

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action Nos.
)	99-30225, 99-30226,
)	and 99-30227-MAP
)	(consolidated)
GENERAL ELECTRIC COMPANY,)	
)	
Defendant.)	
)	

SEVENTH MODIFICATION OF CONSENT DECREE

WHEREAS, on October 27, 2000, the Court entered a Consent Decree (“Consent Decree” or “Decree”) in this action among the United States, the Commonwealth of Massachusetts (the “State”), the State of Connecticut (“Connecticut”), the City of Pittsfield (the “City”), the Pittsfield Economic Development Authority (“PEDA”), and the General Electric Company (“GE”) relating to the GE-Pittsfield/Housatonic River Site (“Site”). Pursuant to the Consent Decree (and without admitting liability), GE is required to perform and/or pay for response actions to remediate contamination at the Site, to reimburse the United States, the State, and Connecticut for certain response costs incurred with respect to the Site, and to take actions to address alleged damages to natural resources.

WHEREAS there have been six prior modifications to the Consent Decree: (1) the First Modification of Consent Decree, filed by the United States on February 6, 2002; (2) the Second Modification of Consent Decree, approved by the Court on May 15, 2003; (3) the Third Modification of Consent Decree, approved by the Court on March 31, 2005; (4) the Fourth Modification of Consent Decree, approved by the Court on June 23, 2006; (5) the Fifth

Modification of Consent Decree, filed by the United States on May 25, 2007, and approved by the Court on May 30, 2007; and (6) the Sixth Modification of Consent Decree, filed by the United States on February 14, 2008.

WHEREAS the United States, the State, and GE (the “Modification Parties”) have agreed that an additional modification to the Consent Decree is appropriate and is in the interest of timely and effective implementation of the Consent Decree. As further described herein, this modification allows GE and certain GE affiliates to enter into a new ground lease, including related easements, and to convey their interests in the structures and facilities located within certain portions of the GE Plant Area, namely certain portions of the Hill 78 Area – Remainder, prior to the recording of a Grant of Environmental Restriction and Easement (“ERE”).

WHEREAS the foregoing modification is a non-material modification of the Consent Decree. As such, pursuant to Paragraph 217 of the Decree, it requires the agreement of the United States, the State and GE. Paragraph 217 of the Decree also provides that written notification of non-material modifications of the Decree is to be provided to the City and PEDDA and that non-material modifications of the Decree are effective upon filing with the Court by the United States.

WHEREAS written notice of this modification has been provided to the City and PEDDA. Those parties have authorized the United States to represent to the Court that they do not object to this modification.

WHEREAS the relevant background information relating to the modification set forth herein is as follows:

A. U.S. Bank National Association, not in its individual capacity but solely as owner trustee (“the Owner Trustee”), acts as the owner trustee under a trust agreement (“the Owner Trust”) between the Owner Trustee and SFG CLA Pittsfield, LLC (“SFG”). SFG is the sole owner participant in the owner trust created under that trust agreement. SFG is a wholly owned subsidiary of General Electric Capital Corporation (“GE Capital”), a GE affiliate. The Owner Trustee is the lessee on a ground lease of portions of the Hill 78 Area – Remainder, as shown on the map attached hereto as Exhibit 1, which portions are hereinafter referred to as “the Premises.” GE is the owner of the land in the Hill 78 Area – Remainder, including the Premises, and is the lessor under the ground lease. GE has also granted certain easements to the Owner Trustee in connection with the ground lease.

B. The Owner Trustee also holds legal title to the structures and facilities on the Premises, which structures and facilities are leased to and operated by Pittsfield Generating Company, L.P. (“PGC”), together with a sublease of the Premises. The limited partnership interests in PGC are currently owned by GE Capital and GE Credit Corporation of Tennessee (“GE Credit”), which is also a GE affiliate. A non-equity general partner interest in PGC is held by PE-Pittsfield LLC, a subsidiary of Pure Energy Operating Services, LLC.

