TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY

(TOWN OF BETHLEHEM, NEW YORK)

AND

PSEG POWER NEW YORK INC.

AGREEMENT FOR PAYMENT

IN LIEU OF TAXES

DATED FEBRUARY 5, 2002

TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY
(PSEG POWER NEW YORK INC. 2002 FACILITY)

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AGREEMENT, made as of the 5th day of February, 2002, by and between PSEG POWER NEW YORK INC., a duly organized and validly existing Delaware corporation located in the Town of Bethlehem and authorized to do business in New York and having an office at 80 Park Plaza, Newark, New Jersey 07102 (the "Company"), and the TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation with an office at 445 Delaware Avenue, Delmar, New York 12054 (the "Agency").

WITNESSETH:

WHEREAS, Title 1 of Article 18-A of the General Municipal Law of the State of New York (the "Enabling Act") was duly enacted into law as Chapter 1030 of the Laws of 1969 of the State of New York; and

WHEREAS, the Enabling Act authorizes and provides for the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and dispose of land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial, industrial or civic facility purposes, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Enabling Act further authorizes each such agency to lease or sell any or all of its facilities, to issue its bonds, for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of and interest on any such

bonds so issued and any agreements made in connection therewith, to mortgage and pledge any or all of its facilities, whether then owned or thereafter acquired, and to pledge the revenues and receipts from the lease or sale thereof to secure the payment of such bonds and interest thereon; and —

WHEREAS, the Agency was created, pursuant to and in accordance with the provisions of the Enabling Act, by Chapter 582 of the Laws of 1973 of the State (collectively, with the Enabling Act, the "Act") and is empowered under the Act to undertake the Bethlehem Energy Center Project (as hereinafter defined) in order to so advance the job opportunities, health, general prosperity and economic welfare of the people of the State and improve their standard of living; and

WHEREAS, the Agency, by resolution adopted on April 26, 2001, determined to provide financial assistance for the Company's Bethlehem Energy Center Project consisting of the following: (1) the acquisition by the Agency of an interest in the existing electric generating facility known as the Albany Steam Station, including a portion of the switchyard (collectively, the "Albany Steam Station"), located on property roughly 84 acres in size along Route 144 in the Glenmont section in the Town of Bethlehem as more particularly described in Exhibit A attached hereto (the "Land"); (2) the construction on the Land of an electric generating plant, consisting of an approximately 92,000 square-foot heat recovery steam generation building, an approximately 16,000 square-foot turbine building, and an approximately 5,000 square-foot water treatment building, which would serve a nominal 750 megawatt, 763 megawatt summer rating, 800 megawatt winter rating (collectively, the "Megawatt Rating"), natural gas-fired

combined cycle turbine facility, utilizing three frame 7FA GE gas combustion turbines, the primary fuel for which would be natural gas with limited use of low sulfur distillate oil (0.04% sulfur) as a secondary fuel (collectively referred to as the "BEC Facility"); and (3) the acquisition by the Agency and the installation at and on the Land and at the Albany Steam Station and the BEC Facility of a variety of equipment, machinery, and other personal property (the "Equipment") (the Albany Steam Station, the Land, the BEC Facility and the Equipment are hereinafter collectively referred to as the "Facility"); and

WHEREAS, the Company has requested that the Agency provide the following financial assistance:

(A) The Agency will take title to the Facility and lease the Facility back to the Company as a straight-lease transaction as defined in Section 854(15) of the New York State General Municipal Law;

(B) The Agency will grant an exemption from state and local sales and use taxes with respect to the qualifying personal property portion of the Facility;

(C) The Agency will grant an exemption from mortgage recording tax; and

(D) The Agency will grant an exemption from general real property taxation with respect to the Facility, and the Company will pay certain contractual payments in lieu of taxes, as agreed to by the Company and the Agency, for the benefit of affected tax jurisdictions (such contemplated financial assistance as set forth in A,

B, C, and D herein being collectively hereinafter referred to as the "Financial Assistance").

WHEREAS, the Agency has agreed to provide Financial Assistance to the Company for the purpose of undertaking the improvement of the Facility; and

WHEREAS, on the date ("Closing Date") the Company executed and delivered a deed and bill of sale conveying title to the Facility to the Agency ("Company Transfer"), the Agency, as landlord, and the Company, as tenant, entered into a certain lease agreement (the "Lease Agreement"), pursuant to which the Company has agreed, among other things, to construct and install the BEC Facility and Equipment on behalf of the Agency, and to lease the Facility from the Agency on the terms and conditions set forth therein.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto hereby formally covenant, agree and bind themselves as follows, to wit:

1. **Representations and Covenants.**

(a) By the Company. The Company makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(i) The Company is a business corporation duly organized and validly existing under the laws of the State of Delaware, is in good standing under the laws of the State of Delaware and is authorized to do business in New York State and has full legal right, power

and authority to execute, deliver and perform this Agreement. This Agreement has been duly authorized, executed and delivered by the Company.

(ii) Neither the execution and delivery of this Agreement or the consummation of the transactions contemplated thereby nor the fulfillment of or compliance with the provisions of this Agreement, will (A) conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of any law, rule, regulation or order of any court or other agency or authority of government or ordinance of the State or any political subdivision thereof or of the Company's Certificate of Incorporation or By-laws, as amended, or any corporate restriction or any agreement or instrument to which the Company is a party or by which it is bound, or result in the creation or imposition of any Lien (as defined in Paragraph 22 hereof) of any nature upon any of the Property (as defined in Paragraph 22 hereof) of the Company under the terms of any such law, ordinance, Certificate of Incorporation or By-laws, as amended, restriction, agreement or instrument, (B) require consent (which has not been heretofore received) under any corporate restriction, agreement or instrument to which the Company is a party or by which the Company or any of its Property may be bound or affected, or (C) require consent (which has not been heretofore obtained) under or conflict with or violate any existing law, rule, regulation, judgment, order, writ, injunction or decree of any government, governmental instrumentality or court (domestic or foreign) having jurisdiction over the Company or any of the Property of the Company, other than the approval of the Article X Application (as defined in Paragraph 22 hereof) and any other governmental or judicial approvals not required as of the Closing Date, including but not limited to any approval from the

Federal Energy Regulatory Commission in connection with the construction and operation of the Facility. The Facility and the design, acquisition, construction and equipping and operation thereof will conform with all applicable zoning, planning, building and environmental laws, ordinances, rules and regulations of governmental authorities having jurisdiction over the Facility. The Company shall defend, indemnify and hold harmless the Agency for expenses, including reasonable attorneys' fees, resulting from any failure by the Company to comply with the provisions of this subparagraph.

(iii) This Agreement constitutes a legal, valid and binding obligation of the Company enforceable against the Company in accordance with its terms.

(iv) As of the Closing Date, no litigation at law or in equity or proceeding before any federal, State or local governmental agency involving the Company is pending or, to the best of its knowledge, after due inquiry, threatened, in which any judgment or order would have a material adverse effect upon the business or assets of the Company or that would affect the Company's existence or authority to do business, the development, acquisition, rehabilitation, or operation of the Facility or the performance of any of its obligations hereunder.

(b) By the Agency. The Agency makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(i) The Agency is duly established and validly existing under the provisions of the Act and has full legal right, power and authority to execute, deliver and perform

this Agreement. This Agreement has been duly authorized, executed and delivered by the Agency.

