



**PacifiCorp**  
**Request for Proposals**  
**RFP 2004-X**

ISSUED: July 19, 2004  
Reissued: July 28, 2004

**DUE DATE:** August 9, 2004

**Questions, Intent to Bid forms & RFP Responses:**

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RFP 2004-X  
PacifiCorp, Suite 600  
825 NE Multnomah St.  
Portland, OR 97232

E Mail: [rfp2004x@PacifiCorp.com](mailto:rfp2004x@PacifiCorp.com)

Fax: (503) 813-6260

(Note: no RFP responses will be accepted via fax)

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## **Purpose and Scope**

In 2001, PacifiCorp issued a Request for Proposals which resulted in the procurement of 400 MW of resources from three entities. Within these resources was the lease of a 200 MW power plant from the West Valley Leasing Company (Leasco). Leasco is a subsidiary of PPM Energy which, in turn, is an affiliate of PacifiCorp. PPM Energy and PacifiCorp are legally separate entities.

The power plant being leased by PacifiCorp consists of five 40 MW General Electric LM-6000 "quick-start" generating units. The term of the lease is fifteen years; however, PacifiCorp holds two early termination options. These two independent options provide PacifiCorp the ability to terminate the lease early and, at PacifiCorp's further option, to purchase the plant for pre-determined amounts.

In May 2004, PacifiCorp exercised its first option to terminate the lease. PacifiCorp has the right, by notice given on or before September 30, 2004, to rescind said termination. Therefore, in this period between its exercise of the first termination option and the deadline for its rescission, PacifiCorp is seeking proposals for a replacement of this 200 MW leased resource. In the event that the resource cannot be replaced, on a more economic basis, PacifiCorp may rescind the termination notice prior to September 30, 2004 and continue the lease until the second option period arrives.

This solicitation seeks resources that may replace the leased resource, as more fully described below, with a resource capable of delivering electricity to PacifiCorp's network transmission system at a location that can, utilizing firm transmission rights, deliver the electricity to a point electrically North of Camp Williams and South of Ben Lomond substations. The replacement resource must be available as of June 1, 2005 for terms of: a) three (3) years, or b) three (3) years with a nine (9) year extension option to be exercised at PacifiCorp's option prior to June 30, 2007, or 3) up to twelve (12) years with a three (3) year minimum.

## **1. Procedural Items**

- a. Schedule of RFP Actions - This RFP is being issued as of July 19, 2004. The anticipated schedule is shown below:

Event	Anticipated Date(s)
RFP Issued	July 19, 2004
Pre Conference phone call	July 26, 2004
Intent to Bid Form Due	July 28, 2004
Deadline for Proposals Due	August 9, 2004
Evaluation Complete	targeted for August 16, 2004
Short List Announced	targeted for August 18, 2004
Definitive Agreement(s) in the form of Appendix E	targeted for September 29, 2004

The deadline for proposals is firm. PacifiCorp will not consider any proposals submitted after the deadline. With the exception of a requirement that definitive agreements be reached no later than September 29, 2004, the targeted dates for evaluations, negotiations and definitive agreements are targets only, and actual dates will vary for reasons that include, but are not limited to, negotiation time, availability of key personnel, due diligence, the evaluation or negotiation of any issues unique to any bid, bidder, or project, bidder's willingness to agree to forms of agreements desired by PacifiCorp, PacifiCorp's evaluation of bidder's creditworthiness, and actions required by any third parties.

