



U.S. Department of Justice

Carmen M. Ortiz
United States Attorney
District of Massachusetts

Main Reception: (617) 748-3100

John Joseph Moakley United States Courthouse
1 Courthouse Way
Suite 9200
Boston, Massachusetts 02210

February 22, 2016

Joseph Savage, Esq.
Goodwin Procter LLP
Exchange Place, 53 State Street
Boston, MA 02109

Re: Power Plant Management Services LLC

Dear Mr. Savage:

This letter sets forth the Agreement between the United States Attorney for the District of Massachusetts ("the U.S. Attorney") and your client, Power Plant Management Services LLC ("Defendant"), in the above-referenced case. The Agreement is as follows:

1. Agreement to Plead Guilty

At the earliest practicable date, Defendant shall waive indictment and plead guilty to the Information attached to this Agreement charging it with conspiracies in violation of 18 U.S.C. § 371, violations of the Clean Air Act, 42 U.S.C. § 7413(c)(2)(C) and violations of the Federal Power Act, 16 U.S.C. § 825o. Defendant expressly and unequivocally admits that it committed the crimes charged in Counts 1-12 of the Information, did so knowingly and willfully, and is in fact guilty of those offenses. Defendant also agrees to waive venue, to waive any applicable statute of limitations, and to waive any legal or procedural defects in the Information. Defendant agrees to the accuracy of the facts set forth in the Information.

The U.S. Attorney agrees not to bring any other criminal charges against Defendant premised on the conduct alleged in the Information.

2. Penalties

Defendant faces the following maximum penalties:

As to each of Counts One through Twelve of the Information: a fine of \$500,000, or twice the gross gain/loss, whichever is greater; a term of probation of not more than five (5) years, and a mandatory special assessment of \$400.

3. Fed. R. Crim. P. 11(c)(1)(C) Plea

This Plea Agreement is made pursuant to Fed. R. Crim. P. 11(c)(1)(C), and Defendant's guilty plea will be tendered pursuant to that provision. In accordance with Rule 11(c)(1)(C), if the District Court ("Court") accepts this Plea Agreement, the Court must include the agreed disposition in the judgment. If the Court rejects any aspect of this Plea Agreement, the U.S. Attorney may deem the Plea Agreement null and void, except that the waiver of statute of limitations and other defenses set forth in Paragraphs 8-9 shall remain valid if the plea is not accepted. Defendant understands and acknowledges that it may not withdraw its plea of guilty unless the Court rejects this Plea Agreement under Fed. R. Crim. P. 11(c)(5).

4. Sentencing Guidelines

The parties agree jointly to take the following positions at sentencing under the United States Sentencing Guidelines ("USSG" or "Guidelines").

- A. As to Counts 1-7 (environmental crimes conspiracy and violations): The United States Sentencing Guidelines ("USSG") promulgated by the United States Sentencing Commission provide guidance for the sentencing of corporate defendants, except that pursuant to USSG §§ 8C2.1 and 8C2.10, the Guidelines that pertain to the sentencing of organizations do not determine the fine range in cases involving environmental crimes. All other sections of Chapter Eight of the Sentencing Guidelines that are applicable to corporate defendants are applicable to this case, including provisions for probation and community service.
- B. As to Counts 8-12 (Federal Power Act conspiracy and violations):
- in accordance with USSG §2B1.1, Defendant's base offense level is 6 because Defendant is pleading guilty to offenses referenced to that Guideline that have a statutory maximum term of imprisonment of less than 20 years;
 - in accordance with USSG §2B1.1(b), the offense level should be increased by 12 because the loss exceeded \$250,000.

The U.S. Attorney's agreement that the disposition set forth below is appropriate in this case is based, in part, on Defendant's prompt acceptance of personal responsibility for the offenses of conviction in this case.

The U.S. Attorney may, at her sole option, be released from her commitments under this Plea Agreement, including, but not limited to, her agreement that Paragraph 5 constitutes the appropriate disposition of this case, if at any time between Defendant's execution of this Plea Agreement and sentencing, Defendant:

- (a) Fails to admit a complete factual basis for the plea;

- (b) Fails to truthfully admit Defendant's conduct in the offense(s) of conviction;
- (c) Falsely denies, or frivolously contests, relevant conduct for which Defendant is accountable under USSG § 1B1.3;
- (d) Fails to provide truthful information about Defendant's financial status;
- (e) Gives false or misleading testimony in any proceeding relating to the criminal conduct charged in this case and any relevant conduct for which Defendant is accountable under USSG § 1B1.3;
- (f) Engages in acts that form a basis for finding that Defendant has obstructed or impeded the administration of justice under USSG § 3C1.1;
- (g) Intentionally fails to appear in Court or violates any condition of release;
- (h) Commits a crime;
- (i) Attempts to withdraw Defendant's guilty plea, or
- (j) Fails to demonstrate that it has an effective compliance and ethics program, either itself or through its agents and contractors, that meets the requirements of USSG § 8B2.1.

Nothing in this Plea Agreement affects the U.S. Attorney's obligation to provide the Court and the U.S. Probation Office with accurate and complete information regarding this case.

5. Agreed Disposition

Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the U.S. Attorney and Defendant agree that the following is a reasonable and appropriate disposition of this case:

- A. At the time of sentencing Defendant shall make total payments of \$750,000 as follows:
 - (1) Fine: At the time of sentencing, the Defendant shall pay a total criminal fine in the amount of \$500,000 to be tendered by check to "Clerk, United States District Court, District of Massachusetts."
 - (2) Community Service Payment. At the time of sentencing, the defendant shall make community service payments totaling \$250,000, to fund a Western Massachusetts Wood Stove Change-Out Project, pursuant to an Agreement with the American Lung Association Northeast, Inc. (ALANE), attached

hereto as Exhibit A. Because the community service payment is designated as community service by an organization, Defendant further agrees that it will not seek any reduction in its tax obligations as a result of this community service payment. In addition, since these payments constitute community service, defendant will not characterize, publicize or refer to this community service payment as a voluntary donation or contribution.

- B. Mandatory Special Assessment. In addition, at the time of sentencing, Defendant shall pay a special assessment of \$400.00 per count to be tendered by check to “Clerk, United States District Court, District of Massachusetts.”