(ii) Neither the execution and delivery of this Agreement or the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agreement, will conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of the Act, any other law, rule, regulation or order of any court or other agency or authority of government or ordinance of the State or any political subdivision thereof or of the Agency's Certificate of Establishment or By-laws, as amended, or of any corporate restriction or any agreement or instrument to which the Agency is a party or by which it is bound, or result in the creation or imposition of any Lien of any nature upon any of the Property of the Agency under the terms of the Act or any such law, ordinance, Certificate of Establishment, By-laws, restriction, agreement or instrument.

(iii) This Agreement constitutes a legal, valid and binding obligation of the Agency enforceable against the Agency in accordance with its terms.

(iv) As of the Closing Date, no litigation at law or in equity or proceeding before any Federal, State or local governmental agency involving the Agency is pending or, to the best of its knowledge, after due inquiry, threatened, challenging the Agency's authority to enter into this Agreement or any other action wherein an unfavorable ruling or finding would adversely affect the enforceability of this Agreement or any other transaction of the Agency which is similar hereto, or would materially and adversely affect any of the transactions contemplated by this Agreement.

2. **Tax Exempt Status of Facility.**

(a) Assessment of Facility. Pursuant to Section 874 of the Act and Section 412-a of the New York Real Property Tax Law ("RPTL"), the parties hereto understand that, upon the first assessment roll of the Town of Bethlehem (the "Town") after the first taxable status date of the Town after the Company Transfer and the execution and delivery of the Lease Agreement between the Agency and the Company, and for so long thereafter as the Facility is under the jurisdiction, control or supervision of the Agency, the Facility (i) shall be assessed by the Town and by the various other taxing entities which hereafter may have assessment jurisdiction over the Facility including without limitation the Bethlehem Central School District ("School District"), the County of Albany ("County") and any other political unit wherein the Facility is located (all of such taxing entities being hereinafter collectively referred to as "Taxing Entities" and individually referred to as a "Taxing Entity") and (ii) should be listed as exempt upon the assessment rolls of the respective Taxing Entities. The Company shall, promptly following the Company Transfer and the execution and delivery of the Lease Agreement, take such action as may be necessary to ensure that the Facility shall be assessed and listed as exempt upon the assessment rolls of the respective Taxing Entities prepared subsequent to the Company Transfer and the execution and delivery of the Lease Agreement (including without limitation ensuring that a form RP-412-a relating to the Facility is filed with the Town Assessor and with each other assessor charged with preparing the assessment rolls for the various Taxing Entities) and for so long thereafter as the Facility is under the jurisdiction, control or supervision of the Agency, but in no event after the Agency transfers title to the Facility to the Company. The Company shall take such further action as may be necessary to maintain such exempt

assessment. The Agency agrees to use its best efforts to assist the Company to both obtain and maintain such exempt assessment. As part of the parties' obligations hereunder with respect to obtaining and maintaining an exempt assessment for the Facility, the parties approve the "Instructions to Assessor" attached as Exhibit B hereto, and the Agency agrees to present these "Instructions to Assessor" to the Town Assessor promptly following the execution and delivery of this Agreement. Notwithstanding the foregoing, neither party agrees or admits that the fair market value of the Facility is the value(s) set forth on Exhibit B. The parties hereto understand that the Facility will not be entitled to such exempt status on the tax rolls until after the Town's March 1, 2002 taxable status date.

(b) Special District Assessments. The parties hereto understand that the tax exemption that is being extended to the Agency by Section 874(1) of the Act and Section 412-a of the RPTL does not entitle the Agency to exemption from special assessments and special ad valorem levies. The Company shall pay all special assessments and special ad valorem levies (collectively, the "Special District Assessments") lawfully levied and/or assessed against the Facility for any special improvement districts or special districts (collectively, the "Special Districts"), but such Special District Assessments paid by the Company shall be credited against the PILOT Payments (as defined in Paragraph 3(b) below) for the same year in which the Special District Assessments are paid. Notwithstanding the foregoing and except as may be otherwise agreed between the parties, all Special District Assessments paid by the Company each year shall be credited against and deducted from the PILOT Payments as follows:

(i) All Special District Assessments for the Bethlehem Public Library and any other such charges which are or may be listed on the annual School District tax bill, which is currently issued each year in September ("School District Special District Assessments") shall be deducted from the School District's portion of the PILOT Payments due the same year as set forth in Paragraph 3(b).

(ii) All other Special District Assessments (other than School District Special District Assessments) which are or may be listed on the annual Town and County tax bill, which is currently issued each year in January or which may be billed separately, shall be deducted from the Town's portion of the PILOT Payments due the same year as set forth in Paragraph 3(b). Such Special District Assessments currently include the Selkirk Fire Department and the Bethlehem Ambulance.

(c) Additional Megawatt Facilities. This Agreement applies to the Facility, and the PILOT Payments shall not increase or decrease based on the construction cost of the Facility or any modifications, repairs, additions or deletions thereto so long as no additional structures or facilities are added to the Facility which would increase the Megawatt Rating (the "Additional Megawatt Facilities"). Notwithstanding anything herein to the contrary, the parties hereto agree that in the event the Company decides to construct any Additional Megawatt Facilities, this Agreement shall not apply to any such Additional Megawatt Facilities, and the Company will approach the Agency for purposes of entering into a separate written agreement regarding payments in lieu of taxes with respect to such Additional Megawatt Facilities. In the event the Agency and the Company agree to enter into such a separate written agreement, the

provisions of such agreement shall control with respect to payments in lieu of taxes relating to the Additional Megawatt Facilities. If the parties cannot reach agreement, then such Additional Megawatt Facilities shall not be entitled to the exemption from taxes as provided for in the Act.

3. **Payments in Lieu of Taxes.**

(a) Prior Tax Payments. The parties acknowledge that the Company (i) has paid all real property taxes and assessments payable to all Taxing Entities with respect to the Facility for the calendar year 2002, (ii) has paid all real property taxes payable to the School District with respect to the Facility for the School District's fiscal year of July 1, 2001 to June 30, 2002 and (iii) will pay the real property taxes and assessments payable to the Town, County and Special Districts with respect to the Facility for the fiscal tax year of each of the Town, County and Special Districts of January 1, 2002 to December 31, 2002 as otherwise agreed to by the Company and the Town.

(b) Agreement to Make PILOT Payments. The Company agrees that it shall make annual payments in lieu of property taxes (the "PILOT Payments") to the Agency on behalf of the respective Taxing Entities in the amounts hereinafter provided. For the School District fiscal year beginning July 1, 2002, and ending June 30, 2003, and provided the Facility is then owned by the Agency, the Company shall, on or before September 30, 2002, make PILOT Payments to the Agency in the amount of $3,370,541.00 for the School District and $231,445.00 for the Bethlehem Public Library. Commencing with calendar year 2003 and the Town/County/Special District fiscal tax years beginning January 1, 2003, and continuing through and including the last day of the calendar year 2023, so long as the Facility is owned by the

Agency, the Company shall make the following PILOT Payments for the following calendar years, except as may be reduced by credits for Special District Assessments as provided for above:

Schedule of PILOT Payments

Note: Special District Assessments paid by the Company shall be deducted from the PILOT Payments described below.

