

Kitsap Non-Wires Alternatives RFP:

Exhibit F. Prototype Capacity and/or Energy Agreement Term Sheet

EXHIBIT F. PROTOTYPE CAPACITY AND/OR ENERGY AGREEMENT TERM SHEET

*Prototype Capacity and/or Energy Agreement Term Sheet***Background**

This Prototype Capacity/Energy Agreement Term Sheet (“Term Sheet”) sets forth the current requirements that PSE wants the Respondent to address or incorporate into any proposal made to PSE that contemplates energy products for PSE from a [Generation / Storage] facility (“Facility”). It is intended to identify certain, but not all, of the elements of a potential transaction that would be embodied in a definitive Capacity/Energy Agreement. This Term Sheet may serve as the basis for a proposal involving a Facility in development or in operation. The terms presented and bracketed herein are indicative of PSE’s expectations and may be subject to negotiation depending upon the particular nature of the proposal and other factors.

By submitting its proposal, Respondent acknowledges that the RFP, including this Term Sheet, has been prepared by PSE as part of PSE’s ongoing process of solution development for Kitsap transmission capacity needs and that PSE is considering alternative arrangements for the procurement of energy products. This Term Sheet is an integral part of, and subject to, the terms and conditions of the RFP. This Term Sheet shall not be interpreted as an offer, agreement or commitment by PSE to acquire any energy product. Also, this Term Sheet shall not limit, restrict or obligate PSE with regard to the conduct of its solution development process, or the actual procurement of any resources.

PSE reserves the right to reject any and all proposals received in response to the RFP, request the submission of different proposals for other resources and/or seek to acquire resources from one or more parties other than any Respondent. PSE may also modify, change, supplement or delete any and all provisions of this Term Sheet, or withdraw and cancel the RFP.

Parties

Puget Sound Energy, Inc. (“Buyer”) and [_____] (“Seller”).

**[Generating /
Storage /
System
Purchase]
Facility**

A [generation/storage facility or system purchase] with a [planned/operational] nameplate capacity of [____] MW [to be developed and] owned by Seller and located [_____]. With a monthly capacity guarantee and dispatchability as outlined in [Schedule II]

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Transaction Seller shall provide to Buyer the Capacity/Energy Services beginning [_____] (the “Delivery Date”) through the expiration of the Term. If the Facility is under development, the Delivery Date shall be the Commercial Operation Date. Energy generated shall be delivered to Buyer at the Energy Delivery Point pursuant to this Capacity/Energy Agreement. Buyer prefers to be the exclusive recipient of capacity/energy services from the Facility but will consider non-exclusive arrangements.

All ancillary services from the [_____] Facility], as further described and defined in Schedule II, as well as any associated electrical capacity rights shall accrue to Buyer.

Term The Capacity/Energy Agreement shall be effective when signed and shall terminate [_____] years from the Delivery Date (the “Term”).

Energy Delivery Point [_____] (“Energy Delivery Point”).

Contract Price The Contract Price, and the components thereof, are set forth in Schedule I attached hereto.

Commercial Operation¹ Commercial Operation shall mean, with respect to the Facility, that date designated by Seller and confirmed by Buyer on which at least [_____] percent (%)] of the nameplate capacity constituting the Facility has been placed in commercial operation, as evidenced by an officer’s certificate of Seller and a confirmation from Buyer (which confirmation shall not be unreasonably withheld or delayed), but such date shall be no earlier than the date upon which the following have occurred: (i) the interconnection agreement for the Facility has been executed, (ii) the Facility has been satisfactorily tested and (iii) all related facilities and rights have been completed or obtained, including all interconnection facilities and substations, to allow for continuous operation of the Facility and the sale of energy, capacity and Ancillary Services therefrom (“Commercial Operation”).

Seller shall provide a Guaranteed Commercial Operation Date for the Facility. The Guaranteed Commercial Operation Date shall be extended for delays caused by Buyer or force majeure events, subject to compliance by Seller of its obligation to mitigate such delays. In the event Seller fails to achieve Commercial Operation on or before the Guaranteed Commercial

¹ To be included if the Facility is under development or construction.