C. For purposes of this Seventh Modification, GE Capital and GE Credit are referred to as “the GE Affiliates.”

D. GE has advised the United States Environmental Protection Agency (“EPA”) and the State of the intent of GE and the GE Affiliates to enter into transactions (collectively, “the Conveyance”) pursuant to which (1) GE and the Owner Trustee will terminate the existing ground lease of the Premises and will enter into a new ground lease of the Premises (including related easements), with the sole owner participant of the Owner Trust at such time

being Pittsfield Power Holding Company LLC (“Pittsfield Power”) (which, at the time of the Conveyance, will be an indirect wholly owned subsidiary of Maxim Power (USA), Inc.), and (2) the GE Affiliates will sell all of their interests in PGC to Pittsfield Power and Pittsfield Power GP LLC (“PPGP”) (which, at the time of the Conveyance, will be a wholly owned subsidiary of Pittsfield Power), and SFG will sell and assign all of its right, title and interest in the Owner Trust to Pittsfield Power. PE-Pittsfield LLC will continue to hold a non-equity general partner interest in PGC. Also as part of the Conveyance, the Owner Trustee will sublease to PGC (which, at the time of the Conveyance, will be a 99%-owned subsidiary of Pittsfield Power, with the remaining 1% owned by PPGP), the real property covered by the new ground lease, and will continue to lease to PGC the structures and facilities within the Premises. Pittsfield Power, PPGP, and PGC are collectively referred to herein as “the Transferees.” One of the related easements (“the Well Easement”) is on a portion of the Building 71 Consolidation Area that is adjacent to the Premises, specifically, an area adjacent to the northern boundary of the Premises providing access to production well ASW-6.

E. GE has further advised EPA and the State that, subsequent to the Conveyance, the Transferees may enter into an additional transaction (“the Direct Lease Transaction”) pursuant to which the Owner Trust will be eliminated, and all of the Owner Trustee’s interests in both the new ground lease and the facilities and structures will be conveyed or released to PGC, so that PGC will become the lessee under the new ground lease and will also become the owner of the facilities and structures on the Premises.

F. GE is required by the Consent Decree to execute and record or register an ERE for the Hill 78 Area – Remainder following completion of all investigations and remediation required at that area. GE has not to date completed the investigation and remediation process

at that area and does not anticipate doing so prior to the anticipated date of the Conveyance.

G. Paragraph 54.j of the Consent Decree provides that GE shall not convey any interest in GE-owned property for which an ERE is required under the Decree unless, prior to such transfer, GE has recorded or registered an ERE on such property and obtains from the transferee an Access and Interim Non-Interference Agreement.

H. The Modification Parties have agreed that, notwithstanding Paragraph 54.j of the Consent Decree, GE may enter into the Conveyance, and the Transferees may enter into the Direct Lease Transaction, prior to the execution and recordation of an ERE on the Hill 78 Area – Remainder, provided that GE otherwise remains responsible to implement its obligations under the Consent Decree, and provided further that the conveying documents include and incorporate the schedule attached hereto as Exhibit 2 (the “Schedule”), which schedule will appear as Exhibit C to the new ground lease.

NOW, THEREFORE, the Consent Decree is hereby modified as follows:

1. Notwithstanding any other provision of the Consent Decree, GE and the GE Affiliates may enter into the Conveyance, and the Transferees may enter into the Direct Lease Transaction, prior to the execution and recordation or registration of an ERE on the Hill 78 Area – Remainder, provided that: (a) each of the Transferees consents to, and the conveying documents include and incorporate, the Schedule; and (b) the Conveyance shall not include any portion of the Hill 78 Consolidation Area and/or the Building 71 Consolidation Area, as those areas are described in Paragraph 4 of the Consent Decree, other than the Well Easement.

2. In all other respects, GE shall, notwithstanding the Conveyance or the Direct Lease Transaction, remain responsible for the implementation of all of its responsibilities under the

Consent Decree with respect to the Premises and all other portions of the Hill 78 Area – Remainder. Except as specifically provided in this Seventh Modification, this modification does not release or otherwise affect GE's obligation to comply with all provisions of the Consent Decree, including, without limitation, the provisions regarding execution and recordation or registration of an ERE for the Premises and all other portions of the Hill 78 Area – Remainder.

3. GE shall include provisions in the conveying documents requiring the Transferees to comply with the terms and conditions set forth in the Schedule, and GE shall enforce such conveying documents if any of the Transferees violate the terms and conditions set forth in the Schedule. If any of the Transferees does not comply with the Schedule and the United States and/or the State incurs costs as a result of such non-compliance, GE shall reimburse such costs as U.S. Future Response Costs and/or as Massachusetts Future Response Costs, pursuant to Paragraph 95 of the Consent Decree.

4. This Seventh Modification shall be deemed to satisfy the notification requirements of Paragraph 12.a(i) of the Consent Decree with respect to the Conveyance.

THE UNDERSIGNED PARTY enters into this Seventh Modification of Consent Decree in the matter of United States, the Commonwealth of Massachusetts, and the State of Connecticut v. General Electric Company, relating to the GE-Pittsfield/Housatonic River Site.