Calendar Year	Town PILOT Payments[1]	School District PILOT Payments[2]	Total
2003	$800,000	$3,200,000	$4,000,000
2004	$575,000	$2,300,000	$2,875,000
2005	$589,375	$2,357,500	$2,946,875
2006	$604,109	$2,416,438	$3,020,547
2007	$619,212	$2,476,849	$3,096,061
2008	$634,692	$2,538,770	$3,173,462
2009	$650,560	$2,602,239	$3,252,799
2010	$666,824	$2,667,295	$3,334,119
2011	$683,494	$2,733,978	$3,417,472
2012	$700,582	$2,802,326	$3,502,908
2013	$718,096	$2,872,385	$3,590,481
2014	$736,049	$2,944,194	$3,680,243
2015	$754,450	$3,017,799	$3,772,249
2016	$773,311	$3,093,244	$3,866,555
2017	$792,644	$3,170,575	$3,963,219
2018	$812,460	$3,249,840	$4,062,300
2019	$832,771	$3,331,086	$4,163,857
2020	$853,591	$3,414,363	$4,267,954
2021	$874,931	$3,499,722	$4,374,653
2022	$896,804	$3,587,215	$4,484,019
2023	$919,224	$3,676,895	$4,596,119

[1] "Town PILOT Payments" are 20% of each annual PILOT Payment to the Agency, for the benefit of the Town and the County, and any special improvement district in which the Facility may be located except for any such district formed by or on behalf of the School District.

[2] "School District PILOT Payments" are 80% of each annual PILOT Payment to the Agency, for the benefit of the School District and the Bethlehem Public Library and any other special improvement district formed by or on behalf of the School District.

(c) Payments after December 31, 2023. Beginning in 2024 and thereafter for so long as the Facility is owned by the Agency, the January and September PILOT Payments shall be equal to the product of the then current assessed value of the Facility as provided for in and established pursuant to RPTL § 520 or any other applicable law, and (taking into account any exemption available under applicable law) as determined by the Town, multiplied by the then current applicable tax rates for the applicable Taxing Entities.

(d) Additional PILOT Payments Based on BEC Facility Performance.

(i) In addition to the PILOT Payments described in Paragraphs 3(b) and (c) above, the Company agrees that it will make additional PILOT Payments in accordance with this subparagraph. If the BEC Facility operates at an average capacity factor percentage above 80% (the "Baseline Capacity Factor") for any two-year period preceding the year of possible payment, the PILOT Payments will increase by $100,000 for each 1% of actual capacity factor performance (the "Actual Capacity Factor") above the Baseline Capacity Factor (the "Performance Contingency Payment"), but such Performance Contingency Payments shall not exceed $1,000,000 in any year. The Performance Contingency Payments shall be adjusted to include any fraction of 1%, e.g., if the average Actual Capacity Factor were 81.5%, the Performance Contingency Payment would be $150,000.

(ii) The Actual Capacity Factor shall be determined over a two year period from July 1 of each year, beginning with the first full calendar year of commercial

operation, to June 30 of the second successive year thereafter (the "Actual Capacity Factor Performance Period").

(iii) The Actual Capacity Factor for the BEC Facility shall be a percentage determined by dividing (A) the actual output of electricity measured in megawatt hours by the BEC Facility during the Actual Capacity Factor Performance Period, measured at the "delivery point," which is the point of interface between the Niagara Mohawk Power Corporation transmission system and the BEC Facility, by (B) the product of the average megawatt capability of the BEC Facility (namely 781 megawatts) multiplied by the total hours over the Actual Capacity Factor Performance Period (using 8760 hours per year for 2 years except that 8784 hours shall be used when the February during any Actual Capacity Factor Performance Period occurs in a leap year). Thus:

$$\text{Actual Capacity Factor} = \frac{\text{Measured plant generation (Mwh)}}{\text{Plant capacity (MW) x hours in an Actual Capacity Factor Performance Period}}$$

(iv) The determination shall be made within sixty days after each Actual Capacity Factor Performance Period.

(v) These Performance Contingency Payments shall be payable, if applicable, to the Agency beginning in the third full calendar year after the BEC Facility commences commercial operation and shall be split with 80% payable in September and 20% payable in the following January when the PILOT Payments are made. In addition, the

Company shall include with the payments a calculation of the Performance Contingency Payments. The Agency will allocate and distribute any such payments to the Taxing Entities in the same percentage shares as the PILOT Payments. The parties presently anticipate commencement of commercial operations of the BEC Facility in 2004, and therefore, based on that, these Performance Contingency Payments would first be calculated in July/August 2007 based on two full years of operation in 2005 and 2006 and be payable, on an allocated basis, in September 2007 and January 2008.

(vi) There will be no Performance Contingency Payments during any period of time in which the BEC Facility is operating because of a regulatory requirement to operate when the Company otherwise would not have elected to so operate.

(vii) Any Performance Contingency Payments will not be increased or decreased because of any modifications, repairs, additions or deletions to or from the BEC Facility, or any increase or decrease in the currently estimated construction cost thereof, so long as the Megawatt Rating is not increased.

(viii) This provision for Performance Contingency Payments shall not apply to the operations of the existing Albany Steam Station.

(e) Billing and Time of Payments. Except for the September 2002 PILOT Payment and any PILOT Payments in 2024 or thereafter, the Company shall make the annual PILOT Payments set forth in Paragraph 3(b) and (d) in two installments as set forth therein. The first 20% installment (the "Town PILOT Payments") shall be payable by the Company not later

than January 30 of each calendar year. The second 80% installment (the "School PILOT Payments")shall be payable by the Company not later than September 30 of each such calendar year. The Agency shall send bills to the Company for each installment, with the bill for the January installment to be issued on or about January 1 and the bill for the September installment to be issued on or about September 1, beginning with a bill for the September 2002 PILOT Payment. The Agency shall distribute any portion of the PILOT Payments received from the Company to any other Taxing Entity entitled to a portion thereof. The Company shall have no obligation to ensure appropriate distributions by the Agency and shall be deemed released from any further obligations for any such payment once it is made to the Agency.

(f) Method of Payments. All payments by the Company hereunder shall be paid in lawful money of the United States of America.

(g) Fiscal Year. Each PILOT Payment covers the fiscal year of each Taxing Entity in which the payment date for the PILOT Payment occurs.

4. **Late Payments.**

(a) First Month. Pursuant to Section 874(5) of the Act, if the Company shall fail to make any payment required by this Agreement when due, the Company shall pay the same, together with a late payment penalty equal to five percent (5%) of the amount due.

(b) Thereafter. If the Company shall fail to make any payment required by this Agreement when due and such delinquency shall continue beyond the first month, the Company's obligation to make the payment so in default shall continue as an obligation of the

Company until such payment in default shall have been made in full, and the Company shall pay the same together with (1) a late payment penalty of one percent (1%) per month on the delinquent amount for each month, or part thereof, that the payment due thereunder is delinquent beyond the first month, plus (2) interest thereon, to the extent permitted by law, at the greater of (a) one percent (1%) per annum, or (b) the rate per annum which would be payable if such amount were delinquent taxes, until so paid in full.

(c) Distributions by Agency to Taxing Entities. Any penalties or interest due to any Taxing Entity for late payment or distribution of any PILOT Payment shall be paid by the Agency and not the Company, provided the Company has made any such PILOT Payment in a timely manner or has paid any penalty or interest due thereon as set forth in subparagraphs (a) and (b) above.

5. **Credit for Taxes Paid.**

(a) The parties agree that should under any subsequently adopted State or local law the Company pay in any calendar year to any Taxing Entity any amounts in the nature of general property taxes, general assessments, service charges or other general governmental charges of a similar nature levied and/or assessed upon the Facility or the interest therein of the Company or the occupancy thereof by the Company (but not including (i) sales and use taxes, and (ii) special assessments of any nature, special ad valorem charges of any nature or governmental charges in the nature of utility charges, including, but not limited to, water, solid waste, sewage treatment or sewer or other rents, rates and charges), then the Company's obligation hereunder to make PILOT Payments in such calendar year shall be reduced by the

amounts which the Company shall have so paid or be obligated to pay to such Taxing Entity in such calendar year. If the Company desires to claim a credit against any particular PILOT Payment due hereunder, the Company shall give the governing body of the affected Taxing Entity and the Agency prior written notice of its intention to claim any credit pursuant to the provisions of this Paragraph 5, such notice to be given by the Company at least 10 days prior to the final date on which such PILOT Payment is due pursuant to the provisions of Paragraph 3.