6. Waiver of Right to Appeal and to Bring Future Challenge

- (a) Defendant has conferred with its attorney and understands that it has the right to challenge its conviction in the United States Court of Appeals for the First Circuit (“direct appeal”). Defendant also understands that, in some circumstances, Defendant may be able to challenge its conviction in a future proceeding (collateral or otherwise), such as pursuant to a motion under 28 U.S.C. § 2255 or 28 U.S.C. § 2241. Defendant waives any right to challenge Defendant’s conviction on direct appeal or in any future proceeding (collateral or otherwise).
- (b) Defendant has conferred with its attorney and understands that defendants ordinarily have a right to challenge in a direct appeal their sentences (including any orders relating to supervised release, fines, forfeiture, and restitution) and may sometimes challenge their sentences (including any orders relating to supervised release, fines, forfeiture, and restitution) in a future proceeding (collateral or otherwise). The rights that are ordinarily available to a defendant are limited when a defendant enters into a Rule 11(c)(1)(C) agreement. In this case, Defendant waives any rights Defendant may have to challenge the agreed-upon sentence (including any agreement relating to supervised release, fines, forfeiture, and restitution) on direct appeal and in a future proceeding (collateral or otherwise), such as pursuant to 28 U.S.C. § 2255 and 28 U.S.C. § 2241. Defendant also waives any right Defendant may have under 18 U.S.C. § 3582 to ask the Court to modify the sentence, even if the USSG are later amended in a way that appears favorable to Defendant. Likewise, Defendant agrees not to seek to be resentenced with the benefit of any change to Defendant’s Criminal History Category that existed at the time of Defendant’s original sentencing. Defendant also agrees not to challenge the sentence in an appeal or future proceeding (collateral or otherwise) even if the Court rejects one or more positions advocated by any party at sentencing. In sum, Defendant understands and agrees that in entering into this Plea

Agreement, the parties intend that Defendant will receive the benefits of the Plea Agreement and that the sentence will be final.

- (c) The U.S. Attorney agrees that she will not appeal the imposition by the Court of the sentence agreed to by the parties as set out in Paragraph 5, even if the Court rejects one or more positions advocated by either party at sentencing.
- (d) Regardless of the previous subparagraphs, Defendant reserves the right to claim that Defendant's lawyer rendered ineffective assistance of counsel under *Strickland v. Washington*.

7. Civil Liability

By entering into this Agreement, the U.S. Attorney does not compromise any civil or administrative liability, including but not limited to any tax liability, Defendant may have incurred or may incur as a result of Defendant's conduct and plea of guilty to the charges specified in Paragraph 1 of this Agreement.

8. Withdrawal of Plea By Defendant or Rejection of Plea by Court

Should Defendant move to withdraw its guilty plea at any time, or should the Court reject the parties' agreed-upon disposition of the case or any other aspect of this Plea Agreement, this Plea Agreement shall be null and void at the option of the U.S. Attorney, except that in this event, Defendant agrees to waive any defenses based upon the statute of limitations, the constitutional protection against pre-indictment delay, and the Speedy Trial Act with respect to any and all charges that could have been timely brought or pursued as of August 15, 2013.

9. Breach of Plea Agreement

If the U.S. Attorney determines that Defendant has failed to comply with any provision of this Plea Agreement, has engaged in any of the activities set forth in Paragraph 4(a)-(j), , or has committed any crime following Defendant's execution of this Plea Agreement, the U.S. Attorney may, at her sole option, be released from her commitments under this Plea Agreement in their entirety by notifying Defendant, through counsel or otherwise, in writing. The U.S. Attorney may also pursue all remedies available to her under the law, regardless whether she elects to be released from her commitments under this Plea Agreement. Further, the U.S. Attorney may pursue any and all charges which otherwise may have been brought against Defendant and/or have been, or are to be, dismissed pursuant to this Plea Agreement. Defendant recognizes that its breach of any obligation under this Plea Agreement shall not give rise to grounds for withdrawal of Defendant's guilty plea, but will give the U.S. Attorney the right to use against Defendant before any grand jury, at any trial or hearing, or for sentencing purposes, any statements made by Defendant and any information, materials, documents or objects provided by Defendant to the government, without any limitation, regardless of any prior agreements or understandings, written or oral, to the contrary. In this regard, Defendant hereby waives any defense to any

charges that Defendant might otherwise have based upon any statute of limitations, the constitutional protection against pre-indictment delay, or the Speedy Trial Act.

10. Collateral Consequences

The Defendant further understands that it will be adjudicated guilty of each offense to which it has pleaded guilty and may be deprived of certain rights as a result of its conviction. The Defendant understands that the Government reserves the right to notify any state or federal agency by whom the Defendant is licensed, or with whom the Defendant does business, of the fact of its conviction, and this Plea Agreement does not provide any protection from collateral consequences to any party resulting from the fact of this guilty plea.

11. Who Is Bound By Plea Agreement

This Plea Agreement is limited to the U.S. Attorney for the District of Massachusetts, and cannot and does not bind the Attorney General of the United States or any other federal, state or local prosecutive authorities.

12. Corporate Authorization

The Defendant's acknowledgement of this Agreement and execution of this Agreement on behalf of the limited liability company is attached as Exhibit B. The Defendant shall provide to the U.S. Attorney and the Court a certified copy of a resolution of the governing authority of the Defendant, affirming that it has the authority to enter into the Plea Agreement and has (1) reviewed the Information in this case and the proposed Plea Agreement; (2) consulted with legal counsel in connection with the matter; (3) authorized execution of the proposed Plea Agreement; (4) authorized the Defendant to plead guilty to the charges specified in the Information; and (5) authorized the corporate officer identified below to execute the Plea Agreement and all other documents necessary to carry out the provisions of the Plea Agreement. A copy of the resolution is attached as Exhibit C. The Defendant agrees that either a duly authorized corporate officer or a duly authorized attorney for the Defendant, at the discretion of the Court, shall appear on behalf of the Defendant and enter the guilty plea and will also appear for the imposition of sentence.

13. Complete Agreement

This Plea Agreement (including Exhibits A-E hereto and any materials incorporated herein by reference) is the complete and sole agreement among the parties hereto and supersedes any prior agreements between the parties with respect to the subject matter hereof, and upon the effectiveness of this Agreement, any such prior agreements shall be void. This Plea Agreement can be modified or supplemented only in a written memorandum signed by the parties or on the record in court. The Exhibits to this Agreement include Exhibit D (Letter from the Attorney General for the Commonwealth of Massachusetts and Exhibit E (Agreement with the United States Federal Energy Regulatory Commission).