- b. Security –In responding to Appendix B, the bidder should provide information sufficient to assure PacifiCorp that any proposed resource has a certainty of successful construction and operation, if a new resource, within the deadlines set forth. PacifiCorp shall require credit assurances adequate to PacifiCorp in its sole and absolute discretion, which credit assurances may include without limitation a guaranty, letter of credit, or other collateral, in a form, amount, and from such entities as are acceptable to PacifiCorp. Please refer to Appendix E for additional minimum requirements. The amount of any required “adequate credit assurances” will include acceptable coverage for, without limitation: market-based liquidated damages for failure to perform, delays in resource availability (which may include construction), failure to meet minimum availability levels, and/or other forms of default or non-performance as determined by PacifiCorp. PacifiCorp reserves the right to require that any respondent provide in writing its intent and ability to provide such adequate credit assurances prior to beginning negotiations of a definitive agreement(s).
- c. Demonstrated Capability- Proposals dependent on construction must be sponsored by entities that have themselves directly and successfully developed, permitted, designed, procured, constructed and commissioned a project similar to that proposed. Any proposed operating entity must have more than five years of demonstrated experience in the successful and reliable operations of facilities employing the same technology as in a configuration similar to that proposed. The success and reliability of operations may be demonstrated through operational records, business references, and NERC / WECC data. In addition, any entity proposing to construct a new resource in order to fulfill its obligations must utilize a single engineer/procure/construct (EPC) contractor that is investment grade or its equivalent, as determined by PacifiCorp.
- d. Confidentiality - PacifiCorp will attempt to maintain the confidentiality of the pricing component of all bids submitted. Due to the short timeframe involved in this solicitation, and the interest displayed by PacifiCorp's regulators to date with respect to the potential to replace this resource, PacifiCorp may disclose blinded bidder and bid information to any regulatory authority that may request it. **It is the bidder's responsibility to clearly indicate in its proposal which pricing information it deems to be confidential and PacifiCorp will attempt to maintain the confidentiality of such bidder specific**

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information, subject to regulatory approved protective order(s). All information supplied to PacifiCorp, or generated internally by PacifiCorp, shall remain the property of PacifiCorp. **PacifiCorp will in its discretion retain all such pertinent information for a period of at least 5 years or until PacifiCorp receives a recovery decision in each state it serves.** Bidder information will be released to PacifiCorp's Legal and/or Credit departments before a short list is determined (please refer to Section 2 below for additional information). Additionally, PacifiCorp will utilize internal and proprietary forward curves in its evaluations. These curves and evaluations will not be shared with entities external to PacifiCorp unless required by law or regulatory order, and in such instances PacifiCorp will seek a confidentiality agreement or protective order limiting further distribution.

- e. Number of Proposals, Proposal Cost, and Expense – **Bidders shall be limited to submitting no more than three proposals each.** Each proposal shall consist of a single proposed transaction, with a clearly defined start date. Any bidder who provides a proposal that contains sub proposals will be asked to clarify in writing the transaction that it desires PacifiCorp to evaluate. A “bidder” shall be deemed to consist of the entity that will be providing the “adequate credit assurances” described above. Each proposal will be prepared at the sole cost and expense of the respondent and with the express understanding that there will be no claims whatsoever for reimbursement from PacifiCorp. PacifiCorp is not liable for any costs incurred by respondents in responding to this RFP or for any damages arising out of or relating to PacifiCorp's rejection of any proposal for any reason. Respondent shall bear all costs and expenses of any response to PacifiCorp in connection with its proposal, including providing additional information and respondent's own expenses in negotiating and reviewing any documentation.
- f. Proposal Ownership - All proposals belong to PacifiCorp and will not be returned. PacifiCorp reserves the right to release such information to agents or contractors to help evaluate the Proposal. PacifiCorp shall not be liable for any damages resulting from any disclosure of such information, howsoever occurring.
- g. Binding. Proposals must be submitted in the legal name of the respondent who would be bound by any agreement with PacifiCorp.
- h. Term. **PacifiCorp will not accept proposals with a term that starts later than June 1, 2005.** In order for proposals with terms that extend, or can extend at PacifiCorp's option, after May 31, 2008 and up to December 31, 2017, to be considered valid, the economics of the proposal during the time period June 1, 2005 through May 31, 2008 must be superior to those contained in the agreement with Leasco.
- i. Evaluation Horizon, Benchmark Comparison, & Analysis Approach. PacifiCorp's evaluation horizons shall be from June 1, 2005 through May 31, 2008, and June 1, 2005 through December 31, 2017. The benchmark comparisons will be the projected net