(b) In the event that all, or substantially all, of the Facility is declared to be subject to taxation for real property taxes or assessments (other than special assessments) by an amendment to the Act, other legislative charge, or by a final judgment of a court of competent jurisdiction, the obligations of the Company hereunder shall be null and void.

6. **Characterization of PILOT Payments.** The parties acknowledge that in the New York Public Service Commission ("Commission") Order dated April 18, 2000, approving the sale of the Albany Steam Station to the Company, the Commission determined that the purchase price for the Albany Steam Station established the fair market value thereof. (Case 94-E-9-0098, pg. 28). The parties also acknowledge that if the Town and other Taxing Entities levied taxes on the existing Albany Steam Station based upon the Commission's determination that the Albany Steam Station's fair market value is represented by the purchase price the Company paid for such facility, the total real property taxes, special assessments and special ad valorem levies thereon by the Taxing Entities (collectively, the "Taxes") for years 2000 through 2003 would be substantially less than the PILOT Payments for 2002-2003 as described in Paragraph 3 hereof or the taxes for 2000-2001 as described in that certain Memorandum of

Understanding dated as of May 31, 2001 among negotiators for the Company and the Agency (the "MOU"). The parties also acknowledge (without agreeing thereto) that the most current appraisal of the fair market value of the Albany Steam Station and other real property located adjacent thereto by the New York Office of Real Property Services ("ORPS") includes a value based upon the cost valuation methodology of $82.6 million. The Agency acknowledges that to the extent such PILOT Payments provided for in Paragraph 3 hereof or the taxes provided for in the MOU exceed an appropriate level of Taxes on the Albany Steam Station, such excess constitutes a community benefit to the respective Taxing Entities. The Company acknowledges that, notwithstanding the foregoing, the Agency and the Taxing Entities will treat the full amount of the PILOT Payments as payments in lieu of taxes, special assessments and special ad valorem levies. If the Taxes were based upon the ORPS value as indicated above, the community benefit difference between such estimated Taxes and the PILOT Payments or taxes provided for herein and in the MOU is as follows:

Year	Approximate Taxes Based on ORPS Value of $82.6 million	PILOT Payments or Taxes per this Agreement and the MOU	Community Benefit
2000	$1,980,000	$5,500,000	$3,520,000
2001	$2,065,000	$5,000,000	$2,935,000
2002	$2,150,000	$4,500,000	$2,350,000
2003	$2,230,000	$4,000,000	$1,770,000

7. **Grievance Proceeding**. This Agreement in no way waives any right of the Company or the Agency to at any time initiate a grievance proceeding, or to otherwise challenge the assessed valuation of the Facility as determined by the Town Assessor or the assessor of any other Taxing Entity. The Agency acknowledges that the Company shall be deemed to be "a person whose property is assessed" or "a person authorized in writing" as provided in Section 524 of the RPTL and an "aggrieved person" as provided in Article 7 of the RPTL. Except as otherwise provided in Paragraph 5, the results of any grievance proceeding or other challenge to the assessed valuation of the Facility shall not reduce or otherwise affect the PILOT Payments to be made by the Company pursuant to Paragraph 3(b) or (d).

8. **No Agency Representation.** Notwithstanding anything to the contrary contained herein, the parties hereto acknowledge and agree that the Agency has neither made nor hereby makes any representation or warranty to the Company as to the availability of, or entitlement of any person to, any exemption from taxation by any governmental body under the laws of the State for the Facility or any of the transactions contemplated herein.

9. **Transfer of Title to Company.** Title to the Facility may be conveyed by the Agency to the Company (the "Agency Transfer") pursuant to the terms and provisions of the Lease Agreement. In the event of an Agency Transfer, the following provisions shall apply:

(a) After the date of the Agency Transfer, the Facility shall become subject to taxes and assessments in accordance with RPTL Sections 302 and 520. Notwithstanding the foregoing, there shall be deducted from such taxes and assessments any PILOT Payments

previously paid pursuant to this Agreement by the Company relating to any period of time after the date of the Agency Transfer. If any Taxing Entity refuses to permit such a deduction, the Company shall be entitled to receive and collect from any such Taxing Entity the amount which would have been deductible pursuant to the terms hereof within thirty (30) days of such refusal.

(b) The PILOT Payments provided for herein shall no longer apply or be payable in connection with the Facility, and this Agreement shall terminate, except that the provisions of this Paragraph and Paragraphs 10 and 13 shall survive any such termination.

(c) Neither the Agency nor any of the Taxing Entities shall be entitled to collect or receive any taxes and assessments on the Facility other than the PILOT Payments provided for herein related to the period of time before the Agency Transfer, provided the Company has made such payments and has paid the Agency's reasonable and necessary fees and expenses as provided for in the Lease Agreement.

(d) The Company shall not be entitled to any refund of PILOT Payments provided for herein and paid by the Company, except as provided in Paragraph 9(a) above.

10. **No Recourse; Limited Obligation of Agency.**

(a) No Recourse. All covenants, stipulations, promises, agreements and obligations (collectively, the "Obligations") of the Agency contained in this Agreement shall be deemed to be the Obligations of the Agency and not of any member, officer, servant or employee of the Agency (collectively, the "Employee of the Agency") in his individual capacity, and no recourse under or upon any Obligation contained in this Agreement, or for any claim based

thereon or otherwise in respect hereof, shall be had against any past, present or future Employee of the Agency, as such, or of any successor public benefit corporation or political subdivision or any person so executing this Agreement on behalf of the Agency, either directly or through the Agency or any successor public benefit corporation or political subdivision or any person executing this Agreement, it being expressly understood that this Agreement contains solely corporate obligations, and that no such personal liability whatever shall attach to, or is or shall be incurred by any such Employee of the Agency or of any successor public benefit corporation or political subdivision or any person so executing this Agreement or under or by reason of the Obligations, contained in this Agreement or implied therefrom; and that any and all such personal liability of, and any and all such rights and claims against, every Employee of the Agency because of the Obligations contained in this Agreement implied therefrom, are, to the extent permitted by law, expressly waived and released as a condition of, and as a consideration for, the execution of this Agreement.

(b) Limited Obligation. Except for the last sentence of Paragraph 9(a) hereof, the Obligations and agreements of the Agency contained herein shall not constitute or give rise to any obligation of the State of New York or of the Town of Bethlehem, New York and neither the State of New York, nor the Town of Bethlehem, New York shall be liable thereon, and further, such Obligations shall not constitute or give rise to a general obligation of the Agency, but rather shall constitute limited obligations of the Agency payable solely from the revenues of the Agency derived and to be derived from the lease or other disposition of the Facility.