If this letter accurately reflects the agreement between the U.S. Attorney and Defendant, please have Defendant sign the Acknowledgment of Agreement below. Please also sign below as Witness. Return the original of this letter to Assistant U.S. Attorney Sara Miron Bloom.

Very truly yours,

CARMEN M. ORTIZ
United States Attorney

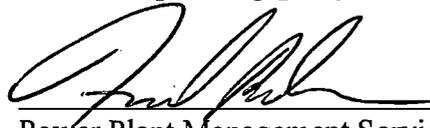
By:



SARAH E. WALTERS
Chief, Economic Crimes Unit
STEPHEN E. FRANK
Deputy Chief, Economic Crimes Unit

ACKNOWLEDGMENT OF PLEA AGREEMENT

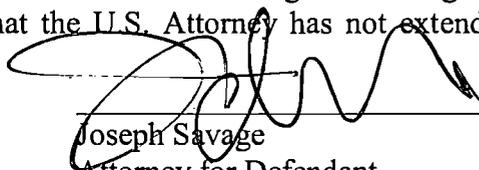
I have read this letter in its entirety and discussed it with my attorney. I hereby acknowledge that it fully sets forth my agreement with the United States Attorney's Office for the District of Massachusetts. I further state that no additional promises or representations have been made to me by any official of the United States in connection with this matter, and that I have received no prior offers to resolve this case. I understand the crimes to which I have agreed to plead guilty, the maximum penalties for those offenses and the Sentencing Guideline penalties potentially applicable to them. I am satisfied with the legal representation provided to me by my attorney. We have had sufficient time to meet and discuss my case. We have discussed the charges against me, possible defenses I might have, the terms of this Plea Agreement and whether I should go to trial. I am entering into this Agreement freely, voluntarily, and knowingly because I am guilty of the offenses to which I am pleading guilty, and I believe this Agreement is in my best interest.



Power Plant Management Services LLC
By: Fred Barber
Its Authorized Representative

Date: 2-24-16

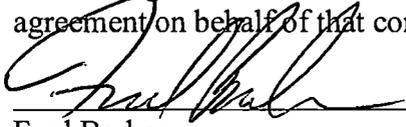
I certify that PPMS's authorized representative has read this and that we have discussed its meaning. I believe he understands the Agreement and is entering into the Agreement freely, voluntarily, and knowingly. I also certify that the U.S. Attorney has not extended any other offers to resolve this matter.



Joseph Savage
Attorney for Defendant

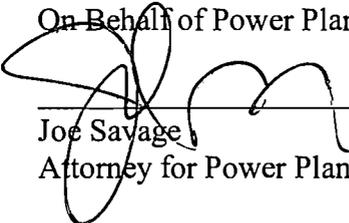
Date: 2/25/16

I, Fred Barber, am General Manager of Power Plant Management Services, LLC (hereinafter, "PPMS"), and I hereby acknowledge that I have read this letter in full. I am entering into this agreement freely and voluntarily after consultation with PPMS's attorney, who also has signed below. I hereby disclose and represent that I am duly authorized to enter into this agreement on behalf of that corporation.



Fred Barber
On Behalf of Power Plant Management Services LLC

Dated: 2-24-16



Joe Savage
Attorney for Power Plant Management Services, LLC

Dated: 2/25/16

EXHIBIT A

**Agreement between Power Plant Management Services, LLC and
The American Lung Association of the Northeast**

DATE

Provided that the Court accepts the plea agreement between the United States Attorney for the District of Massachusetts and Power Plant Management Services, LLC ("PPMS"), resolving criminal violations of the Clean Air Act, PPMS will provide \$250,000 (the "Project Dollars") on the date of sentencing to the American Lung Association of the Northeast (ALANE) to fund a Western Massachusetts Wood Stove Change-out Program ("Program" or "Project") in the geographic area of Berkshire, Franklin, Hampshire and Hampden Counties (the "Geographic Area").

The Project dollars will be expended within four years of ALANE's receipt of the funds. If after three years, it appears that the Project dollars will not be spent in the Geographic Area, ALANE will expand the project initially to encompass Worcester County and then, if necessary, all of Massachusetts.

Project Objective

The Western Massachusetts Wood Stove Change-out Program is intended to reduce air pollution in both indoor and outdoor air by replacing, retrofitting or upgrading inefficient, higher polluting wood burning appliances (e.g. outdoor boilers, and inefficient wood stoves) with cleaner burning appliances and technologies such as: (1) replacing non-EPA-certified wood stoves with EPA-certified wood stoves or cleaner burning hearth appliances (e.g., wood pellet or gas appliances); (2) replacing spent catalysts in EPA-certified wood stoves; and (3) replacing older hydronic heaters with EPA-certified wood stoves, other cleaner burning, more efficient hearth appliances (e.g., wood pellet or gas appliances); or with EPA-certified hydronic heaters. To qualify for replacement, retrofitting or upgrading, the older wood-burning appliance must currently be used as a source of residential heat, and the new appliance must be purchased and professionally installed in compliance with all relevant building and fire codes by a participating retailer (no do-it-yourself option).

ALANE will give priority to (1) areas with high amounts of air pollution, especially particle pollution and hazardous air pollutants; (2) areas located within a geography and topography that make them susceptible to high levels of particle pollution; (3) areas that have a significant number of non EPA-certified wood stoves or older hydronic heaters; and (4) areas with dense residential populations. ALANE will make an effort to enlist participation from income-qualified homeowners in the geographic area.

Project Operation

ALANE will prepare, distribute, and process applications for wood stove replacement vouchers from homeowners who reside in the Geographic Area. Workplaces, rental properties, and seasonal homes are not eligible. ALANE will issue vouchers to homeowners based on receipt of a fully completed application by mail (no email or walk-ins) that includes a certification section in which the applicant agrees to the requirements for participation, a photo of the existing appliance and documentation for income qualification, if applicable. There shall be a limit of one voucher per household.