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Operation Date, Seller shall be required to pay to Buyer liquidated damages for each day of delay beyond the Guaranteed Commercial Operation Date in the amount per day of [] per MW of the Facility's expected nameplate capacity. If the Commercial Operation Date has not been achieved within [] days after the Guaranteed Commercial Operation Date, Seller shall be in default under the Capacity/Energy Agreement and Buyer shall be entitled to terminate the Capacity/Energy Agreement and seek damages or exercise other remedies at law or equity.

If the Commercial Operation Date is achieved, but the Final Nameplate Capacity is less than one hundred percent (100%) of the Planned Nameplate Capacity, Seller shall make a one-time payment of liquidated damages to Purchaser in the amount of [(\$)/MW] for each MW that the Final Nameplate Capacity is below the Planned Nameplate Capacity.

**Development
Milestones²**

Seller shall use commercially reasonable efforts to achieve the agreed upon Development Milestones for the Facility, which shall include "interim" major milestones, such as receipt of all necessary permits, EPC contract execution, achieving financial closing, the commencement of physical construction, commencement and completion of generation tie-line construction, completion of construction of foundations, generation equipment commitment date, energization date, and test energy date. The guaranteed Development Milestone dates shall be subject to extension for delays caused by Buyer or force majeure events, subject to compliance by Seller of its obligation to mitigate such delays. In the event Seller fails to achieve the agreed upon major Development Milestones on or before the prescribed guaranteed date therefore, Seller shall be required to pay to Buyer "interim" liquidated damages for each day of delay beyond the prescribed date in the amount per day of [\$] per MW of the Facility's expected nameplate capacity. If certain major Development Milestones have not been achieved within [] days after the guaranteed date therefor, it shall be an Event of Default under the Capacity/Energy Agreement and Buyer shall be entitled to terminate the Capacity/Energy Agreement and seek damages or exercise other remedies at law or equity. Interim liquidated damages shall be credited against the amount of any delay liquidated damages payable for a failure to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date and if any such credits are not fully utilized as of the Commercial Operations Date, Buyer shall refund such remaining amount of interim liquidated damages to Seller. If the Guaranteed Commercial Operation Date ultimately is achieved despite Seller's failure to satisfy one of more of the other major

² To be included if the Facility is under development.

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Development Milestones, Buyer shall refund such interim liquidated damages to Seller.

Labor

To the extent possible and subject to any collective bargaining agreement of Seller or its affiliates, if any, Seller shall make a good faith effort given its commercial requirements to hire local workers (such as local unionized workforce) during construction of the Facility and as permanent employees for the operation of the Facility and performance of Seller's obligations under the terms of the Capacity/Energy Agreement. Seller shall use commercially reasonable efforts to use apprenticeship labor to meet the Washington State Apprenticeship and Training Council requirements so as to allow Purchaser to qualify for the statutory one and two-tenths (1.2) multiplier for quantifying the Attributes from the Facility. As required by WAC 480-107-075, Seller shall furnish to Purchaser from time to time, upon Purchaser's reasonable request, and in any event not more than once annually, a report detailing the use by Seller of diverse businesses, including but not limited to women-, minority-, disabled-, and veteran-owned businesses, and a report detailing the application of the labor standards in RCW 82.08.962 and 82.12.962.

Standard of Operation

Seller shall operate the Facility in accordance with the practices, methods, acts, guidelines, standards and criteria of relevant system operators or reliability councils, and all applicable Laws. Seller shall obtain all certifications, permits, licenses and approvals necessary to construct, operate and maintain the Facility and to perform its obligations under the Capacity/Energy Agreement.

Transmission Services; Interconnection

During the Term, Seller shall be responsible for delivery of the energy generated by the Facility (less applicable transmission losses) to the Energy Delivery Point and Buyer shall be responsible for arranging, at Buyer's expense, all transmission services from the Energy Delivery Point. Buyer shall be responsible for all costs of interconnection of the Facility and any associated network upgrades required by Buyer's transmission function or any other transmission provider. It shall be the specific responsibility of Seller to have secured transmission necessary to deliver the energy to Buyer's system. Buyer shall consider arrangements whereby Seller secures such transmission rights from the Facility to Buyer's system and assigns those transmission rights to Buyer, with Buyer taking on responsibility for the costs of transmitting such energy to Buyer's system. Buyer shall also consider alternative arrangements where the Point of Delivery shall be at an appropriate point on Buyer's system.