(c) Further Limitation. Notwithstanding any provision of this Agreement to the contrary, no order or decree of specific performance with respect to any of the obligations of the Agency hereunder shall be sought or enforced against the Agency unless (i) the party seeking such order or decree shall first have requested the Agency in writing to take the action sought in such order or decree of specific performance, and ten (10) days shall have elapsed from the date of receipt of such request, and the Agency shall have refused to comply with such request (or, if compliance therewith would reasonably be expected to take longer than ten (10) days, shall have failed to institute and diligently pursue action to cause compliance with such request within such ten (10) day period) or failed to respond within such notice period, (ii) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it will incur fees and expenses, the party seeking such order or decree shall have placed in an account with the Agency an amount sufficient to cover such reasonable fees and expenses, and (iii) if the Agency refuses to comply with such request and the Agency's refusal to comply is based on its reasonable expectation that it or any of its members, officers, agents or employees shall be subject to potential liability, the party seeking such order or decree shall (x) agree to indemnify and hold harmless the Agency and its members, officers, agents and employees against any liability incurred as a result of its compliance with such request, and (y) if requested by the Agency, furnish to the Agency satisfactory security to protect the Agency and its members, officers, agents and employees against all liability expected to be incurred as a result of compliance with such request; provided, however, that no limitation on the obligations of the Agency contained in this Paragraph by virtue of any lack of assurance provided in subparagraph (c)(ii) hereof shall be deemed to prevent the occurrence and full force and effect of

any default hereunder. The limitations provided for in subparagraphs (c)(ii)-(iv) shall not apply to the Agency's obligation to distribute PILOT Payments as provided for in Paragraph 3(e) and to pay penalties or interest as provided for in Paragraph 4(c).

(d) Agency Reliance. The Agency may rely conclusively on any notice, certificate or other document furnished to it under this Agreement and reasonably believed by it to be genuine. Except for the Agency's obligations under Paragraphs 3(e) and 4(c), the Agency shall not be liable for any action taken by it in good faith and reasonably believed by it to be within the discretion or power conferred upon it, or in good faith omitted to be taken by it and reasonably believed to be beyond such discretion or power, or taken by it pursuant to any direction or instruction by which it is governed under this Agreement, or omitted to be taken by it by reason of the lack of direction or instruction required for such action under this Agreement, and shall not be responsible for the consequences of any error of judgment reasonably made by it. A permissive right or power to act shall not be construed as a requirement to act, and no delay in the exercise of a right or power shall affect the subsequent exercise thereof. The Agency shall in no event be liable for the application or misapplication of funds or for other acts or defaults by any person except by its own members, officers and employees.

11. **Events of Default.** Any one or more of the following events shall constitute an event of default under this Agreement, and the terms "Event of Default" or "Default" shall mean, whenever they are used in this Agreement, any one or more of the following events:

(a) Failure of the Company to pay or cause to be paid any amount due and payable by it pursuant to this Agreement and continuance of said failure for a period of thirty

(30) days after written notice to the Company stating that such payment is due and payable. Any such notice shall identify, with reasonable detail, the amount of the payment which is due, the payee, the due date, and the basis or requirement for such payment.

(b) Failure of the Company to observe and perform any other covenant, condition or agreement hereunder on its part to be observed or performed (other than as referred to in Paragraph (a) above) and continuance of such failure for a period of thirty (30) days after written notice to the Company requesting that it be remedied; provided that if such default cannot reasonably be cured within such thirty (30) day period and if the Company shall have commenced action to cure the default within said thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for so long as the Company shall require in the exercise of due diligence to cure such default. Any such notice shall describe, in reasonable detail, the nature of the default and the basis or requirement for action or performance by the Company for which the Agency has determined the Company to be in default.

(c) An Event of Default under and as defined in the Lease Agreement.

12. **Remedies on Default.**

(a) General. Whenever any Event of Default shall have occurred with respect to this Agreement, the Agency may take whatever action at law or in equity as may appear necessary or desirable to collect the amount then in default or to enforce the obligations, agreements or covenants of the Company under this Agreement; provided, however, that the Agency shall not be entitled to sell the Facility.

(b) Lease Agreement. In addition, an Event of Default hereunder shall constitute an event of default under the Lease Agreement. Upon the occurrence of an Event of Default hereunder resulting from a failure of the Company to make any payment required hereunder, the Agency shall have, as a remedy therefor under the Lease Agreement, among other remedies, the right to terminate the Lease Agreement and convey the Facility to the Company, thus subjecting the Facility to immediate full taxation pursuant to RPTL Section 520.

(c) Separate Suits. Each such Event of Default shall give rise to a separate cause of action hereunder and separate suits may be brought hereunder as each cause of action arises.

(d) Venue. The Company irrevocably agrees that any suit, action or other legal proceeding arising out of this Agreement may be brought in the courts of record of the State, consents to the jurisdiction of each such court in any such suit, action or proceeding, and waives any objection which it may have to the laying of the venue of any such suit, action or proceeding in any of such courts.

13. **Payment of Attorney's Fees and Expenses**. Pursuant to Section 874(6) of the Act, if the Company should default in performing any of its obligations, covenants or agreements under this Agreement and the Agency or any Taxing Entity should employ attorneys or incur other expenses for the collection of any amounts payable hereunder or for the enforcement of performance or observance of any obligation, covenant or agreement on the part of the Company herein contained, the Company agrees that it will, on demand therefor, and provided the Agency or Taxing Entity is successful in such collection effort, pay to the Agency or such Taxing Entity,

as the case may be, not only the amounts adjudicated due hereunder, together with the late payment penalty and interest due thereon, but also the reasonable fees and disbursements of such attorneys and all other expenses, costs and disbursements so incurred, whether or not an action is commenced.

14. **Remedies; Waiver and Notice.**

(a) No Remedy Exclusive. No remedy herein conferred upon or reserved to the Agency or any Taxing Entity is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity.

(b) Delay. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

(c) Notice Not Required. In order to entitle the Agency or any Taxing Entity to exercise any remedy reserved to it in this Agreement, it shall not be necessary to give any notice, other than such notice as may be expressly required in this Agreement or the Lease Agreement or applicable law.

(d) No Waiver. In the event any agreement herein should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

(e) Paragraph Headings Not Controlling. The headings of the several Paragraphs in this Agreement have been prepared for convenience of reference only and shall not control or affect the meaning of or be taken as an interpretation of any provision of this Agreement.

15. **Notices**. All notices, demands, certificates and other communications hereunder shall be in writing and shall be either delivered personally or sent by certified mail, postage prepaid, return receipt requested, addressed as follows or to such other address as any party may specify in writing to the other:

To the Agency:

Town of Bethlehem Industrial Development Agency
445 Delaware Avenue
Delmar, New York 12054
Attention: Chairman

With a copy to:

McNamee, Lochner, Titus & Williams, P.C.
75 State Street
P.O. Box 459
Albany, New York 12201-0459
Attention: Thomas P. Connolly, Esq.

To the Company:

PSEG Power New York Inc.
80 Park Plaza
Newark, New Jersey 07102
Attention: Legal Department

and

PSEG Power New York Inc.
80 Park Plaza, Mail Code T6B
Newark, New Jersey 07102
Attention: Manager – Corporate Properties

and

PSEG Power New York Inc.
c/o Albany Steam Station
Rt. 144
Glenmont, New York 12077
Attention: Plant Manager

With a copy to:

Nixon Peabody LLP
Clinton Square
P.O. Box 31051
Rochester, New York 14603-1051
Attention: John B. Hood, Esq.

16. **Amendment, Changes and Modifications of Agreement.** This Agreement may not be amended, changed, modified, altered or terminated except in writing executed by the parties hereto. Notwithstanding anything herein to the contrary, any amendment which changes, modifies or alters the allocation of the PILOT Payments described herein shall not be effective without the approval of the party against whom enforcement of the change, modification or alteration is sought.

17. **Applicable Law.** This Agreement shall be governed exclusively by the applicable laws of the State without regard or reference to its conflicts of laws principles.