The vouchers will be redeemed by the homeowners only at participating retailers with whom ALANE has signed retailer agreements and who are using ALANE's Voucher Tracking Form to get reimbursed. Among the requirements for reimbursement will be attestation that: an operating older stove will be retrofitted or replaced with a new, EPA-certified or cleaner burning device (e.g. gas); the older device that is replaced will be removed and properly disposed of/recycled (scrapped/rendered inoperable, not reused) by the retailer; the replacement device will be purchased prior to voucher expiration date (usually four weeks); and a picture before and after installation will be submitted to ALANE.

Participating retailers will submit a Voucher Tracking Form to redeem each voucher. The tracking form will be sent to ALANE, along with the before and after photos, the original voucher, an itemized, final invoice for the purchase, and validation that the older stove was properly disposed/recycled (scrapped/rendered inoperable, not reused), as required.

Non-EPA certified stoves must be replaced by a new EPA-certified wood stove or wood-pellet stove, or a new gas stove. Old hydronic heaters must be replaced with a new EPA-certified wood or wood-pellet stove, or with a gas stove, or with an EPA-certified hydronic heater.

Project Dollars to retrofit or replace stoves will be allocated as follows:

- For replacement of a non-EPA certified wood stove with a new EPA-certified wood stove: \$1,000 reimbursement/voucher;
- For replacement of a non-EPA certified wood stove with a new EPA-certified wood pellet stove or a new gas stove: \$2,000 reimbursement/voucher;
- For an income-qualified homeowner: for replacement of a non-EPA certified wood stove with a new EPA-certified wood or wood pellet stove, or with a new gas stove: \$3,000 reimbursement/voucher;
- For replacement of a hydronic heater with a new EPA-certified wood stove: \$1,500 reimbursement/voucher (for an income-qualified homeowner: \$3000 reimbursement/ voucher);

- For replacement of a hydronic heater with a new EPA-certified wood pellet stove, or gas stove; \$2,000 reimbursement/voucher (for an income-qualified homeowner \$3000 reimbursement/voucher)
- For replacement of a hydronic heater with an EPA-certified hydronic heater, or with an indoor gas furnace: \$4000 reimbursement/voucher (for an income-qualified homeowner \$5000 reimbursement/voucher); and
- For retrofit of an existing catalytic wood stove with a new replacement catalyst up to \$300 reimbursement/voucher for replacement catalyst.

Retailers

ALANE will identify retailers that sell and install wood stoves in the Geographic Area that are interested in participating in the Project. ALANE will formally enlist each participating retailer through a written agreement. The written agreement will stipulate that the retailer will accept Project vouchers as an instant rebate, agree that pricing for appliances and installation will be no higher than that for non-Project appliance sales and installation, comply with all applicable federal, state, and local laws, codes and regulations with respect to the Project, follow best practices in hearth appliance installation procedures, operate appliances in ways that maximize energy efficiency and reduce emissions, and attest that the retailer will remove and properly recycle or dispose of (scrapped/rendered inoperable, not reused) older stoves.

Publicity, Education and Outreach

ALANE shall provide:

- Information including, education efforts, and outreach regarding clean-burning alternatives to pre-1988 wood stoves and proper operation of the hearth appliances;
- Implementation of a marketing plan for the Project, and information on its website to feature the Project and serve as a point of entry for information for participants and participating retailers;
- Encouragement and promotion to residential homeowners in the target communities to replace their old wood stoves (pre-1988 wood stoves) with cleaner burning, more energy efficient hearth appliances like wood pellet stoves, EPA certified wood stoves, gas stoves or propane stoves;

ALANE will make an effort to enlist participation from income-qualified people in the Geographic Area. To be eligible for the Project's income qualified voucher, the applicant must provide documentation of either qualification for or participation in the Low Income Heating Assistance Heating Program, the state Medicaid program, or the Women, Infants and Children Supplemental Food Program.

PPMS will not seek any reduction in its tax obligation as a result of the payments made herein.

Reporting

ALANE will submit periodic reports to PPMS, the U.S. Attorney's Office, and the United States Environmental Protection Agency within 60 days after the end of each half of the calendar year (January through June and July through December) until completion of the Project, and a Final Report within 30 days of project completion. Reports must include a summary of actions implemented and expenditures made regarding implementation of the Project. ALANE shall include the following information in each report:

- Description of education and outreach conducted by ALANE
- Number of applications for new, cleaner burning devices received and accepted
- Geographic location of each accepted application
- Number of older stoves retrofitted with a new replacement catalyst
- Number of each type of older appliance removed
- Number of each type of new equipment installed
- Method/location of disposal or recycling of older stoves or hydronic heaters replaced
- Total project dollars spent cumulatively
- Type and amount of reimbursement
- Estimate of emissions avoided for the reporting period and Project to date
- Anticipated activities for next reporting period
- Any actual or anticipated problems or delays with the Project

In addition to the above, the Final Report shall include:

- The date the Project was completed;
- The results of implementation of the Project including the estimated emission reductions or other environmental benefits achieved;
- The street address of the locations in which each of the appliances was installed;
- Documentation that the new stoves/appliances replaced old wood stoves and that the old stoves were disposed properly or recycled so that the stoves cannot be resold or reused, and
- The total Project Dollars spent in implementing the Project.

Project Budget/Funding

The total project budget is \$250,000. Ten percent of the total project budget will be used by ALANE as an administrative fee to administer the project. The remaining \$225,000 will be used by ALANE to fund the rebates. ALANE will maintain and use the project dollars solely for implementing the Project. The preceding sentence shall not

apply to the administrative fee which ALANE will use solely to pay the operating expenses of the Project.

Agreement Termination

If the Court does not accept the plea agreement between the United States Attorney for the District of Massachusetts and PPMS, this agreement will be null and void.

If the Court accepts the plea agreement, this Agreement shall be terminated upon receipt of the Final Report from the ALANE documenting completion of the Project.



Power Plant Management Services, LLC
BY: Fred Barber, General Manager

February 24, 2016
Date

Jeffrey Seyler, CEO
The American Lung Association of the Northeast

Date

apply to the administrative fee which ALANE will use solely to pay the operating expenses of the Project.

Agreement Termination

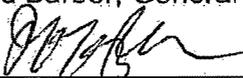
If the Court does not accept the plea agreement between the United States Attorney for the District of Massachusetts and PPMS, this agreement will be null and void.

If the Court accepts the plea agreement, this Agreement shall be terminated upon receipt of the Final Report from the ALANE documenting completion of the Project.