present value revenue requirement (Net PVRR) per Kilowatt-Month (\$ Net PVRR per KW-mo) as determined on an economic dispatch basis. All bids with terms equal to three years will be benchmarked against the June 1, 2005 through May 31, 2008 Leasco economics, while all bids with terms greater than three years will be benchmarked against the June 1, 2005 through December 31, 2017 Leasco and market economics. PacifiCorp will project these \$ Net PVRR per KW-mo's using a spreadsheet based model that takes into account the spread between projected power and gas prices. Gas prices shall be those projected to be applicable to the location of the leased plant from Leasco and power prices shall be those projected for the Mona power market. The leased plant has access to both the Kern pipeline and the Questar LDC gas system, at PacifiCorp's option.

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In addition, PacifiCorp will take into account the effect of direct or inferred debt associated with any given proposals. Direct debt may result in debt being added directly to PacifiCorp's balance sheet pursuant to Emerging Issues Task Force 01-08. Inferred debt may result due to rating agencies inferring debt associated with any proposed agreement. For example, Standard & Poors has stated debt will be inferred for agreements greater than 3 years in term. It is PacifiCorp's intent to analyze the higher of direct or inferred debt as having a cost associated with it. The cost of the direct or inferred debt will be the amount of incremental equity required to re-balance PacifiCorp's debt/equity ratio, through the term of the agreement, multiplied by the difference between the pre-tax equity rate and PacifiCorp's pre-tax weighted average cost of capital.

j. Analysis Variables – Key variables that will affect the analysis of a bid will be the combination of the fixed and variable expenses associated with the proposal based on the predicted economic scheduling of the resource over the term horizon. Variables that can affect this analysis include:

- Heat Rate - To the extent heat rates are applicable, lower incremental heat rates, and thus lower incremental costs, will fair better than higher incremental costs, depending on the level of fixed cost proposed,
- Future Air Quality Obligations - Proposals wherein the bidder accepts and collateralizes future air quality standards may have a favorable effect,
- Accounting Treatment – Proposals wherein the structure proposed by the bidder does not require consolidation pursuant to Financial Interpretation No. 46R or is not considered a capital lease under Financial Accounting Standards Board No. 13 (accounting for leases), as a result of lease determination pursuant to Emerging Issues Task Force 01-08, may have a favorable evaluation effect. Bidders are encouraged to consult with their accounting professionals with respect to the above accounting guidelines. Bidders will be expected to provide PacifiCorp with any and all information in order for PacifiCorp to perform necessary accounting analyses.

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- Transmission – The estimated costs, as well as the feasibility and timing, of delivering the energy utilizing firm transmission rights to a point that is electrically North of Camp Williams and South of Ben Lomond substations will be included in the evaluation of proposals.

## **2. Resource Information**

### a. Price and Non-Price Information –

2. a.i Price Information – PacifiCorp is willing to consider pricing proposals from bidders that include, but are not limited to, the following concepts, so long as the bidder supplies information, sufficient to PacifiCorp's satisfaction, to permit PacifiCorp to perform an effective evaluation. No proposals will be evaluated that have a term that extends beyond December 31, 2017:

- Day ahead fixed price call options<sup>1</sup>;
- Day ahead indexed price call options;
- Day ahead heat-rate based gas/electricity options (i.e., tolling service agreements); and/or
- Day ahead electricity/electricity exchanges.

### 2. a.ii Non-Price Information -

- **Point of Delivery** - the proposed resource must deliver electricity to PacifiCorp's network transmission system, utilizing firm transmission rights, such that the resource can be utilized to meet PacifiCorp load obligations electrically North of Camp Williams and South of Ben Lomond substations.
- In the event a bidder proposes to make deliveries to a point that does not meet the above criteria, such point shall be clearly described by the bidder and **shall not** consist of a point(s) other than those that constitute delivery in or to the portion of PacifiCorp's Eastern Control area generally described as being in Utah, SE Idaho, or electrically South of the Naughton 230 kV substation in SW Wyoming<sup>2</sup>; provided, in the event PacifiCorp agrees to accept deliveries at such alternate point(s), and PacifiCorp's allocated

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<sup>1</sup> Such options could be based or struck at a fixed electricity price, a variable electricity price or at a price based on fuel prices.

