

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”), dated \_\_\_\_\_, 2008, is between Mountain Communities for Responsible Energy (“MCRE”), and Beech Ridge Energy, LLC (“Beech Ridge”) (collectively, “the Parties”).

### **Background:**

- ♣ On November 11, 2005, Beech Ridge applied to Public Service Commission of West Virginia (“PSC”) for a siting certificate to construct and operate a wind generating facility consisting of 124 wind turbines and a supporting transmission line in Greenbrier and Nicholas Counties, West Virginia (“the Project”). Case Number 05-1590-E-CS was assigned to the pertinent case (“the Case”) before the PSC. On August 28, 2006, the PSC awarded Beech Ridge a siting certificate.
- ♣ Aside from its initial concerns in the Case, MCRE remains concerned that the Project would create a chronic source of noise that would impact nearby landowners and undermine the integrity of cultural and historic resources in the area. MCRE is further concerned that the Project would kill threatened and endangered bats, particularly the Indiana bat.
- ♣ The Case remains open as of the date of this Agreement, and MCRE asserts that Beech Ridge has not fully complied with the pre-construction conditions set forth in the PSC’s August 28, 2006 Order. The possibility exists of further litigation before the PSC, an appeal of a further PSC decision, litigation before other governmental agencies, and litigation in federal court. Such litigation may frustrate efforts to construct and operate the Project.
- ♣ In the interest of conserving the PSC’s administrative resources, in the interest of avoiding potentially protracted litigation, and in the interest of enabling the Project to be constructed, in part, and placed into operation in a timely manner, the Parties wish to reach a settlement and enter into this Agreement.

### **The parties agree:**

1. Turbines to be Constructed: Beech Ridge may construct and place into operation all turbines initially intended to be a part of the Project, as those turbines appear on the topographic “Generating Facility Map,” consisting of three pages and appearing as Exhibit G-3 to Beech Ridge’s application to the PSC (the “Maps”) [scanned sections attached, showing western and eastern portions of the Maps], **except** the following sixty-one (61) turbines: A1 through A19, B1 through B7, B10 through B12, B16, C1 through C6, D3 through D16, D19 through D22, F5 through F6, and H1 through H5 (“the Revised Project”; sites collectively referred to as the “Prohibited Turbine Locations”). Beech Ridge will not deviate from placing its turbines according

to the GPS coordinates indicated in [GPS reference document], and corresponding to the respective locations on the Maps (the “Accepted Turbine Locations”), subject only to minor shifts in the placement of such turbines required to attain necessary permits from the West Virginia Department of Environmental Protection (“DEP”), the West Virginia Division of Natural Resources (“DNR”), the West Virginia State Historic Preservation Office (“SHPO”), the United States Fish & Wildlife Service (“USFWS”) and the United States Army Corps of Engineers (“USACE”). Under no circumstances will Beech Ridge construct a turbine farther than two hundred fifty (250) feet from any individual location among the Accepted Turbine Locations.

2. Limitations on Future Wind Development: Beech Ridge and all business entities in any way affiliated with Beech Ridge, including, but not limited to, Invenergy, LLC, will neither construct nor operate any wind turbine or wind generating facility, other than the Revised Project, within a 20-mile radius of any individual location among the Prohibited Turbine Locations. Beech Ridge and all business entities in any way affiliated with Beech Ridge, including, but not limited to, Invenergy, LLC, will not at any time assist, enter into an agreement with, or provide data gathered by their own employees or agents, or by third parties, to any other party planning or intending to construct a wind turbine or wind generating facility within a 20-mile radius of any individual location among the Prohibited Turbine Locations. Beech Ridge and all business entities in any way affiliated with Beech Ridge, including, but not limited to, Invenergy, LLC, will not, at any time in the future, permit the construction of an electric transmission line upon the land it has leased for the Project, other than any transmission line for which the party constructing the line possesses the power of eminent domain.
3. Mitigation of Impacts: The construction and operation of the Revised Project will ensure reasonable mitigation of the Project’s impacts to nearby landowners, cultural and historic resources, and threatened and endangered species of bats.
4. Withdrawal of Opposition: In consideration of the commitments of Beech Ridge recited in Paragraphs 1 and 2, above, MCRE will withdraw its opposition to the final certification and approval of the Revised Project in the Case. As further consideration, subject to the exception provided in Paragraph 8 below, MCRE will neither take action adverse to the Revised Project, nor provide assistance to any other party taking action adverse to the Revised Project, before any of the following bodies having jurisdiction over an aspect of the Revised Project: the PSC, the Circuit Courts of the State of West Virginia, the Supreme Court of Appeals of West Virginia, United States District Court, DEP, DNR, SHPO, USFWS and USACE.
5. Joint Stipulation: MCRE and Beech Ridge will file in the Case a Joint Stipulation memorializing the terms of this Agreement.

6. Membership of MCRE: For the purposes of this Agreement, the membership of MCRE includes the following individuals, who are understood to constitute the active membership of MCRE:

John Nathan Stroud  
HC 68, Box 84  
Williamsburg, WV 24991

Jeffrey Eisenbeiss  
P.O. Box 21  
Renick, WV 24966

Debbie Sizemore  
P.O. Box 220  
Williamsburg WV 24991

Alicia Eisenbeiss  
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Amy Denison  
HC 68, Box 91B  
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Alan Rudley  
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John Walkup  
HC 68, Box 91B  
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Steve Rutledge  
HC 68, Box 70  
Friars Hill, WV 24938

Michael Rosolina  
HC 68, Box 74  
Friars Hill, WV 24938

Florian Schleiff  
HC 67, Box 554  
Renick WV 24966

Dave Buhrman  
HC 67 Box 533  
Renick, WV 24966

Eddie Fletcher  
HC 68 Box 91A  
Williamsburg, WV 24991

7. Governing Law: Any disputes arising under or pertaining to this Agreement will be resolved according to the law of the State of West Virginia.
8. Remedies: If either party breaches this Agreement, the other party may seek specific performance by such party in the Circuit Court of Greenbrier County, West Virginia.
9. Severability: If any part of this Agreement is held to be void or unenforceable by a court of competent jurisdiction, the remainder of the Agreement will remain in full force and effect.
10. Binding Upon Successors: This Agreement is binding upon all parties who have acquired, or may later acquire, either sole or partial ownership or control of the Revised Project. Beech Ridge will inform any such party of the entirety of the terms of this Agreement prior to conveying, assigning, or otherwise

transferring any degree of ownership or control of the Revised Project to such party.

- 11. Entire Agreement: This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement, and supersedes all prior and contemporaneous agreements and understandings of the Parties, whether written or oral, in connection with the subject matter of this Agreement.

***Mountain Communities for Responsible Energy***

\_\_\_\_\_  
John Nathan Stroud, Co-Chairperson

\_\_\_\_\_  
Date

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of December, 2008, by John Nathan Stroud.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

***Beech Ridge Energy, LLC***

\_\_\_\_\_  
David Groberg, Vice President

\_\_\_\_\_  
Date

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of December, 2008, by David Groberg.

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public