UNITED STATES OF AMERICA

Ronald J. Tenpas
Assistant Attorney General
Environment and Natural Resources Division

Date: 5/15/08

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Date: 5/7/08

/s/ Timothy M. Conway
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Senior Enforcement Counsel
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Boston, MA 02114

THE UNDERSIGNED PARTY enters into this Seventh Modification of Consent Decree in the matter of United States, the Commonwealth of Massachusetts, and the State of Connecticut v. General Electric Company, relating to the GE-Pittsfield/Housatonic River Site.

COMMONWEALTH OF MASSACHUSETTS

Date: 5/14/08

By: /s/Nancy E. Harper
Nancy E. Harper
Assistant Attorney General
Environmental Protection Division
1 Ashburton Place
Boston, MA 02108
617-727-2200

THE UNDERSIGNED PARTY enters into this Seventh Modification of Consent Decree in the matter of United States, the Commonwealth of Massachusetts, and the State of Connecticut v. General Electric Company, relating to the GE-Pittsfield/Housatonic River Site.

GENERAL ELECTRIC COMPANY

Date: 5/14/08

By: s/s Roderick J. McLaren
Roderic J. McLaren
Counsel-Pittsfield/Housatonic River
Remediation
General Electric Company
Corporate Environmental Programs
159 Plastics Avenue
Pittsfield, MA 01201

CERTIFICATE OF SERVICE

I certify that this Seventh Modification of Consent Decree was filed on May 15, 2008, through the Court's ECF system and was therefore electronically sent to the registered participants as identified on the Notice of Electronic Filing. In addition, paper copies of this document are being sent by first class mail to the following counsel on May 15, 2008.

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/s/ Donald G. Frankel
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EXHIBIT 1