<sup>2</sup> The following will NOT be considered as a delivery point: Four Corners; deliveries in Wyoming that are electrically North of the Naughton 230 kV substation; and deliveries utilizing non-firm transmission.

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transmission rights into the above described point of delivery<sup>3</sup> are curtailed during hours when the resource is scheduled to meet load service obligations, then the bidder shall reimburse PacifiCorp for 125 % of liquidated damages during such curtailments. The bidder shall have no contractual rights to curtail deliveries following a schedule submitted by PacifiCorp.

Network Resource Requirement - PacifiCorp must be able to integrate fully and completely, by no later than June 1, 2005, any proposed resource acquired as a result of this solicitation into the existing transmission agreement between PacifiCorp's merchant function and PacifiCorp's transmission function as a network generation resource. As such, the purchase of any generation resource considered as part of this RFP process shall be contingent upon PacifiCorp being able to add and maintain the resource as a network generation resource, with any terms and conditions imposed by PacifiCorp Transmission to be the contractual and financial obligation of the bidder if an alternate delivery point is proposed. Bidders shall specify if they propose to provide operating reserves or if PacifiCorp is expected to provide operating reserves associated with the proposed resource. PacifiCorp shall not be obligated to accept deliveries or pay for power during periods when the resource cannot be utilized to serve network load. Any bid failing to so provide will be considered non-qualifying and be rejected.

It is PacifiCorp's intent that, where applicable, the scheduling of resource deliveries shall be pursuant to industry practices. If a Bidder is not specific with respect to scheduling times and/or limitations, the bid will be considered to be non-qualifying and may be rejected.

The exact rules surrounding resource adequacy for planning and operational purposes have yet to be promulgated by the Federal Energy Regulatory Commission (FERC) and state regulatory agencies with jurisdiction over PacifiCorp. A requirement of this RFP is that all power sales to PacifiCorp shall contractually define an asset (or assets) associated with deliveries at such time as required pursuant to applicable Federal and or State law or regulatory order.

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<sup>3</sup> North of Camp Williams and South of Ben Lomond



- b. Resource Types Eligible to bid – **Affiliate companies of PacifiCorp may not respond to this RFP.** Table 4 indicates the term of the resources requested.

**Table 4: Resource Type & Terms**

Resource Type	Size (MW)	Delivery Start	Resource Term
"Day Ahead Option "	Up to 200 MW in minimum of 50 MW blocks	June 1, 2005	<b>Term 3 years</b> June 1, 2005 through May 31, 2008
"Day Ahead Option "	Up to 200 MW in minimum of 50 MW blocks	June 1, 2005	<b>Term 3 years with 9 year extension option:</b> June 1, 2005 through May 31, 2008 with PacifiCorp option to extend the term until December 31, 2017 by notice given June 30, 2007
"Day Ahead Option "	Up to 200 MW in minimum of 50 MW blocks	June 1, 2005	<b>Term 3 years up to 12 years (three year minimum)</b> June 1, 2005 through up to December 31, 2017  <b>Note:</b> the economics during the first 3 years must be superior to those contained in the Leasco agreement.