Power Plant Management Services, LLC
BY: Fred Barber, General Manager

February 24, 2016
Date



Jeffrey Seyler, CEO
The American Lung Association of the Northeast

March 9, 2016
Date

EXHIBIT B

ACKNOWLEDGMENT OF PLEA AGREEMENT

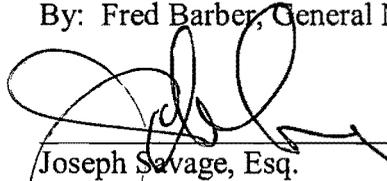
Power Plant Management Services LLC ("PPMS") is a single member limited liability company and the undersigned is authorized as General Manager to execute this Plea Agreement on behalf of PPMS, and to take all such actions as may be necessary to effectuate this Plea Agreement. The General Manager has reviewed this Plea Agreement and the attached criminal information in its entirety and has discussed them fully in consultation with PPMS's attorneys. The General Manager acknowledges that these documents fully set forth PPMS's agreement with the United States. The General Manager further states that no additional promises or representations have been made to PPMS by any officials of the United States in connection with the disposition of this matter, other than those set forth in the Plea Agreement.

Dated: 2-24-16



Power Plant Management Services, LLC
By: Fred Barber, General Manager

Dated: 2/25/16



Joseph Savage, Esq.
Goodwin, Proctor
Counsel for Power Plant Management Services, LLC

EXHIBIT C

Power Plant Management Services LLC, Unanimous Consent of Managers

Pursuant to the limited liability company agreement of Power Plant Management Services, LLC (the "Company") and Section 101.105 of the Tex. Bus. & Com. Code Ann, the undersigned, being the sole member and General Manager of the Company, hereby consents to the following actions and directs that this written record thereof be filed with the Secretary of the Company.

WHEREAS the federal government has been conducting an investigation into the Company's conduct relating to the operation and calibration of the environmental monitors and reporting to ISO-New England (the "Investigation"):

WHEREAS the undersigned Member/Manager has consulted with legal counsel in connection with the Investigation; the Company's legal counsel has been negotiating a resolution of the Investigation; and the Company's legal counsel has reported to the Member/Manager the terms and conditions of a proposed resolution of the Investigation;

WHEREAS the Member/Manager has reviewed the proposed Information and Plea Agreement related to the Investigation;

WHEREAS the Member/Manager acknowledges that the proposed Plea Agreement fully sets forth the Company's agreement with the United States and that no additional promises or representations have been made to the Company by any officials of the United States in connection with the disposition of the Investigation, other than those set forth in the proposed Plea Agreement itself.

NOW, THEREFORE, in consideration of these and such other facts and circumstances as determined relevant or otherwise appropriate to consider in acting on the matter, be it:

RESOLVED, that the Company is hereby authorized and directed to enter into the proposed Plea Agreement;

FURTHER RESOLVED, that the Company is hereby authorized and directed to plead guilty to the charges specified in the Criminal Information;

FURTHER RESOLVED, that Officers of the Company, or their duly authorized representatives or attorneys, are hereby authorized and directed to take all actions and deliver any agreements, certificates and documents and instruments with respect to or contemplated by the matters set forth above, including, without limitation, the payment of all amounts, fees, costs and other expenses, necessary or appropriate to effectuate the purpose and intent of the foregoing resolutions and to effectuate and implement the resolutions contemplated hereby; and

FURTHER RESOLVED, that any actions taken by the Officers of the Company, or their duly authorized representatives or attorneys, prior to the adoption of this resolution, that are within the authority conferred hereby, are fully ratified, confirmed and approved as the acts and deeds of the Company.

Date: 2-24-14



Fred Barber, Member/General Manager of Power
Plant Management Services, LLC

EXHIBIT D



THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE ATTORNEY GENERAL
ONE ASHBURTON PLACE
BOSTON, MASSACHUSETTS 02108

MAURA HEALEY
ATTORNEY GENERAL

(617) 727-2200
(617) 727-4765 TTY
www.mass.gov/ago

February 29, 2016

Joseph F. Savage, Jr., Esquire
Goodwin Procter, LLP
Exchange Place
53 State Street
Boston, MA 02109

RE: Power Plant Management Services, LLC

Dear Attorney Savage:

As you are you aware, your client, Power Plant Management Services, LLC ("PPMS"), has been the subject of a joint criminal investigation conducted by the United States District Attorney's Office for the District of Massachusetts ("USAO") and the Office of the Massachusetts Attorney General ("AGO"). This investigation has related to: (1) tampering with the Continuous Emissions Monitoring System at Berkshire Power plant in Agawam, MA between and including January 2009 and March 2011; and (2) submitting false or fraudulent statements to ISO New England relating to the plant's availability to produce power between and including January 2009 and March 2011.

As a result of this investigation, PPMS has executed a Plea Agreement with USAO by which it has agreed to plead guilty in federal District Court to one count of conspiracy to violate the federal Clean Air Act, four counts of tampering with a monitoring device or method in violation of the federal Clean Air Act, two counts of false reporting in violation of the federal Clean Air Act, one count of conspiracy to violate the federal Power Act, and four counts of using and employing manipulative and deceptive devices and contrivances in connection with the purchase and sale of electric energy and the purchase and sale of transmission services subject to the jurisdiction of the Federal Energy Regulatory Commission in violation of the federal Power Act. *See attached copy of Federal Plea Agreement* (hereinafter "Plea Agreement"). The Plea Agreement also sets forth terms and conditions which PPMS is obligated to meet; and in the event it does not, that it may be deemed to be in breach of the Plea Agreement.

Be advised that provided that PPMS fully complies with all of the terms and conditions set forth in the Plea Agreement and its plea is accepted by the federal District Court, the AGO, on behalf of the Commonwealth, hereby agrees that it will not seek to prosecute PPMS, or its

successors or assigns, criminally or civilly for any violation(s) of state law(s) relating to the aforementioned mentioned investigation.

However, in the event that PPMS, or its successors or assigns, breaches any condition or term of the Plea Agreement or the Plea Agreement becomes null and void pursuant to Paragraph Eight thereof, the AGO, on behalf of the Commonwealth, reserves the right to prosecute PPMS, or its successors or assigns, criminally and/or civilly for any and all violations of state law(s) relating to the aforementioned investigation.