18. **Binding Effect; Assignment.**

(a) This Agreement shall inure to the benefit of and shall be binding upon the parties and their respective successors and assigns. The provisions of this Agreement are intended to be for the benefit of the Company, the Agency and the respective Tax Entities.

(b) This Agreement may be assigned by the Company without the consent of the Agency. The Company shall provide written notice of any assignment to the Agency prior to the effective date of such assignment. Any assignment shall be on the following conditions, as of the time of such assignment:

(i) No assignment shall relieve the Company from secondary liability for any of its obligations hereunder in the event that the assignee shall default in its obligations hereunder or under this Agreement following a material breach which remains uncured for the requisite period and following the exercise by the Agency of its remedies hereunder and pursuant to the Lease Agreement;

(iii) Any assignee shall assume the obligations of the Company hereunder;

(iv) The Company shall, within ten (10) business days after the delivery thereof, furnish or cause to be furnished to the Agency a true and complete copy of each the assignment and the instrument of assumption;

(v) The proposed assignee's use of the Facility shall constitute a "project" under the Act; and

(vi) No Event of Default exists under this Agreement.

(c) It is anticipated that the Company may pledge and assign its rights to and interest in this Agreement to the Lender (as defined in the Lease Agreement) as security for the payment of the principal of and interest on the Loans (as defined in the Lease Agreement). The Agency hereby acknowledges and consents to such pledge and assignment by the Company.

19. **Company to Maintain Its Existence; Conditions Under Which Exceptions Permitted.** The Company agrees that during the term of this Agreement the Company will maintain its corporate existence, will not dissolve or otherwise dispose of all of its assets and will not consolidate with or merge into another corporation or permit one or more corporations to consolidate with or merge into it; provided, however, that if no Event of Default specified herein shall have occurred and be continuing, the Company may consolidate with or merge into another domestic corporation organized and existing under the laws of one of the states of the United States of America, or permit one or more such domestic corporations to consolidate with or merge into it, or sell or otherwise transfer to another such domestic corporation, all or substantially all of its assets as an entirety, provided (a) that the surviving, resulting, or transferee corporation, as the case may be, is incorporated under the laws of the State or qualifies to do business in the State, and (b) that the surviving, resulting or transferee corporation, as the case may be, assumes in writing all of the obligations of and restrictions on the Company under this Agreement and any other agreement securing the Company's performance of its obligations hereunder.

20. **Severability.** In the event any immaterial provision of this Agreement shall for any reason be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof. In the event any material provision of this Agreement is so held to be invalid or unenforceable, the parties shall negotiate in good faith to attempt to amend this Agreement to accomplish the objectives contemplated herein.

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

22. **Definitions.** All capitalized terms used in this Agreement and not otherwise defined shall have the meanings assigned below:

- "Article X Application" means the application by the Company to the New York State Board on Electric Generating Siting and the Environment for a Certificate to Construct the Facility pursuant to Article X of the Public Service Law.

- "Lien" means any interest in Property securing an obligation owed to a Person, whether such interest is based on the common law, statute or contract, and including but not limited to the security interest arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term "Lien" includes reservations, exceptions, encroachments, easements, rights-of-way, covenants, conditions, restrictions, leases and other similar title exceptions and encumbrances, including but not limited to mechanics',

materialmen's, warehousemen's, carriers' and other similar encumbrances, affecting real property. For the purposes of this definition, a Person shall be deemed to be the owner of any Property which it has acquired or holds subject to a conditional sale agreement or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

- "Property" means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

23. **Energy Reimbursement Payments.** The Company shall make energy reimbursement payments ("Energy Reimbursement Payment") to the Agency, which shall be used by the Agency for its economic development purposes and activities. Such payments shall be made by the Company as soon as practicable after the end of each Quarter (as defined herein) of each Contract Year (as defined herein) following the receipt of all necessary data by the Company to calculate such payments as provided for herein:

(a) Each payment shall be accompanied by the actual calculation of such payment utilizing the following formula:

- *Energy Reimbursement Payment* = [Five Percent Discount] × [Generator Weighted DAM LBMP Clearing Price for the BEC Facility Bus for the Quarter] × [Agency Load] × [BEC Facility Capacity Factor for the Quarter] × hours in the Quarter x [85% efficiency factor for the First Discount Period and Second Discount Period, and 75% efficiency factor for the Third Discount Period and following the Third Discount Period]

(b) The following definitions shall apply to the provisions for Energy Reimbursement Payments in this paragraph:

- "BEC Facility" means the combined cycle plant constructed on the Land. The BEC Facility nameplate capability is 763 megawatts for the summer capability period (May through October) and 800 megawatts for the winter operating period (November through April).

- "Five Percent Discount" means five percent (5%) of the price posted by the New York Independent System Operator ("NYISO") Day Ahead Market ("DAM") Locational Based Marginal Price ("LBMP").

- "Generator Weighted DAM LBMP Clearing Price for the BEC Facility Bus for the Quarter" means the sum of the products for the Quarter of the NYISO DAM LBMP for each hour in which the BEC Facility generates power multiplied by the megawatts generated during the hour with that sum divided by the total megawatt hours generated during each of said hours for the Quarter (e.g., [[$3 DAM LBMP Clearing Price for hour ending 1 on 10/1/04 x 10 megawatts generated for the hour] + [$6 DAM LBMP Clearing Price for hour ending 2 on 10/1/04 x 20 megawatts generated for the hour]] ÷ [30 megawatt hours generated for the period] = $5 generator weighted DAM LBMP clearing price for the BEC Facility bus.

- "Contract Year" means the 12 month period starting with the first full calendar month of commercial operation of the BEC and each successive 12 month period thereafter during the term of this Agreement.

- "Quarter" means the successive three month periods in each Contract Year, beginning with the first day of each Contract Year.

- "Agency Load" shall be as follows:

    - 3 megawatt hours per hour for each Quarter of the five year period commencing with the first day of the first Contract Year ("First Discount Period")

    - 6 megawatt hours per hour for each Quarter of the five year period following the First Discount Period ("Second Discount Period")

    - 9 megawatt hours per hour for each Quarter of the five year period following the Second Discount Period ("Third Discount Period")

    - 12 megawatt hours per hour for each Quarter of the five year period following the Third Discount Period

- "BEC Facility Capacity Factor for the Contract Quarter" means the actual capacity factor calculation for the BEC Facility for the Contract Quarter as specified in the real time generation detail, verifiable through station metering. The Capacity Factor for the Quarter is calculated as the megawatt hours generated

by the plant over the Quarter divided by the product of the average nameplate capability, 781 megawatts, of BEC multiplied by the hours in the Quarter.

(c) The Agency shall have the right to request adjustment of any payment made by the Company for any errors in arithmetic, computation, estimating or otherwise no later that twelve (12) months after the date that the payment is rendered. Any request for adjustment shall be in writing and shall state the specific basis for the adjustment. A payment shall be binding on the Agency twelve (12) months after the payment is made.

(d) The Agency shall be responsible for and pay, or cause to be paid, any and all taxes levied on the Energy Reimbursement Payments made by the Company hereunder.

(e) If any of the items used to compute the Energy Reimbursement Payment becomes unavailable, then the parties shall use good faith efforts to develop a substitute for such item in order to place the parties in the same economic position each would had been in had such item continued to have been available.

(f) There will be no Energy Reimbursement Payments during any period of time in which the BEC Facility is operating because of a regulatory requirement to operate when the Company otherwise would not have elected to so operate.

IN WITNESS WHEREOF, the Agency and the Company have duly executed this Agreement as of the day and year first above written.