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Capacity Tests	<p>Prior to the Delivery Date, Seller shall establish the tested capacity (the "Tested Capacity") of the Facility pursuant to a performance test conducted in accordance with procedures to be agreed upon by the Parties. Each Party shall have the right to request a limited number of additional performance tests at the expense of the requesting party to re-determine the Facility's Tested Capacity. If as the result of any performance test, the Tested Capacity of the Facility is less than [____] MW (the "Minimum Capacity"), the Monthly Capacity Payment shall be appropriately reduced until such time that Seller shall have demonstrated, to Buyer's reasonable satisfaction, that the Tested Capacity shall have been restored.</p>
Metering	<p>Subject to the requirements of the interconnection agreement for the Facility, Seller shall be responsible for the provision, maintenance, reading and testing of all electric metering equipment in conformance with all applicable regulatory requirements, with Buyer having rights to inspect, observe tests and conduct its own tests in its reasonable discretion.</p>
Scheduling Coordinator; Imbalances	<p>Buyer shall be responsible for arranging all scheduling services necessary to ensure compliance with applicable regional power scheduling regulations and protocols. Buyer and Seller shall prepare and put in place certain mutually acceptable scheduling protocols to be followed by Buyer, including the nature and extent of information to be utilized to prepare schedules and the policies and practices to be applied to such information by Buyer in connection therewith ("Agreed Scheduling Practices").</p> <p>Seller shall arrange and be responsible for any transmission services required to deliver energy to the Energy Delivery Point and shall schedule or arrange scheduling services with its transmission providers to so deliver the energy to the Energy Delivery Point. Buyer shall arrange and be responsible for transmission services at and from the Energy Delivery Point and shall schedule or arrange for scheduling services with its transmission providers to receive energy at the Energy Delivery Point.</p> <p>Buyer shall be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges (collectively, "Charges") attributable to or assessed for energy delivered to Buyer at and after the Energy Delivery Point. Seller shall be responsible for all Charges applicable to the Facility's output prior to the Energy Delivery Point.</p> <p>Seller shall be obligated to pay, or reimburse Buyer for the payment of, any generation imbalance charges related to the over-generation or under-</p>

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generation of energy scheduled to be generated by the Facility to the extent that such imbalance was caused by the operation of the Facility, the failure of the Facility to operate or Seller's failure to comply with the Agreed Scheduling Practices.

Resource Adequacy Program

Purchaser may participate in the regional Resource Adequacy (RA) Program to be administered by a regional organization, which is yet to be determined. In such case, Purchaser would intend for the Seller to be designated as a participating RA resource in the RA program, with Purchaser acting as RA Coordinator. Seller anticipates working with Purchaser to enable Seller to qualify as a participating resource in the RA program.

Energy Imbalance Market

Purchaser participates in the Energy Imbalance Market ("EIM") operated by the CAISO. For resources within Purchaser's Balancing Authority Area ("BAA") Purchaser may intend for the Seller to be designated as a participating resource (or its equivalent from time to time) in the Energy Imbalance Market, with Purchaser acting as Scheduling Coordinator (as defined in the CAISO Open Access Transmission Tariff) for the Facility. In such case, Purchaser and Seller should expect to work together to complete the technical review described in Section 3.3 of the EIM BP, which shall identify improvements to the Facility required for the Facility to be designated as a participating resource in the Energy Imbalance Market. Upon conclusion of the technical review, Seller shall cause any required improvements to the Facility to be implemented, at Seller's sole cost and expense. Seller anticipates working with Purchaser to enable Seller to qualify as a participating resource in the Energy Imbalance Market and, if applicable, the Extended Day Ahead Market.

Taxes

Seller shall be responsible for and shall pay all taxes incurred by Seller or Buyer on the energy, capacity and Ancillary Services produced and sold prior to the Delivery Point. Buyer shall be responsible for and shall pay all taxes incurred by Seller or Buyer on energy, capacity and Ancillary Services produced and sold at and beyond the Delivery Point. Buyer shall be responsible for and shall pay all taxes incurred by Seller or Buyer associated with the acquisition and delivery of fuel to the Facility.