Nothing in this letter shall be construed in any way to bar any future actions by the Commonwealth against PPMS, its affiliates, successors, agents, and assigns based upon any claims or allegations, which have not been the subject of the aforementioned investigation and therefore not conditionally released by this letter.

Sincerely,

A handwritten signature in cursive script, appearing to read 'M. Hoffer', written over a horizontal line.

Melissa Hoffer
Chief, Energy & Environment Bureau

cc: Sara M. Bloom, AUSA.

EXHIBIT E

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Berkshire Power Company LLC
Power Plant Management Services LLC

Docket No. IN16-3-000

STIPULATION AND CONSENT AGREEMENT

I. Introduction

1. The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission), Berkshire Power Company LLC (Berkshire), and Power Plant Management Services LLC (PPMS, and together with Berkshire, the Companies) enter into this Stipulation and Consent Agreement (Agreement) to resolve a non-public investigation (Investigation) of the Companies' conduct between January 1, 2008 and March 31, 2011 (Relevant Period). Staff initiated this investigation in June 2014, following a referral from the United States Attorney's Office for the District of Massachusetts. Enforcement conducted the investigation pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2015).

2. The companies admit to violations of the Commission's Anti-Manipulation Rule, Section 222 of the Federal Power Act (FPA), 16 U.S.C. § 824v(a) and 18 C.F.R. § 1c.2 (2015); the Market Behavior Rules, 18 C.F.R. §§ 35.41(a) and (b) (2015); and the ISO-New England, Inc. (ISO-NE) Transmission, Markets, and Services Tariff (ISO-NE Tariff), as described below. The Companies agree to: (a) pay a civil penalty of \$2,000,000 to the United States Treasury and (b) implement procedures to improve compliance going forward, subject to monitoring via submission of semi-annual reports for one year. Berkshire will pay to ISO-NE disgorgement of \$1,012,563, plus interest.

3. In addition, Berkshire admits to violations of several Commission-approved Reliability Standards and agrees to pay a civil penalty of \$30,000 to the United States Treasury for those violations.

II. Stipulations

Enforcement and the Companies hereby stipulate and agree to the following facts:

A. The Companies

4. Berkshire is a subsidiary of the EIF Berkshire Holdings, LLC, which, during the Relevant Period, ultimately was managed by Ares EIF Management, LLC, formerly known as EIF Management, LLC (EIF). Berkshire owns an approximately 245 MW (289 MW maximum nominal gross nameplate capacity) natural gas-fired, combined-cycle generating facility in Agawam, Massachusetts (the Plant). The Plant began operations in June 2000 and, during the Relevant Period, had authority from the Commission under section 205 of the FPA to make sales at market-based rates.
5. PPMS is a general and administrative services management consulting firm that was formed in 2006 to provide management services to EIF-affiliated projects.
6. In July 2008, Berkshire engaged PPMS to provide project management and administrative services at the Plant.
7. With PPMS's assistance, Berkshire hired a third party company (Third Party Company) to provide Operations and Maintenance services at the Plant starting January 9, 2009. The Third Party Company hired a plant manager to run the day-to-day operations.
8. In January 2009, PPMS hired a Projects General Manager for the Plant (Projects General Manager). That individual had a long history with the Plant by that point, as he had supervised its construction in the 1990s and had served in capacities including its general manager and/or plant manager since February 1998. He also had served as Berkshire's owner's representative in various capacities.
9. All of the employees at the Plant, with the exception of the Projects General Manager, became employees of the Third Party Company in January 2009.
10. PPMS was responsible for overseeing the Third Party Company's performance.
11. The Projects General Manager's authority was set forth in various employment documents, but notwithstanding certain stated limitations on his authority in those documents, Plant employees viewed him as the ultimate decision maker at the Plant, and he prepared Berkshire's offers for the power markets, directed the Plant's maintenance program, and managed all communications with ISO-NE and Berkshire's lead market participant.

B. Participation in the ISO-NE Markets

12. During the Relevant Period, Berkshire made offers and sold power into the ISO-NE Day Ahead and Real-Time Energy Markets as a Resource and Market Participant, as those terms are defined in the ISO-NE Tariff. As such, it was required to comply with the ISO-NE Tariff, including:

Section III.1.7.20(b), which requires such Resources to “respond to the ISO’s directives to start . . . [and] continuously maintain all Offer Data concurrent with on-line operating information.”

13. Berkshire entered into a Reliability-Must-Run (RMR) agreement with ISO-NE, effective July 1, 2005, requiring it to operate and maintain the Plant in exchange for certain payments. The RMR agreement entitled Berkshire to a Monthly Fixed-Cost Charge, the size of which was based principally on the number of hours that the Plant was available that month. The cumulative Monthly Fixed-Cost Charges were subject to an annual cap of \$26,000,000.

14. The RMR agreement listed the Projects General Manager (who, during the term of the RMR agreement, became and then served as an employee of PPMS) as the Owner’s Representative for purposes of implementing the agreement. The parties to the RMR agreement stipulated that their representatives had “full authority to deal with all day-to-day matters arising under th[e] Agreement” and that “[a]cts and omissions of representatives shall be deemed to be acts and omissions of the Party.” They further stipulated that “Owner and ISO shall be entitled to assume that the representatives of each Party are at all times acting within the limits of the authority given by the representatives’ Party.” The RMR agreement expired on June 1, 2010, and it was not renewed.

15. Berkshire also participated in ISO-NE’s installed capacity (ICAP) program during the time that the RMR agreement was in effect and was required to comply with provisions in the ISO-NE Tariff applicable to ICAP Resources (as that term is defined in the ISO-NE Tariff), including:

Section III.8.3.1(c), which required ICAP Resources to “notify the ISO of any outage (including partial outages) and the expected return date from the outage,” and

Section III.8.3.1(e), which required ICAP Resources to abide by ISO-NE’s maintenance coordination procedures. Such procedures included Manual M-

20, which obligated Berkshire to notify the ISO Operations Department for any hour of any day that the resource could not provide the full amount capacity due to a forced outage, and ISO-NE Operating Procedure No. 5, which required Berkshire to notify the ISO Control Room Generation Desk and ISO Forecaster regarding outages.

