



## Mutual Nondisclosure Agreement

Puget Sound Energy, Inc. a Washington corporation with offices at 10885 NE 4<sup>th</sup> St., Bellevue, WA ("PSE") and the "Other Party" identified on the signature page below are considering a business transaction (the "Transaction"). In connection with the proposed Transaction, the parties are willing to disclose confidential information to each other on the terms and conditions stated in this agreement (this "Agreement").

The parties, intending to be legally bound, agree that:

### **I. Confidentiality.**

1. In connection with the Transaction, each party (a "Disclosing Party") is prepared to make available to the other party (a "Receiving Party") certain Confidential Information regarding the Disclosing Party's business. The Receiving Party agrees to keep such information confidential, and protect all Confidential Information from disclosure by using the highest practical degree of care and at least the same care the Receiving Party uses to protect its own confidential information.

2. "Confidential Information" means: (i) any and all information with respect to the status of or the terms of the Transaction, and (ii) any trade secrets or other confidential or proprietary information of the Disclosing Party, whether of a technical, business or other nature (including, without limitation, the relationship between the parties, and information relating to the Disclosing Party's technology, software, products, services, designs, methodologies, know how, business plans, finances, marketing plans, customers, employees, prospects or other affairs). Confidential Information also includes any information that has been made available to the Disclosing Party by third parties that the Disclosing Party is obligated to keep confidential.



3. Receiving Party may not disclose Confidential Information to third parties; provided, however, that notwithstanding the foregoing, Receiving Party may disclose Confidential Information to its employees, consultants, advisors, or other agents (its "Representatives") only to the extent necessary for such Representatives to assist the Receiving Party in evaluating the Transaction, provided that such Representatives agree to keep such Confidential Information confidential in accordance with this Agreement. A breach of this Agreement by a Representative of Receiving Party will be deemed a breach by the Receiving Party, and Receiving Party agrees, at its sole expense, to take all reasonable measures (including but not limited to court proceedings) to restrain its Representatives from prohibited or unauthorized disclosure of the Confidential Information. Receiving Party shall immediately notify Disclosing Party of any actual, probable or reasonably suspected disclosure or unauthorized access to the Disclosing Party's Confidential Information.

4. Receiving Party will not use or allow others to use Confidential Information for any purpose other than evaluating the Transaction.

5. At Disclosing Party's request, Receiving Party will return all materials furnished by Disclosing Party that contain Confidential Information and will destroy or deliver to Disclosing Party any other materials containing Confidential Information, including materials prepared by Receiving Party, unless such Confidential Information is required to be retained by the Receiving Party to comply with applicable law, regulatory requirements or internal document retention policies. Notwithstanding the foregoing, the parties acknowledge that Receiving Party's computer systems may automatically back-up and retain electronic copies of the Confidential Information. To the extent that such systems create copies of the Confidential Information, the Receiving



Party may retain such copies in its archival or back-up computer storage. If the Receiving Party retains a copy of any Confidential Information for any reason, including copies on electronic backup media, then such information shall in all respects remain subject to the terms and conditions of this Agreement.

6. The provisions of this Part I shall not apply to Confidential Information that: (a) is or becomes publicly available through no fault of Receiving Party; (b) is or has been received in good faith by Receiving Party without restriction on use or disclosure from a third party having no obligation of confidentiality to Disclosing Party; or (c) is or has been independently developed by Receiving Party without reference to Confidential Information received from Disclosing Party, as evidenced by Receiving Party's written records.

7. The fact that portions of Confidential Information may be publicly available or otherwise not subject to this Agreement will not affect Receiving Party's obligations with respect to the remaining portion.

8. If Receiving Party is required by judicial or administrative process to disclose Confidential Information, Receiving Party shall promptly notify Disclosing Party and allow Disclosing Party a reasonable time to oppose such process. If disclosure is nonetheless required, Receiving Party may disclose only the Confidential Information that, in the written opinion of counsel acceptable to Disclosing Party, Receiving Party is legally required to disclose. Receiving Party shall use its best efforts to limit the dissemination of Confidential Information that is disclosed.

9. This Agreement will not apply to information disclosed to Receiving Party after Receiving Party receives written notice from Disclosing Party that further disclosures will not be treated as confidential.



10. In providing Confidential Information pursuant to this Agreement, Disclosing Party makes no representation, either express or implied, as to adequacy, sufficiency, or freedom from fault of such Confidential Information and incurs no responsibility nor obligation whatsoever by reason thereof; and the furnishing of such Confidential Information will not convey any rights or license with respect to such Confidential Information.

**II. No Commitment to Enter Into Transaction.** The parties acknowledge that nothing in this Agreement is intended to create or constitute any agency or partnership among the parties, or any legally binding obligation for either party to enter into, or negotiate to enter into, the Transaction.

**III. Miscellaneous.**

1. This Agreement shall continue in full force and effect for two (2) years from the Effective Date, unless terminated earlier or extended by mutual agreement of the parties.

2. In the event of a default under this Agreement, the non-breaching party will be entitled to injunctive relief, without posting bond, in addition to any other available remedies, including damages. In any litigation concerning this Agreement, the prevailing party will be entitled to recover all reasonable expenses of litigation, including reasonable attorney fees at trial and on any appeal.

3. Any failure by a party to enforce another party's strict performance of any provision of this Agreement will not constitute a waiver of its right to subsequently enforce such provision or any other provision of this Agreement.

4. This Agreement will be governed by and construed and enforced in accordance with the internal laws of the state of Washington, without regard to contrary principles of conflicts of law. The federal and state courts within the State of Washington shall have exclusive jurisdiction to



**PUGET SOUND ENERGY**

*2011 Demand Response RFP • Exhibit C*

adjudicate any dispute arising out of and relating to this Agreement. Venue for purposes of any litigation arising under this Agreement will be in King County, Washington.

5. All additions or modifications to this Agreement must be in writing and executed by all parties.

**EFFECTIVE DATE:** \_\_\_\_\_

**Puget Sound Energy, Inc.**

**Other Party:** \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_