260-0959-3
FPL Energy, LLC
Account No.]

Confidential
Treatment

(c) Notices, requests and other communications will be deemed given upon the first to occur of such item having been (a) delivered personally to the address provided in this Section 14.01; (b) delivered by confirmed facsimile transmission to the facsimile number provided in this Section 14.01; or (c) delivered by mail or by reputable national overnight courier

service in the manner described above to the address provided in this Section 14.01 (in each case regardless of whether such notice, request or other communication is received by any other Person to whom a copy of such notice, request or other communication is to be delivered pursuant to this Section 14.01). Any Party from time to time may change its address, facsimile number or other information for the purpose of notices to that Party by giving notice specifying such change to the other Party.

14.02 Entire Agreement.

This Agreement and the Additional Agreements supersede all prior discussions and agreements, whether oral or written, among the Parties with respect to the subject matter hereof, including the Option Agreement, which shall be without further force or effect on and after the date of this Agreement, and contain the entire agreements among the Parties with respect to the subject matter hereof.

14.03 Expenses.

(a) Project Costs and Expenses. Except as otherwise provided herein, Seller shall be responsible for all costs incurred in connection with the Ashtabula III Project (including all internal and third party costs) on or before the Closing Date and Purchaser shall be solely responsible for its own due diligence costs.]

(b) Post Closing Expenses. After the Closing Date, Purchaser shall be responsible for all costs incurred in connection with the Ashtabula III Project except for Retained Liabilities and without limiting the indemnification rights of the Purchaser under Article XII.

(c) Other Costs and Expenses. Except as otherwise expressly provided in this Agreement, whether or not the transactions contemplated hereby are consummated, each Party will pay its own costs and expenses incurred in connection with the negotiation, execution and closing of this Agreement and the transactions contemplated hereby, including costs of legal counsel, consultants, contractors, accountants, and other advisors.

14.04 Public Announcements.

Prior to the Closing, neither Party shall issue any public announcement or other statement with respect to this Agreement or the transactions contemplated hereby without the prior consent, which shall not be unreasonably withheld, conditioned or delayed, of the other Party, unless required by applicable Laws, order of a court of competent jurisdiction or stock exchange rules and in the reasonable judgment of the Party making such release or announcement, based upon the advice of counsel, prior review and joint approval, despite reasonable efforts to obtain the same, would prevent dissemination of such release or announcement in a sufficiently timely fashion to comply with such Laws, order of a court of competent jurisdiction or stock exchange rules. In the event of a breach of this Section 14.04, in addition to and not in lieu of any legal or equitable remedies that may otherwise be available, the non-breaching Party may, in its sole discretion, issue public announcements the non-breaching Party shall deem to be appropriate in its sole discretion to supplement, correct or amplify the announcement or statement made by the breaching Party. After the Closing, either Party may issue a public announcement or other statement with respect to this Agreement or the transactions contemplated hereby without the prior consent of the other Party.

14.05 Confidentiality.

(a) This Agreement and all written information that has been clearly marked by the disclosing Party as confidential (the “Information”) furnished (whether before or after the date hereof) by the Representatives of any Party to the Representatives of any other Party in connection with the transactions contemplated by this Agreement shall not be disclosed in any manner by any receiving Party to any third party without prior written consent of the disclosing Party and shall be used by a receiving Party solely in connection with the purposes of this Agreement.

(b) The term “Information” will not, however, include information that can be shown to have been (i) previously known by a receiving Party; (ii) in the public domain (either prior to or after the furnishing of such documents or information hereunder) through no fault of a receiving Party; or (iii) later acquired by a receiving Party from another source if such receiving Party is not aware that such source is under an obligation to another Party to keep such documents and information confidential.

(c) Notwithstanding anything contained in this Section 14.05, the foregoing restrictions will not apply to (i) use after the Closing by Purchaser, its successors or permitted assigns of Information furnished concerning the Assets, the Ashtabula III Project or the Business or Condition of the Project; (ii) disclosure by any Party required or compelled by judicial or administrative process (including in connection with obtaining the necessary Governmental Approvals under or in respect of this Agreement and the transactions contemplated hereby) or by other requirements or provisions of Law or of any recognized stock exchange; or (iii) disclosure in an Action or Proceeding brought by a Party in pursuit of its rights or in the exercise of its remedies hereunder.

(d) Notwithstanding anything contained in this Section 14.05, Purchaser may reveal the Information to actual and prospective lenders, actual and prospective equity investors or transferees of a direct or indirect ownership interest in Purchaser, or the Ashtabula III Project, suppliers and potential suppliers of major equipment to the Ashtabula III Project, contractors, consultants, advisors and other third parties as may be necessary for Purchaser to perform its obligations under this Agreement and any project debt documents or other financing documents, any interconnection agreement, any engineering, construction, procurement or maintenance agreements or similar documents so long as such Persons (i) need to know the Information for purposes of evaluating this Agreement, the Ashtabula III Project or the Business or Condition of the Project; (ii) are informed of the confidential nature of the Information; and (iii) are bound by an agreement to maintain the confidentiality of such Information in a manner consistent with the requirements of this Agreement or are otherwise obligated to so maintain the confidentiality of such Information under Law or by Order or ethical rules or codes of conduct.

(e) If the transactions contemplated hereby are not consummated, upon the request of a Party, each Party will, and will cause its Affiliates, any Person who has provided, or who is providing, financing to such Party and their respective Representatives to, promptly (and in no event later than five (5) Business Days after such request) deliver or cause to be delivered all copies of Information furnished by the other Party in connection with this Agreement or the transactions contemplated hereby and destroy or cause to be destroyed all notes, memoranda, summaries, analyses, compilations and other writings related thereto or based thereon (including

electronic copies thereof) prepared by the Party furnished such Information or its Representatives.