16. When the RMR agreement expired, Berkshire became a participant in the ISO-NE Forward Capacity Market, and it participated in that market until the end of the Relevant Period. As a Generating Capacity Resource (as that term is defined in the ISO-NE Tariff) during that period, Berkshire was required to comply with certain provisions of the ISO-NE Tariff, including:

Section III.13.6.1.1.2, which requires such Resources to “re-declare to the ISO any changes to the offer parameters that occur in real time to reflect the known capability of the resource,” and

Section III.13.6.1.1.5(c), which requires such Resources to follow ISO New England Manuals and Operating Procedures regarding outages. Such procedures included Manual M-20 and ISO-NE Operating Procedure No. 5.

17. Berkshire registered with the North American Electric Reliability Corporation (NERC) as a Generator Owner and Generator Operator on August 14, 2008. As such, it was required to comply with Commission-approved Reliability Standards, including:

TOP-002-2 R14, which states:

R14. Generator Operators shall, without any intentional time delay, notify their Balancing Authority and Transmission Operator of changes in capabilities and characteristics including but not limited to:

R14.1. Changes in real output capabilities.

TOP-003-1 R1.1, which states:

R1.1. Each Generator Operator shall provide outage information daily to its Transmission Operator for scheduled generator outages planned for the next day (any foreseen outage of a generator greater than 50 MW). The Transmission Operator shall establish the outage reporting requirements.

TOP-006-1 R1, which states:

R.1. Each Transmission Operator and Balancing Authority shall know the status of all generation and transmission resources available for use.

R1.1. Each Generator Operator shall inform its Host Balancing Authority and the Transmission Operator of all generation resources available for use.

18. ISO-NE was Berkshire's Transmission Operator and Balancing Authority during the Relevant Period.

C. The Fraudulent Scheme

19. The Projects General Manager engaged in a fraudulent scheme to perform unreported maintenance work and to conceal that work and associated maintenance outages from ISO-NE. Berkshire is responsible for the actions of its agents.

20. Individuals at the Plant scheduled maintenance work for times when the Plant was unlikely to be dispatched and then failed to notify ISO-NE about the work or the associated Plant unavailability.

21. In March 2009, the Plant manager hired by the Third Party Company confronted the Projects General Manager about the scheme, informed him that his actions likely violated the law, and recommended that Berkshire stop performing unreported maintenance. The Projects General Manager rejected that recommendation, and Berkshire continued to conceal its maintenance work from ISO-NE.

22. Berkshire failed to report at least 16 separate periods of significant maintenance-related outages between January 2008 and March 2011, when the Projects General Manager was removed from his position at the Plant, thereby ending the scheme. The instances were identified based on a review of control room operator logs and other logs, recordings of calls with ISO-NE, invoices, internal company communications, and the testimony of current and former employees at the Plant. At least half of those 16 unreported outages lasted ten hours or more, and one unreported outage lasted 86 hours.

23. The Projects General Manager assisted employees of the Third Party Company in preparing the Generating Availability Data System (GADS) reports that Berkshire was required to submit to ISO-NE during the Relevant Period. Those reports did not disclose the unreported maintenance outages.

24. The Projects General Manager gave the control room operators specific instructions as to how they should respond if the Plant nevertheless was dispatched while it was unavailable due to ongoing maintenance. Specifically, the operators were given a

standing order that if they received a dispatch call from ISO-NE during a time that the generator was unavailable, they should act as if it were available, acknowledge the request, and then call the Projects General Manager. If ISO-NE asked how soon the Plant could start, they generally were to respond "within one hour." The Projects General Manager then called ISO-NE dispatch office himself or told the operator to wait for some amount time and then (falsely) assert that the Plant had experienced an unanticipated problem during start-up.

25. There were at least six instances in which employees of the Third Party Company, acting pursuant to the Projects General Manager's standing order, falsely represented to ISO-NE dispatchers that the Plant was starting up or able to start up when it was, in fact, unavailable due to ongoing maintenance or other technical problems.

26. The scheme ended in March 2011, when the Projects General Manager's responsibilities at the Plant were suspended due to the discovery of evidence suggesting violations of federal and state environmental laws.

27. The Projects General Manager passed away in December 2012.

III. Violations

28. The Companies admit that they violated the Anti-Manipulation Rule. That rule prohibits any entity from using a fraudulent device, scheme, or artifice, or engaging in any act, practice, or course of business that operates or would operate as a fraud; with the requisite scienter; in connection with a transaction subject to the jurisdiction of the Commission.

29. The Projects General Manager directed Berkshire to engage in a fraudulent scheme to conceal certain maintenance work and related unavailability from ISO-NE. From January 2008 until the scheme ended in March 2011, oversight of and control over management of the Plant was within the real or apparent scope of the Projects General Manager's employment (which, from 2009 until after the scheme ended, was with PPMS).

30. The Projects General Manager's explicit instructions directing employees at the Plant to tell ISO-NE that Berkshire had tried to start when it had not and his continued efforts to conceal maintenance and associated outages from ISO-NE even after being confronted by the Third Party Company plant manager demonstrates that he intended to engage in a scheme to defraud ISO-NE. Such intent to defraud satisfies the

scienter requirement. Moreover, because the scheme involved sales and offers for sales of energy and capacity in ISO-NE's wholesale markets, the conduct was undertaken in connection with the purchase, sale or transmission of electric energy subject to the jurisdiction of the Commission.

31. Berkshire, but not PPMS, was a "Seller" during the period relevant to this investigation, as that term is defined in section 35.36(a)(1) of the Commission's regulations. Section 35.41(a) of those regulations mandates that "[w]here a Seller participates in a Commission-approved organized market, Seller must operate and schedule generating facilities, undertake maintenance, declare outages, and commit or otherwise bid supply in a manner that complies with the Commission-approved rules and regulations of the applicable market."

32. Berkshire violated the ISO-NE Tariff and section 35.41(a) of the Commission's regulations by failing to schedule and disclose maintenance and failing to accurately disclose its availability. The provisions of the ISO-NE tariff that it violated include sections III.1.7.20(b), III.8.3.1(c) and (e), III.13.6.1.1.2, and III.13.6.1.1.5(c) during the relevant time period for each of those provisions.

33. Section 35.41(b) of the Commission's regulations requires all Sellers to "provide accurate and factual information and not submit false or misleading information, or omit material information, in any communication with . . . Commission-approved independent system operators, or jurisdictional transmission providers, unless Seller exercises due diligence to prevent such occurrences."