LEASE AND EASEMENT AREAS IN HILL 78 - REMAINDER

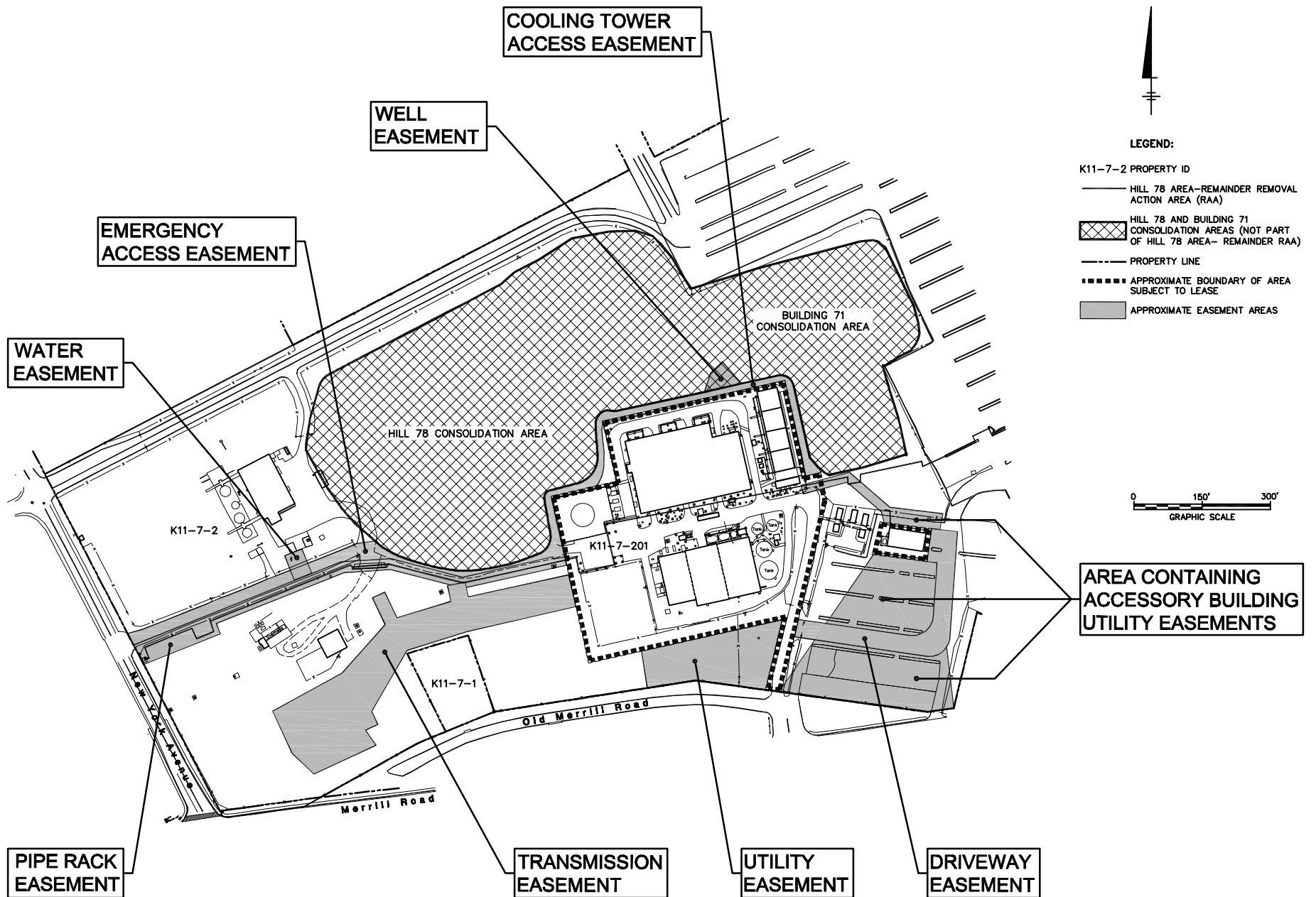


EXHIBIT 2 TO SEVENTH MODIFICATION TO GE-PITTSFIELD CONSENT DECREE

**Exhibit C to Lease for Pittsfield Generating Property
Regarding Obligations Related to Consent Decree
for GE-Pittsfield Housatonic River Site**

WHEREAS General Electric Company (“Lessor”) and U.S. Bank National Association, not in its individual capacity but solely as owner trustee (“the Owner Trustee”) of an owner trust (“the Owner Trust”), are simultaneously executing a new ground lease with related easements (“the Lease”) for certain property owned by Lessor and located in the City of Pittsfield, Massachusetts (“the Premises”), as generally shown on the attached map (Exhibit C-1).

WHEREAS, the sole beneficiary of the Owner Trust is Pittsfield Power Holding Company LLC (“Pittsfield Power”), a wholly owned subsidiary of Maxim Power (USA), Inc.;

WHEREAS the Owner Trustee is simultaneously subleasing to Pittsfield Generating Company, L.P. (“PGC”) (which is a 99%-owned subsidiary of Pittsfield Power, with the remaining 1% owned by Pittsfield Power GP LLC (“PPGP”), a wholly owned subsidiary of Pittsfield Power) the real property covered by the ground lease, as well as the structures and facilities located on the Premises;

WHEREAS, at a future date the Owner Trust may be eliminated, at which time all of the Owner Trust’s interests in both the ground lease and the facilities and structures will be conveyed or released to PGC, so that PGC will become the lessee under the ground lease and will also become the owner of the facilities and structures on the Premises (“the Direct Lease Transaction”);

WHEREAS Pittsfield Power, PPGP, and PGC (hereinafter collectively referred to as “the Transferees”) acknowledge that the Premises are subject to the requirements of a Consent Decree entered on October 27, 2000, by the United States District Court for the District of Massachusetts in *United States et al. v. General Electric Co.*, No. CV-99-30225-MAP *et seq.* (“the Consent Decree”), for the GE-Pittsfield/Housatonic River Site;

WHEREAS the Transferees acknowledge having received a copy of the Consent Decree from Lessor;

WHEREAS the Transferees acknowledge that, as required by the Consent Decree, Lessor will, from time to time throughout the duration of the Lease, be conducting environmental investigations, evaluations, and remediation actions (collectively “response actions”) at, upon, and beneath the surface of the Premises, which response actions are subject to oversight by employees and contractors of the United States and the Commonwealth of Massachusetts (“the State”); and

WHEREAS the Transferees further acknowledge that Lessor will, at a future date, be required to record a legal deed restriction known in the Consent Decree as a “Grant of Environmental Restriction and Easement” (“ERE”) on the Premises, in accordance with

Paragraph 54 of the Consent Decree, which ERE is required to be substantially in the form attached as Appendix L to the Consent Decree (attached hereto as Exhibit C-2) with any modifications agreed upon by Lessor and the United States Environmental Protection Agency (“EPA”), after a reasonable opportunity for review and comment by the Massachusetts Department of Environmental Protection (“MDEP”), as appropriate for the specific area subject to the ERE.