TOWN OF BETHLEHEM INDUSTRIAL DEVELOPMENT AGENCY

By: /s/ Michael Tucker

Name: F. Michael Tucker
Title: Chairman

PSEG POWER NEW YORK INC.

By: _____

Name: Jeffrey W. Moore
Title: Vice President

STATE OF NEW YORK)
) ss:
COUNTY OF ALBANY)

On the 5th day of February in the year 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared F. Michael Tucker, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within Agreement for Payment in lieu of Taxes, and acknowledged to me that he executed the same in his capacity, and that by his signature on the Agreement for Payment in lieu of Taxes, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

Maureen A. Kucharski

Notary Public

MAUREEN A. KUCHARSKI
Notary Public, State of New York
No. 01KU4855324
Qualified in Rensselaer County
Commission Expires June 23, 20 02

STATE OF NEW JERSEY)
) ss:
COUNTY OF ESSEX)

On the 5 day of February in the year 2002, before me, the undersigned, a Notary Public in and for said State, personally appeared Jeffrey W. Moore, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within Agreement for Payment in lieu of Taxes, and acknowledged to me that he executed the same in his capacity, and that by his signature on the Agreement for Payment in lieu of Taxes, the individual, or the person or entity on behalf of which the individual acted, executed the instrument.

Mary Patricia Corcoran
Notary Public

MARY PATRICIA CORCORAN
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 6/6/2006

Exhibit A

(Description of the Land)

ALL THAT TRACT OR PARCEL OF LAND, situate in the Town of Bethlehem, County of Albany and State of New York, being further described as follows:

Beginning at a point at a found concrete monument having a NYSPCS (NAD-83) coordinate value of N 1370205.25, E 689408.03 at the southwest corner of lands conveyed to Niagara Mohawk Power Corporation ("Niagara") by deed recorded in the Albany County Clerk's Office in Book 1228 of Deeds, Page 195, said point also being the east line of Route #144 (River Road), New York State Highway #193; thence the following seven (7) courses along said east line of Route #144 (River Road), New York State Highway #193: (1) N 08°37'25" W a distance of 212.38 feet to a point; (2) N 02°34'59" W a distance of 292.44 feet to a point; (3) N 03°04'27" E a distance of 800.80 feet to a point; (4) N 07°22'16" E a distance of 831.38 feet to a point; (5) N 13°31'57" W a distance of 30.80 feet to a found concrete monument; (6) N 11°17'47" W a distance of 229.80 feet to a found concrete monument; (7) N 28°40'11" W a distance of 8.60 feet to a point therein where the same is intersected by the dividing line between the lands herein described and other lands now or formerly owned by Niagara; thence the following four (4) courses along said dividing line; (1) N 66°48'12" E through a metal rod and cap set at a distance of 2.45 feet from the east line of New York State Highway #193, Route #144 (River Road) a total distance of 213.71 feet to a rod and cap set; (2) S 77°11'59" E a distance of 89.66 feet to a metal rod and cap set; (3) N 67°55'30" E a distance of 646.83 feet to a metal rod and cap set; (4) N 63°05'59" E passing through a metal rod and cap set at 217.64 feet a total distance of 264.94 feet to a point on the westerly line of the "BEACON ISLAND DIKE" as shown on a plan entitled "Albany Steam Station Lands Under Water at Island Creek" prepared by Niagara and having a drawing number of G-3539-E; thence S 08'57'11" E along said westerly line a distance of 86.36 feet to a point; thence N 78'22'58" E a distance of 122.49 feet to a point on the U.S. Pier Head line as established by the U.S. Army Corps of Engineers May 10, 1934 and being further described as being point number 218A as shown on the said plan entitled "Albany Steam Station Lands Under Water at Island Creek"; thence S 11°37'12" E along said Pier Head line a distance of 2085.82 feet to a point in the southeasterly corner of lands conveyed to Niagara as described in Book 1228 of Deeds, Page 195 being a corner in the dividing line between the lands herein described and other lands now or formerly owned by Niagara; thence the following five (5) courses along said dividing line: (1) S 67°30'33" W a distance of 130.00 feet to a metal rod and cap set; (2) S 07°29'12" E a distance of 279.62 feet to a point; (3) S 75°58'09" W a distance of 827.00 feet to a metal rod and cap set; (4) N 26°11'21" W a distance of 148.73 feet to a found concrete monument; (5) S 67°30'33" W a distance of 833.05 feet to the point of beginning (the "Premises"), comprising of an area of 83.50 acres as shown on a Survey of James M. Zuccolotto, N.Y.S.P.L.S., dated November 16, 1999, last revised March 13, 2000, consisting of four (4) sheets, and filed in the Albany County Clerk's Office in Map Drawer 172 as Map No. 10859 on March 20, 2000 (the "Survey").

Bearings and coordinates refer to the N.Y. State Plane Coordinate System (Eastern Zone - NAD '83) based on control established by G.P.S. and adjusted to the published coordinates for N.G.S. horizontal control stations "Rensport", "Schodack" and "New Scot". Distances are grid distances.

BEING the same premises or a portion thereof described in the following instruments: deed from New York State Realty Terminal Company to Niagara recorded in the Albany County Clerk's Office in Book 1265 of Deeds at page 75; deed from Hudson River Estates, Inc. and the Delaware and Hudson Railroad Corporation to Niagara recorded in the Albany County Clerk's Office in Book 1307 of Deeds at page 479; Letters Patent issued June 10, 1953 to Niagara recorded in the Albany County Clerk's Office in Book 1376 of Deeds at page 75; deed from The Texas Company to Niagara recorded in the Albany County Clerk's Office in Book 1420 of Deeds at page 367; deed from The Texas Company to Niagara recorded in the Albany County Clerk's Office in Book 1491 of Deeds at page 139; and deed from Sun Oil Company to Niagara recorded in the Albany County Clerk's Office in Book 1228 of Deeds at page 195.

TOGETHER WITH an easement to build, maintain, repair, modify, enlarge, inspect, remove, patrol, rebuild and replace a water main and related equipment over lands now or formerly owned by Niagara, 15 feet in width lying 7.5 feet on each side of the following described centerline:

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Bethlehem, County of Albany and State of New York beginning at a point, said point being the intersection of the northerly line of the Premises with the center line of an existing eight inch water main, said point being further described as being 13.5 feet± easterly and 110 feet ± southerly of center line station 71+43.58 of the former Delaware and Hudson Railroad Susquehanna Division spur to Cabbage Island, Railroad Valuation map V4-142-B; thence northerly parallel to and 10 feet distant easterly of the center line alignment of the said Delaware and Hudson Railroad line a distance of 2700 feet ± to a point; thence westerly crossing said center line a distance of 27 feet ± to a point; thence northerly parallel to and approximately 13.5 feet westerly of the center line of the former Delaware and Hudson Railroad line a distance of 2-15± feet to a point; thence northeasterly, northerly and northwesterly crossing the Island Creek Diversion Channel (Normans Kill) on the west side of a railroad bridge a distance of 355 feet ± to a point; thence northwesterly a distance of 300 feet ± to a point on the northerly line of lands now or formerly owned by Niagara, as shown on Sheet 4 of the Survey and together with the right of ingress and egress to and over the easement premises and the surrounding land now or formerly owned by Niagara, insofar as necessary to exercise the foregoing easement rights in a manner which will not materially interfere with the use of the surrounding land of and by Niagara, its successors and assigns.