- 2d. Information required in bid proposals - Appendix B to this RFP provides a list of information that bidding entities are required to provide with their proposals. Appendix C provides a template Bid Summary that must accompany every proposal. Bidders are instructed to submit Appendix D so that the credit status of the respondent can be determined. All potential bidders should direct all communications and questions with respect to this RFP to:

**Questions, Bid Numbers, Intent to Bid forms:**

Address: Supply RFP 2004-X  
 PacifiCorp, Suite 600  
 825 NE Multnomah St.  
 Portland, OR 97232  
 E Mail: [rfp2004x@PacifiCorp.com](mailto:rfp2004x@PacifiCorp.com)  
 Fax: 503 813 6260

Bidders are encouraged to ask any questions via e-mail that will help them provide to PacifiCorp a lowest cost alternative responsive to this RFP. The answers to any such questions will be posted on PacifiCorp's website and be available to all bidders. Bidders should be aware, however, that PacifiCorp reserves the right not to answer any specific question, and that PacifiCorp will not provide accounting or legal advice.

Responses to this RFP shall be remitted to **PacifiCorp** via U.S. mail or courier. Proposals are due prior to 2:00 p.m. Pacific prevailing time on the due date of August 9, 2004. **No faxed responses will be accepted! No bidder should expect PacifiCorp to review any information provided by fax and e-mail by any bidder throughout this RFP process, unless that bidder has been specifically instructed by PacifiCorp to provide a specific response by fax or e-mail.**

**BIDDERS ARE INSTRUCTED TO PROVIDE THEIR PROPOSAL IN ELECTRONIC "PDF" FORMAT on a compact disc.** If any bidder does not understand what a "PDF" format document is then they are instructed to contact PacifiCorp.

Responses should be addressed to "Supply RFP 2004-X, PacifiCorp Suite 600, 825 NE Multnomah St., Portland, OR 97232".

**Respondents who intend to be considered as part of this RFP process MUST return the "Intent To Bid Form" (see Appendix A) to PacifiCorp no later than close of business on the date indicated in Section 1.c above.** Respondents who do not return the "Intent to Bid Form" prior to such time will not be considered as eligible bidders under this RFP.

### **3. Bid Evaluation and Selection**

PacifiCorp will utilize a "first-price sealed bid format" in order to generate a short list from which it will determine those proposals that will give rise to post-bid negotiations. Under this format, contract payments are based on the price contained in each winning bid proposal. The "first-price sealed bid format" means that PacifiCorp will utilize the initial prices and/or pricing structure submitted by the bidder in order to determine the short-listed entities. PacifiCorp will not ask for, or accept, updated pricing from bidders during the evaluation period. **PacifiCorp will negotiate both price and non-price issues during the post-bid negotiations.** PacifiCorp reserves the right not to engage in any post-bid negotiations with any bidder that has not made the short list. Selection for the short list and post-bid negotiations does not constitute a "winning bid proposal." Only execution of a definitive agreement by both PacifiCorp and the bidder on terms acceptable to PacifiCorp in its sole and absolute discretion will constitute a "winning bid proposal." Any definitive power purchase agreement will be in the forms shown in Appendix E. Transactions for more than three years shall be in the form of the PPA attached as Exhibit E-1; transactions for less than or equal to three years shall be in the form of the Edison Electric Institute Master Agreement with additional terms as set forth on Exhibit E-2, with collateral thresholds and other credit terms as determined by PacifiCorp's credit department based on its evaluation of the counterparty and then-prevailing market conditions. PacifiCorp may use its assessment that it is unlikely that the parties will execute a form of PPA in the form of Exhibit E, or other form acceptable to PacifiCorp, or complete its required due diligence on or before September 29, 2004, as a reason to reject a bid altogether. If the Bidder alters or does not use the supplied form of agreement, PacifiCorp reserves the right to not accept the proposal. PacifiCorp has no legal obligation to enter into any agreement with any bidder.