34. The Projects General Manager and the Third Party Company's operators made false and misleading representations that they were trying to start the Plant (or could start the Plant), and made false and misleading representations regarding the Plant's availability. Berkshire made false and misleading GADS reports. These false and misleading representations and reports violated section 35.41(b).

35. Berkshire admits that it violated Commission-approved Reliability Standards TOP-002-2 R14, TOP-003-1 R1.1, and TOP-006-1 R1 by withholding information regarding its planned maintenance unavailability, both before and during the unavailability.

IV. Remedies and Sanctions

36. For purposes of settling any and all claims, civil and administrative disputes and proceedings arising from Enforcement's Investigation, the Companies agree with the facts as stipulated in Section II of this Agreement, and they admit the violations described in Section III of this Agreement. The Companies further agree to undertake obligations set forth in the following paragraphs.

A. Disgorgement

37. Berkshire shall pay to ISO-NE disgorgement of \$1,012,563, plus interest calculated pursuant to 18 C.F.R. § 35.19a (2015).

38. That disgorgement amount represents (1) for the sixteen periods of substantial unreported maintenance, the Capacity Payments or Fixed-Cost Charges that accrued for the hours when the Plant was not actually able to generate power; and (2) for the six instances in which the Projects General Manager and/or the operators affirmatively misstated availability to ISO-NE staff in connection with a dispatch call, the Capacity Payments or Fixed-Cost Charges for the days on which such misstatements were made.

B. Civil Penalty

39. The Companies agree to pay a civil penalty of \$2,000,000 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined herein. The Companies agree to be held jointly and severally liable for payment of the \$2,000,000 civil penalty.

40. The penalty is based, in part, on the following factors: (1) an individual with substantial authority (the Projects General Manager) participated in the violation, (2) the Companies did not have an effective compliance program at the Plant during the Relevant Period, and (3) the Companies provided full cooperation during the Investigation.

41. In addition, Berkshire agrees to pay a separate civil penalty of \$30,000 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined herein.

C. Compliance

42. The Companies shall institute new policies and associated processes to improve compliance with the Commission's Anti-Manipulation Rule, the ISO-NE Tariff, and Commission-approved Reliability Standards.

43. The Companies shall make semi-annual compliance monitoring reports to Enforcement for one year following the Effective Date of this Agreement. The first semi-annual compliance monitoring report shall be submitted on or before June 1, 2016. Future reports shall be submitted at six month intervals thereafter. Each report following the first such report shall cover the six-month period that ends one month before the report's submission date. After the receipt of the second semi-annual report, Enforcement may, at its sole discretion, require the Companies to submit semi-annual reports for one additional year.

44. Each compliance monitoring report shall: (1) identify any known violations of Commission regulations that occurred during the applicable period, including a description of the nature of the violation and what steps were taken to rectify the situation; (2) describe all compliance measures and procedures related to compliance with Commission regulations that each Company instituted or modified during the applicable period; and (3) describe all Commission-related compliance training that each Company administered during the applicable period, including the dates such training occurred, the topics covered, and the procedures used to confirm which personnel attended.

45. Each compliance monitoring report shall also include an affidavit stating that it is true and accurate to the best of his/her knowledge, executed by an officer of each Company.

46. The Companies may submit joint reports or separate reports.

47. Upon request by Enforcement, the Companies shall provide to Enforcement documentation supporting the contents of their reports.

V. Terms

48. The "Effective Date" of this Agreement shall be the date on which the Commission issues an order approving this Agreement without material modification. When effective, this Agreement shall resolve the matters specifically addressed herein,

and that arose on or before the Effective Date, as to the Companies or any affiliated entity.

49. Commission approval of this Agreement without material modification shall release the Companies and forever bar the Commission from holding either of the Companies, any affiliated entity, and any successor in interest to either of the Companies liable for any and all administrative or civil claims arising out of the conduct addressed and stipulated to in this Agreement that occurred on or before the Agreement's Effective Date.

50. Failure by the Companies to make civil penalty payments or comply with the compliance obligations agreed to herein, or any other provision of this Agreement, including failure by Berkshire to make the disgorgement payment, shall be deemed a violation of a final order of the Commission issued pursuant to the FPA, 16 U.S.C. § 792, *et seq.*, and may subject the Companies to additional action under the enforcement provisions of the FPA.

51. If the Companies do not make the required civil penalty payment, or if Berkshire does not make the disgorgement payment, described above at the time agreed by the parties, interest will begin to accrue pursuant to the Commission's regulations at 18 C.F.R. § 35.19a (2015) from the date that payment is due, in addition to the penalty specified above and any other enforcement action and penalty that the Commission may take or impose.

52. The Agreement binds each of the Companies and its agents, successors, and assignees. The Agreement does not create any additional or independent obligations on either Company, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in this Agreement.

53. The signatories to this Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member, employee, officer, director, agent or representative of Enforcement or the Companies has been made to induce the signatories or any other party to enter into the Agreement.

54. Unless the Commission issues an order approving the Agreement in its entirety and without material modification, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor the Companies shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and the relevant Company.

55. In connection with the civil penalty provided for herein, the Companies agree that the Commission's order approving the Agreement without material modification shall be a final and unappealable order assessing a civil penalty under the FPA, 16 U.S.C. § 792, *et seq.*, as amended. The Companies waive findings of fact and conclusions of law, rehearing of any Commission order approving the Agreement without material modification, and judicial review by any court of any Commission order approving the Agreement without material modification.

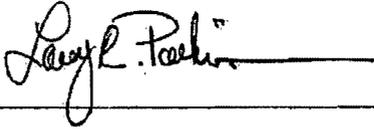
56. This Agreement can be modified only if in writing and signed by Enforcement and the Companies, and any modifications will not be effective unless approved by the Commission.

57. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity, and accepts the Agreement on the entity's behalf.

58. The undersigned representatives of the Companies affirm that he or she has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his or her knowledge, information and belief, and that he or she understands that the Agreement is entered into by Enforcement in express reliance on those representations.

59. This Agreement is executed in triplicate, each of which so executed shall be deemed to be an original.

Agreed to and accepted:



Larry Parkinson
Director
Office of Enforcement
Federal Energy Regulatory Commission
DATE: 2/25/16



NOAH EHRENPRES
AUTHORIZED AGENT & ATTORNEY
Berkshire Power Company LLC
DATE: 2-24-2016



Fred Barber
President
Power Plant Management Services LLC
DATE: 2/21/2016