Operation and Maintenance

Seller and Buyer shall endeavor to develop written operating procedures ("Operating Procedures") for the Facility before the Delivery Date which shall set forth the protocol under which the Parties shall perform their respective obligations under the Capacity/Energy Agreement and shall include, without limitation, procedures concerning the following: (i) the

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method of day-to-day communications, (ii) key personnel lists for Seller and Buyer, including an appointed authorized representative for each Party, and (iii) forced outage and planned outage reporting.

During the Term, the Facility shall be operated and maintained by Seller or its designee in accordance with those practices, methods, and acts, that are commonly used by a significant portion of the [_____] industry in prudent engineering and operations to design and operate such electric equipment lawfully and with safety, dependability, efficiency, and economy, including any applicable practices, methods, acts, guidelines or standards and criteria of governing regulatory bodies and reliability councils and all applicable requirements of law.

Outages

No later than ninety (90) days prior to the beginning of each calendar year during the Term, Seller shall provide Buyer with a non-binding detailed planned outage schedule for the forthcoming year and Seller shall be excused from providing electricity during any planned outage.

Seller shall furnish Buyer with as much advance notice as practicable of any proposed or necessary maintenance outages. The Parties shall work to plan such outage to mutually accommodate, as practicable, the reasonable requirements of Seller and the reasonable requests of Buyer, taking into account the desire of Buyer to have the Facility available during peak periods.

Seller shall promptly provide written notice to Buyer, to the extent information is available, of the reason, timing, expected duration and the impact upon the energy output of any forced outage. Seller also shall provide to Buyer, in a form reasonably acceptable to Buyer, a monthly report of forced outages.

**Availability/
Round-trip
Efficiency
Guarantee**

Seller shall provide Buyer with a guarantee that the Facility availability shall be no less than the percentages indicated on Schedule III for each month after the Delivery Date (the "Minimum Monthly Availability"). Facility availability shall be calculated using a methodology agreed to by the Parties that is generally consistent with the method prescribed by the Facility's equipment manufacturers. Seller shall pay to Buyer liquidated damages if the Facility fails to meet the Minimum Monthly Availability in any contract year after the Commercial Operation Date.

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If the Facility fails to meet the Minimum Monthly Availability in any month after the Delivery Date, the Monthly Capacity Payment for such month, if applicable, shall be reduced as determined pursuant to Schedule III.

Seller's failure to cause the Project to achieve an Availability Factor of at least [_____] percent (___%) for any two consecutive Contract Years, commencing on the first anniversary of the Commercial Operation Date will be grounds for default. For storage projects, Seller guarantees a [_____] round-trip efficiency guarantee throughout the terms of the agreement.

Credit Support

Upon execution of the Capacity/Energy Agreement Seller shall maintain an investment grade credit rating. If Seller does not have or cannot maintain the required credit rating, Seller shall provide Buyer with a guaranty, cash collateral and/or letter of credit in forms acceptable to Buyer in the amount of [\$_____ per MW]. In addition to the foregoing security, Seller shall furnish Buyer with a lien on its interest in the Facility to secure Seller's obligations to Buyer. Buyer shall agree to subordinate such lien as may be reasonably necessary to accommodate Seller's first lien construction and/or permanent financing of the Generation Facility. Buyer shall not be required to provide credit support or performance assurance of any kind to Seller.

Default

The Capacity/Energy Agreement shall include customary events of default ("Events of Default") including for failure to make payments when due, failure to perform a material obligation, breach of representation or warranty, bankruptcy, failure to maintain required credit support, etc.

In addition to customary Events of Default, the following shall be additional Events of Default, subject to extension for delays caused by Buyer or force majeure events and compliance by Seller of its obligation to mitigate such delays:

Subsequent to the Delivery Date, Seller fails to achieve the Minimum Monthly Availability for any [_____] consecutive contract months or for any [_____] contract months during the Term.

The Facility fails to demonstrate a Tested Capacity at least equal to the Minimum Capacity in three successive capacity tests performed after the Delivery Date; provided that Seller is provided a reasonable period of time after any failure to achieve the Minimum Capacity in any capacity test to resolve the problem prior to conducting a subsequent capacity test.