Bidders should also be aware that operational separation exists, pursuant to FERC orders and PacifiCorp's Standards of Conduct, between PacifiCorp's merchant and transmission functions. This RFP is a product of PacifiCorp's merchant function. As a result, **the bidder is responsible for the negotiation, execution, and all costs respecting interconnection with the interconnecting control area, which the bidder should undertake directly with the relevant transmission provider. The bidder is responsible for all incremental transmission expenses associated with delivery to PacifiCorp's network transmission system (inclusive of any needed system upgrades in order to deliver such power to PacifiCorp's network) in PacifiCorp's control areas, as the burden of those costs and expenses may change from time to time pursuant to applicable law.** Any anticipated cost, transmission or otherwise, that is not disclosed in a bidder's response may constitute a ground for rejecting the bid and may be added by PacifiCorp, should it evaluate that bidder's response, using information reasonably calculated by or readily available to it. Bidders are encouraged to contact PacifiCorp's transmission function (Larry Soderquist, 503-813-6102) for information related to system interconnection.

#### **4. Awarding of Contracts**

- a. **Invitation** - This RFP contains only an invitation to make proposals to PacifiCorp. No proposal is itself a binding contract. PacifiCorp may in its sole and absolute discretion do any one or more of the following:
- i. Determine which proposals are eligible for consideration as proposals in response to this RFP.
  - ii. Issue additional subsequent solicitations for information, and conduct investigations with respect to the qualifications of each respondent.
  - iii. Disqualify proposals contemplating resources that do not meet this RFP's requirements.
  - iv. Supplement, amend, or otherwise modify this RFP, or cancel this RFP in its entirety with or without the substitution of another RFP.
  - v. Negotiate with respondents to amend any term of any proposal.
  - vi. Select and enter into agreements with the respondents who, in PacifiCorp's sole judgment, are most responsive to the RFP and whose proposals best satisfy the interests of PacifiCorp and its customers, and not necessarily on the basis of any single factor alone.
  - vii. Issue additional subsequent solicitations for Proposals.
  - viii. Reject any or all Proposals in whole or in part.
  - ix. Vary any timetable.
  - x. Conduct any briefing session or further RFP process on any terms and conditions.
  - xi. Withdraw any invitation to submit a response.

- b. Rejection - Proposals may be rejected for any reason, including without limitation:
- i. Receipt after the response deadline.
  - ii. Failure to meet any of the requirements described in this RFP.
  - iii. Failure to submit a complete proposal containing all pertinent information necessary for PacifiCorp's evaluation.
  - iv. Failure of the respondent's authorized officer to sign the proposal.
  - v. Failure to timely submit an Intent to Bid form.
  - vi. Misrepresentation.
  - vii. Failure to permit disclosure of information contained in the proposal to PacifiCorp agents, contractors or regulators.
  - ix. Any attempt to influence PacifiCorp's evaluation of the proposals outside the solicitation process.
  - x. Any change in regulation or regulatory requirements.
  - xi. Any matter impairing the respondent or the specified resources.
  - xii. Any collusive bidding or other anticompetitive conduct.
  - xiii. Inability or unwillingness of the respondent to provide the required security or surety required for performance.
  - xiii. Any failure to disclose the real parties in interest in any proposal submitted.
  - xiv. The bidder or a primary sponsor or affiliate of either that is pursuing or has threatened to pursue a claim in current litigation or potential litigation with PacifiCorp.
- c. Post-Bid Negotiation – PacifiCorp may negotiate both price and non-price factors during post-bid negotiations. PacifiCorp will include in its evaluation of all bids any factors that may impact the total cost of a resource, including but not limited to all of the factors used in the initial cost analysis plus consideration of accounting treatment and potential effects due to rating agency treatment. Post bid negotiation will be based on PacifiCorp's cost assessment. PacifiCorp will continually update its

economic and risk evaluations until both parties execute a definitive agreement acceptable to PacifiCorp in its sole and absolute discretion.

PacifiCorp shall have no obligation to enter into any agreement with any bidder to this RFP and PacifiCorp may terminate or modify this RFP at any time without liability or obligation to any bidder. In addition, this RFP shall not be construed as preventing PacifiCorp from entering into any agreement that PacifiCorp deems prudent, in PacifiCorp's sole opinion, at any time before, during, or after this RFP process is complete. Finally, PacifiCorp reserves the right to negotiate only with those entities who propose transactions that PacifiCorp believes in its sole discretion to have a reasonable likelihood of being timely executed.