14.06 Waiver.

Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition and delivered pursuant to Section 14.01. No waiver by any Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion. All remedies, either under this Agreement or by Law or otherwise afforded, will be cumulative and not alternative.

14.07 Amendment.

This Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each Party.

14.08 No Third Party Beneficiary.

The terms and provisions of this Agreement are intended solely for the benefit of each Party and their respective successors or permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other Person other than any Person entitled to indemnity under ARTICLE XII.

14.09 No Assignment, Binding Effect.

(a) Neither this Agreement nor any right, interest or obligation hereunder may be assigned by any Party without the prior written consent of the other Parties and any attempt to do so will be void.

(b) Notwithstanding the foregoing, either Party may, upon notice to the other Party but without the need for consent from the other Party, collaterally assign its rights under this Agreement and the Additional Agreements to any Unaffiliated Facility Investor (as defined in the PPA), or any other lender or lenders, for collateral security purposes, provided, however, that such Party's obligations under this Agreement and the Additional Agreements shall continue in their entirety in full force and effect and such Party shall remain fully liable for all of its obligations under or relating to this Agreement and the Additional Agreements. In addition, Purchaser may assign its right, interest or obligation under this Agreement to any Affiliate of Purchaser without consent from Seller.

14.10 Invalid Provisions.

If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any Party under this Agreement shall not be materially and adversely affected thereby, (a) such provision shall be fully severable; (b) this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof; and (c) the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom.

14.11 Governing Law.

This Agreement shall be governed by and construed in accordance with the Laws of the State of New York without regard to its principles of conflict of laws, except Section 5-1401 of the New York General Obligations Law.

14.12 Venue and Consent to Jurisdiction.

Each of the Parties hereby irrevocably consents and agrees that any legal action or proceedings with respect to this Agreement may be brought in any of the courts of the State of New York located in the Borough of Manhattan, New York, New York, or the courts of the United States of America for the Southern District of New York, having subject matter jurisdiction and, by execution and delivery of this Agreement and such other documents executed in connection herewith, each Party hereby (a) accepts the non-exclusive jurisdiction of the aforesaid courts; (b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court with respect to such documents; (c) irrevocably waives, to the fullest extent permitted by Law, any objection which it may now or hereafter have to the laying of venue of any Action or Proceeding with respect to such documents brought in any such court, and further irrevocably waives, to the fullest extent permitted by law, any claim that any such Action or Proceeding brought in any such court has been brought in any inconvenient forum; (d) agrees that service of process in any such Action or Proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Party at its address in Section 14.01, or at such other address of which the other Parties shall have been notified; and (e) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by Law or limit the right to bring any Action or Proceeding in any other jurisdiction.

14.13 Attorney's Fees.

In the event of any Action or Proceeding between any of the Parties with respect to any of the transactions contemplated hereby or subject matter hereof, the prevailing Party shall, in addition to such other relief as may be awarded, be entitled to recover reasonable attorney's fees, costs (including at the trial and appellate levels and in any bankruptcy proceeding) and all expenses of investigation and litigation.

14.14 Limitation of Liability, Waiver of Consequential Damages.

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED. NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT TO THE CONTRARY, EXCEPT AS PROVIDED WITH RESPECT TO ANY TAXES WHICH MAY BE INDEMNIFIED UNDER SECTION 10.01 OR WITH RESPECT TO ANY LOSS WHICH MAY BE INDEMNIFIED UNDER SECTION 12.01, IN NO EVENT (EXCEPT IN THE EVENT OF FRAUD OR WILLFUL MISCONDUCT) SHALL ANY PARTY OR ITS AFFILIATES, OR ITS RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES OR REPRESENTATIVES, BE LIABLE HEREUNDER AT ANY TIME FOR PUNITIVE, CONSEQUENTIAL, SPECIAL, OR INDIRECT LOSS OR DAMAGE OF ANY OTHER PARTY OR ANY OF SUCH PARTY'S AFFILIATES, INCLUDING LOSS OF PROFIT, LOSS OF REVENUE OR ANY OTHER SPECIAL OR INCIDENTAL DAMAGES,

WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND EACH PARTY HEREBY EXPRESSLY RELEASES THE OTHER PARTIES, THEIR AFFILIATES, AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES AND REPRESENTATIVES THEREFROM.

14.15 **Waiver of Trial by Jury.**

EACH OF THE PARTIES 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. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

14.16 **Facsimile Signature, Counterparts.**

This Agreement may be executed by facsimile signature in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

(Signatures on next page)

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officer of each Party as of the date first above written.

Otter Tail Power Company

By: _____
Name: Charles S. MacFarlane
Title: President and CEO

Ashtabula Wind III, LLC

By: _____
Name: Michael O'Sullivan
Title: Vice President

EXHIBITS AND SCHEDULES

[Exhibits and Schedules to be attached]

EXHIBIT B**COMMON FACILITIES**

The Common Facilities applicable to the OTP III Project shall consist of the following portion(s) of the Common Facilities:

- The portion thereof consisting of the Ashtabula Project communication pathway or collection system necessary for the operation of both the OTP III Project and the Ashtabula Project.
- The portion thereof consisting of interconnection and transmission facilities between the OTP III Project and the Ashtabula Substation and Ashtabula Power Line Assets.
- The portion thereof consisting of any applicable Ashtabula Project access roads and any other facilities necessary for the operations of the OTP III Project

[PROTECTED DATA BEGINS...

**Case No. PU-22-
Attachment 3 is CONFIDENTIAL
in its Entirety**

...PROTECTED DATA ENDS]