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Each Party shall have a duty to mitigate damages and covenants that it shall use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's default or non-performance of the Capacity/Energy Agreement.

Termination

Buyer may terminate the Capacity/Energy Agreement if Seller fails to achieve Commercial Operation by [_____].³

If an Event of Default shall have occurred, the non-defaulting Party shall have the right to terminate the Capacity/Energy Agreement and, in such case, each Party shall pay the other all amounts due for all periods prior to termination. In addition, if applicable, the defaulting Party shall make a termination payment to the non-defaulting party.

Any termination payment under the Capacity/Energy Agreement shall be based on a comparison of the net present value of the payments that the non-defaulting Party reasonably expects to be applicable in the market under a replacement contract covering the same services to the net present value of the then remaining payments under the Capacity/Energy Agreement, plus the reasonable transactional costs of the non-defaulting Party entering into a new capacity/energy arrangement. Any such calculations shall be based on reasonable assumptions as to future Facility operations, differences between a replacement contract and the Capacity/Energy Agreement, discount rate and similar considerations, as reasonably determined by the non-defaulting Party.

Indemnification

The Capacity/Energy Agreement shall include customary indemnification obligations between the Parties including for liabilities related to energy once delivered to Buyer at the Energy Delivery Point.

Limitation of Liability

Unless expressly provided in the Capacity/Energy Agreement, a Party's liability shall be limited to direct actual damages only, which direct actual damages shall be the sole and exclusive remedy and all other remedies or damages at law or equity are waived. Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages, whether such damages are allowed or provided by statute, in tort, under any indemnity provisions or otherwise except and only to the extent that any actual or liquidated damages expressly provided for in the Capacity/Energy Agreement include an element of profit or other type of damages which are

³ To be included if the Facility is under development

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otherwise disclaimed and except to the extent required through indemnification on account of third party claims.

Dispute Resolution

The Capacity/Energy Agreement would contain provisions for the resolution of disputes, and the exclusive forum for the resolution of any dispute arising under or in connection with this Term Sheet or the Capacity/Energy Agreement would be King County, Washington or if no such court will accept jurisdiction, in any state or federal court of general jurisdiction in the State of Washington, or if no such court will accept jurisdiction, in any court of competent jurisdiction in the United States) with respect to any proceeding relating to the Capacity/Energy Agreement.

Expenses

Unless otherwise provided for in the RFP, Each party would bear its own legal, accounting, regulatory and other professional fees and expenses and other costs associated with the RFP and a potential transaction, regardless of whether a transaction is consummated.

Governing Law

The Capacity/Energy Agreement shall be governed by the laws of the State of Washington, without regard to conflicts of laws principles. Venue shall be in King County, Washington.

Assignment

Neither Party shall assign any of its rights or obligations under the Capacity/Energy Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed, except that either Party may, without the other Party's consent, (i) transfer, sell, pledge, encumber or assign the Capacity/Energy Agreement or the revenues or proceeds thereof in connection with any financing, (ii) transfer or assign the Capacity/Energy Agreement to an affiliate or (iii) transfer or assign the Capacity/Energy Agreement to any person or entity succeeding to all or substantially all of the assets of such Party; provided that in the case of clauses (ii) or (iii) above, the assignee agrees to be bound by all terms and conditions and, in the case of an assignment by Seller, either the assignee or its guarantor possesses the same or better credit rating as Seller or provides credit support reasonably acceptable to Buyer.

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Schedule I
Contract Price⁴

Monthly Capacity Payment	Variable O&M Charge	Start-Up Charge
(\$ per MW of Tested Capacity)	(\$ per MWh)	(\$ per start)

⁴ *Illustrative pricing structure only, actual pricing structure will be based on capacity resource type proposed. Respondent may propose an alternative structure.*

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Schedule II
Monthly Capacity and Dispatch Schedule⁵

Month	Monthly Capacity	Dispatch Parameters / Operating Characteristics
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

⁵ Illustrative only, actual capacity and dispatch structure will be based on capacity resource type proposed. Respondent may propose an alternative structure.

Schedule III
Availability Guarantee and Liquidated Damages⁶

⁶ To be provided by Respondent.