- d. Subsequent Regulatory Action – Unless mutually agreed between the parties or unless required by actual (or proposed) law or regulatory order, at the time of contract execution, PacifiCorp does not intend to include a contractual clause whereby PacifiCorp is allowed to adjust contract prices in the event that an entity who has regulatory jurisdiction over PacifiCorp does not fully recognize the contract prices in determining PacifiCorp's revenue requirement. As of the issuance date for this solicitation, PacifiCorp is unaware of any such actual or proposed law or regulatory order. However, PacifiCorp reserves the right to contingent any agreement on the completion of any regulatory process that may be required, in PacifiCorp's sole discretion, prior to June 1, 2005.

**Notice of Intent to Bid**

This is to declare that the undersigned intends to respond to PacifiCorp's:  
Request for Proposals, Electric Resources (RFP 2004)

**Company** \_\_\_\_\_  
(Legal entity of intended signatory to a contract)

**Mailing Address/Phone/Fax/Email** \_\_\_\_\_

**Contact Person** \_\_\_\_\_

**PacifiCorp Affiliate Certification**

Bidder does not have an affiliate relationship (whether by ownership, joint venture or other association) with PacifiCorp or any PacifiCorp affiliate; and the proposed bid is for power generated by facilities that are not owned by, or otherwise associated with PacifiCorp, or any PacifiCorp affiliate unless it can be demonstrated that such generation rights have been contractually allocated to a third party.

**Proposed Delivery Point (Please be specific):** \_\_\_\_\_

**Authorized Signature and Date** \_\_\_\_\_

**Print Name** \_\_\_\_\_ **Title** \_\_\_\_\_

Return by mail or fax by July 28, 2004 to:

Supply RFP 2004  
PacifiCorp, Suite 600  
825 NE Multnomah St., Suite 600  
Portland, OR 97232

E-mail: rfp2004x@PacifiCorp.com  
Fax: (503) 813-6260

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## Information required in bid proposals

This appendix describes PacifiCorp's expectations and requirements for RFP bids. In general, PacifiCorp expects bidders to provide any information that could impact the cost, reliability, dispatch frequency, or output capability of a resource. Bids from a PacifiCorp affiliate, or for power from generating facilities owned in part or in whole by PacifiCorp, or a PacifiCorp affiliate will not be accepted for evaluation in this RFP.

In the event a bidder is proposing a transaction that does not require the construction of a resource, much of the following information may not apply. PacifiCorp believes these resource attributes largely consist, but may not be limited to, the following information categories:

**Impact of Temperature on Output** - If a proposed generator output will vary with ambient conditions; capability, and any associated performance impact, should be stated in terms of conditions expected during a summer day, with ambient air conditions of 95°F and 20% relative humidity, and a winter day with ambient air conditions of 20°F and 75% humidity. In the event summer and winter daily design conditions are different, bidder shall identify those conditions. To the extent pricing, capability and/or availability vary based on specific characteristics of the facility and/or ambient conditions, the bidder shall clearly identify that relationship in tabular form.

**Impact of Other Factors on Output** - PacifiCorp prefers generation facilities designed, permitted, and operated so that, to the extent practicable, the proposed facility and any related energy provided to PacifiCorp is without restriction related to:

- Environmental permits or other environmental limitations or environmental forfeitures
- Hours of operation
- Sales to other parties
- Interruption of primary fuel supply
- Any other factor relevant to the technology (noise, agreements with neighbors, etc.)
- Non-environmental or technology factors that could encumber the facility
- Failure to meet the target in-service date
- Bidders shall describe in detail any such limitations in their Proposal



## Appendix B

**Deleted: Ownership Purchase** - bidders may propose a "turn-key" sale or lease of generation assets to PacifiCorp. Such proposal must include the following information in addition to any technical information:¶