TOGETHER WITH all right, title and interest of Grantor under a grant made by Hudson River Estates, Inc. to Niagara dated October 21, 1963 recorded in the Albany County Clerk's Office on January 17, 1964 in Book 1782 of Deeds at Page 245, a grant made by Albany Port District Commission to Niagara dated June 30, 1952 recorded in the Albany County Clerk's Office on July 10, 1952 in Book 1318 of Deeds at Page 385, as amended by an Amendment to

1952 Indenture of the Albany Port District Commission, dated May 11, 2000, recorded in the Albany County Clerk's Office on May 12, 2000 in Book 2655 of Deeds at page 945 and under a letter agreement, dated June 12, 1952 between The Delaware and Hudson Railroad Corporation and Niagara, subject to any burdens set forth in the above-referenced grants or the above-referenced letter agreement.

TOGETHER WITH an easement to maintain, repair, modify, enlarge, inspect, remove, patrol, rebuild and replace a forced main sanitary sewer line over lands now or formerly owned by Niagara and Consolidated Rail Corporation, 15 feet in width lying 7.5 feet on each side of the following described centerline:

ALL THAT TRACT OR PARCEL OF LAND situate in the Town of Bethlehem, County of Albany and State of New York beginning at a point at the intersection of the westerly line of New York State Highway #193, Route #144 (River Road) with the centerline of the existing 4" force main sanitary sewer, said point being approximately 175 feet south of New York State Survey Station 272+50, said survey station shown on drawings by the New York State Department of Transportation No. RC 45-28 River Road S.H. #193; thence northwesterly a distance of 424 feet± to a point; thence continuing northwesterly on a line deflecting to the right at an angle of 25° 42' a distance of 700 feet± to a point; thence continuing northwesterly on a line deflecting to the left at an angle of 42° 15' a distance of 508 feet± to a point; thence westerly on a line deflecting to the left at an angle of 45° a distance of 323 feet± to a point; thence northwesterly on a line deflecting to the right at an angle of 45° a distance of 67 feet ± to a point on the southerly line of the Feura-Bush-Glenmont Road, as shown on Sheet 4 of the Survey and together with the right of ingress and egress to and over the easement premises and the surrounding land now or formerly owned by Niagara, insofar as necessary to exercise the foregoing easement rights in a manner which will not materially interfere with the use of the surrounding land of and by Niagara, its successors and assigns.

TOGETHER WITH AND SUBJECT to the terms of a Grant of Easement for a sewer main between Consolidated Rail Corporation and Niagara dated December 17, 1992 and recorded in the Albany County Clerk's Office on December 30, 1993 in Book 2500 of Deeds at Page 391, as shown on a map annexed to the foregoing Grant of Easement identified as "Map NMP - 137 Albany Steam Station Detail of 4" Force Main Sanitary Sewer Crossing at Penn Central Railroad" at Book 2500 of Deeds at Page 630 and as shown on Sheet 4 of the Survey.

TOGETHER WITH an easement to install, maintain, repair, modify, enlarge, inspect, remove, patrol and replace a water service line to tap into the sixteen (16) inch water main described in an Indenture, made the 29th day of January, 1979 by and between Niagara and the Town of Bethlehem and recorded in the Albany County Clerk's Office on February 14, 2000 in Book 2650 of Deeds at page 108 over lands now or formerly owned by Niagara, 15 feet in width 7.5 feet on each side of the following described centerline:

Commencing at a found concrete monument having a NYSPCS (NAD-83) coordinate value of N 1370205.25, E 689408.03 at the southwest corner of lands conveyed to Niagara by

deed recorded in the Albany County Clerk's Office in Book 1228 of Deeds, page 195, said point also being the east line of Route #144 (River Road), New York State Highway #193; thence the following three (3) courses along said east line of Route #144 (River Road), New York State Highway #193: (1) N 08° 37' 25" W a distance of 212.38 feet to a point; (2) N 2° 34' 59" W a distance of 292.44 feet to a point; (3) N 03° 04' 27" E a distance of 603.93 feet to a point; thence S 87° 31' E, crossing Route #144 (River Road) New York State Highway #193, a distance of approximately 67.5 feet to a point on the west line of said highway to the point and place of beginning of said centerline; thence S 87° 31' E through the lands now or formerly owned by Niagara approximately 20 feet to the existing Town of Bethlehem waterline and together with the right of ingress and egress to and over the easement premises and the surrounding land now or formerly owned by Niagara, insofar as necessary to exercise the foregoing easement rights in a manner which will not materially interfere with the use of the surrounding land by Niagara, its successors and assigns.

TOGETHER WITH AND SUBJECT TO the terms of an easement granted to Niagara dated June 15, 1953 and recorded in the Albany County Clerk's Office on July 13, 1953 in Book 1365 of Deeds at Page 225, as shown on Sheets 2 and 3 of the Survey.

TOGETHER WITH the appurtenances, including riparian rights, if any, and all the estate and rights of Grantor in and to the Premises and together with all right, title and interest of Grantor, if any, in and to the highways and all gores and strips of land, easements, rights and rights of way appurtenant to or used in connection with the Premises.

SUBJECT TO all other easements, covenants, restrictions and other encumbrances of record.

SUBJECT TO terms, covenants, conditions and provisions of the Letters Patent granted by the People of the State of New York recorded in the Albany County Clerk's Office in Liber 837 of Deeds at page 226, Liber 850 of Deeds at page 432 and Liber 1376 of Deeds at Page 75 to the extent they affect the Premises.

SUBJECT TO any and all right, title and interest the public may have in and to the public highways running through or adjacent to the Premises.

Being and intending to describe the same premises described in a deed from Niagara to Grantor dated May 11, 2000 recorded in the Albany County Clerk's Office on May 12, 2000 in Book 2655 of Deeds at page 935.

TOGETHER WITH THE BENEFITS of a Sound Easement Agreement between Niagara and Grantor dated as of May 11, 2000 and recorded in the Albany County Clerk's Office on May 12, 2000 in Book 2655 of Deeds at page 889.

TOGETHER WITH AND SUBJECT TO the terms of an Easement Agreement between Grantor and Niagara dated May 11, 2000 recorded in the Albany County Clerk's Office in Book 2655 of Deeds Page 897.

TOGETHER WITH AND SUBJECT TO the terms of a Site Agreement between Grantor and Niagara dated as of February 1, 2000.

Exhibit B

Date: February 5, 2002

Instructions to Town Assessor

The real property described in Exhibit A and the improvements thereon (collectively, the "Facility") should be carried on the tax rolls as exempt. The Town of Bethlehem Industrial Development Agency (the "Agency") and PSEG Power New York Inc. (the "Company") have entered into a payment in lieu of taxes agreement (the "PILOT Agreement") pursuant to which the Company is obligated to make the payments in lieu of real property taxes and general assessments (the "PILOT Payments") set forth in such PILOT Agreement.

In addition, the Company shall pay to all governmental bodies having the power to levy special ad valorem levies and special assessments including the Town of Bethlehem and the County of Albany all special ad valorem levies and special assessments levied against the Facility and to deduct such payments from the PILOT Payments. Therefore, the Agency and the Company request the assessor of the Town of Bethlehem to establish the following assessed values for the Facility:

Calendar Year	Assessed Value
2002	164,316,000
2003	142,000,000
2004	100,000,000
2005	100,000,000
2006	100,000,000
2007	100,000,000
2008	100,000,000
2009	100,000,000
2010	100,000,000
2011	100,000,000
2012	100,000,000
2013	100,000,000
2014	100,000,000
2015	100,000,000
2016	100,000,000
2017	100,000,000
2018	100,000,000
2019	100,000,000
2020	100,000,000
2021	100,000,000
2022	100,000,000
2023	100,000,000