NOW, THEREFORE, any provision in the Lease or other conveying documents notwithstanding, the Transferees agree as follows:

Access to Premises and Non-Interference with Response Actions

1. The Transferees consent to the officers, employees, agents, contractors, subcontractors, consultants, and other authorized representatives of the United States, the State, and Lessor entering and having continued access to the Premises for the following purposes:

- a. Taking soil, sediment, surface water, groundwater, and air samples as may be determined necessary;
- b. Sampling any solids or liquids stored or disposed of on the GE-Pittsfield Housatonic River Site;
- c. Drilling or excavating holes and installing borings and/or monitoring wells for subsurface investigation;
- d. Taking other actions related to the investigation of surface or subsurface contamination;
- e. Conducting remediation or other response actions to mitigate the hazards posed by polychlorinated biphenyls and other hazardous substances found at the GE-Pittsfield/Housatonic River Site;
- f. Overseeing the above activities being performed by Lessor; and
- g. Taking any other response actions or evaluating the need to take other response actions.

The Transferees realize that these actions will be undertaken pursuant to the United States’ response and enforcement authorities under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 *et seq.*, and the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, and the State’s response and enforcement authorities under M.G.L. ch. 21E, as amended.

2. The Transferees agree not to take any action, or allow any of the Transferees’ employees, agents, or independent contractors to take any action, at the Premises that would interfere with or adversely affect the implementation, integrity, or protectiveness of the response actions implemented or to be implemented pursuant to the Consent Decree.

Prohibition on Excavation Activities

3. The Transferees agree not to engage in any excavation, digging, drilling, or other intrusive activity into or disturbance of the surface of the ground and/or the underlying soil (collectively “excavation activities”) on the Premises, or allow any of the Transferees’ employees, agents, or independent contractors to engage in any excavation activities on the Premises.

Subordination of Leasehold Interest to ERE

4. The Transferees agree that, following the preparation of an ERE covering the Premises and prior to the execution and recording or registration of such ERE, the Transferees will, within 30 days of a request by Lessor and without charge to Lessor, direct the Owner Trustee (if the Owner Trust is then in existence) to subordinate its interest in the Lease to that ERE, and the Transferees themselves shall subordinate their interests in the Lease to that ERE, by the execution of subordination agreements substantially in the form attached as Appendix M to the Consent Decree, and attached hereto as Exhibit C-3.

5. Upon recordation or registration of an ERE covering the Premises, the Transferees agree as a condition of the Lease to comply with such ERE. The Transferees agree that any transfer, assignment, or sublease of their interest, including but not limited to the Direct Lease Transaction, shall contain provisions requiring such transferee, assignee, or sublessee to comply with such ERE.

Prohibition on Sublease or Assignment

6. a. Except for the potential Direct Lease Transaction and the sublease to PGC described herein, the Transferees shall not enter into, and shall not direct the Owner Trustee to enter into, any sublease respecting any portion of the Premises, nor shall the Transferees assign or transfer, or direct the Owner Trustee to assign or transfer, any of the Transferees’ interests in the Lease or any of the Transferees’ obligations contained in this Exhibit C, unless Lessor, on behalf of the Transferees, proposes to the United States and the State that there will be a further modification of the Consent Decree allowing such sublease, assignment or transfer, and such modification is agreed to.

b. Notwithstanding paragraph 6.a, above, the Transferees may, without further modification of the Consent Decree, enter into the Direct Lease Transaction, provided that nothing in the Direct Lease Transaction shall otherwise modify the Transferees’ obligations contained in this Exhibit C.

Termination

7. The obligations and agreements contained in this Exhibit C (except for the access consent in Paragraph 1 and the provisions of Paragraph 5) shall terminate as of the date on which the subordination agreements executed by Trustee and/or the Transferees, as required by Paragraph 5, are recorded or registered, which date shall occur concurrently with, or subsequent to, the date on which an ERE is recorded or registered on the Premises; provided, however, that the Transferees shall, from that point forward, comply with (and

shall direct the Owner Trustee to comply with, if the Owner Trust is then in existence) the provisions of the ERE. The access consent in Paragraph 1 of this Exhibit C and the provisions of Paragraph 5 shall extend for the duration of the Lease.

Authorization

8. The Transferees consent to the terms contained in this Exhibit C voluntarily with knowledge of the Transferees' right to refuse and without threats of any kind. The Transferees' signatures below confirm that the Transferees have authority to consent to these terms and that no other party needs to be consulted.

Public Document

9. The Transferees acknowledge that this Exhibit C as executed will be submitted to EPA and the State and that this Exhibit C will be a public, non-confidential document.

Pittsfield Power Holding Company LLC
By: _____
Title: _____
Date: _____

Pittsfield Power GP LLC
By: _____
Title: _____
Date: _____

Pittsfield Generating Company, L.P.

By: _____

Title: _____

Date: _____