¶

<#>Amounts and dates of payments required of PacifiCorp.¶

¶

<#>Estimated cost and timing of annual capital additions likely to be required.¶

¶

<#>Estimate of the annual fixed and variable O&M costs associated with the generation facility.¶

¶

<#>Estimate of startup costs (i.e., the period of time from when a start is initiated to the time the unit reaches sustainable minimum load)¶

¶

<#>Operating Limits - Any limits imposed on the number of startups that may performed per year or per unit of time. Any limits on the number of hours that a unit may be operated per year or unit of time.¶

¶

<#>Estimate of emissions (air, liquid and solid wastes) in pounds per hour per pollutant and/or waste product at 100% load and tons per year per pollutant and/or waste product at a specified capacity factor as selected by the bidder.¶

¶

<#>Estimated annual unit availability and any guaranteed minimum annual availability.¶

¶

<#>Information regarding location and transmission availability.¶

¶

<#>Information regarding fuel and transportation availability.¶

¶

<#>Capacity on summer design day in compliance with all regulatory requirements.¶

¶

<#>Efficiency (Heat rate) in compliance with all regulatory requirements.¶

¶

<#> Failure to meet the target in-service date.

¶

<#>Terms of warranties and/or guarantees on major equipment.¶

**Sitting** - Bidders are responsible for all construction and coordination with the applicable service provider(s) for any new electrical transmission and fuel transportation facilities required in response to this RFP. Bidders are responsible for satisfying all zoning and environmental requirements.

**Facility Information** – To the extent applicable, the bidder should clarify the following information with respect to any proposed facility:

1. Proposed air emissions (all criteria pollutants and air toxics), description of emission controls, description of plan to acquire any required emission offsets, and description of criteria used to determine requirement.
2. List of required environmental, construction, and other regulatory permits and timeline for acquisition
3. Proposed water usage quantity, quality and source.
4. Proposed water discharge quantity and quality, plus description of water discharge plan.
5. Receiving water body identity and description.
6. Description of local groundwater quality, quantity, uses, and potential impacts.
7. Prevailing noise ordinance at the site and expected sound level (A-weighted) at full load at the site boundary.
8. Proposed noise levels and description of noise baffles and stack silencing equipment.
9. Proposed site plans, layouts, elevations, or other aspects of the facility.
10. Types of transportation access required.
11. Characterization of the area surrounding the site including a description of local zoning, flood plain information (100 yr. & 500 yr.), existing land use and setting (woodlands, grasslands, agriculture, etc.).
12. Proximity and extent of nearest wetlands and description of types of all nearby wetlands and water bodies.
13. Information on fish, wildlife and vegetation inhabiting the area of the Project.
14. Proximity to nearest endangered or threatened or critical species habitat and information on all nearby endangered or threatened species which could potentially be impacted.
15. Proximity to nearest historical or archaeological resources and all nearby historical or archaeological resources which could potentially be impacted.
16. Location and distance to population centers which could be impacted.
17. Expected site ambient temperature extremes and verification that freeze protection will be provided if necessary.

**Fuel Transportation Route Information** - To the extent applicable, the bidder should clarify the any relevant information with respect to fuel transportation route information for any proposed site:

- Proposed new fuel transportation route(s).
- Estimated impact on wetlands (e.g., length of route through wetlands).
- Describe land use impacts
- Descriptions of stream crossings.
- Characterization of the area encompassing the fuel transportation route including a description of existing land use and setting.

**Proposal Format** –PacifiCorp is requesting that bidders conform to the following format for presenting their bid information:

**Section 1 - Executive Summary of Proposal** - The Executive Summary section should provide an overall description of the proposal and its key benefits and advantages to PacifiCorp. It should include a general description of the technology, location, and business arrangement for the bid. Bidder shall state the period under which the terms and conditions of their Proposal will remain effective.

**Section 2 – Resource Description** - This section should include a description of the resource, including:

- Type of generation equipment and description
- Manufacturers of major equipment
- Date of manufacture or age of major equipment
- Hours of operation and major maintenance performed for any previously owned/operated equipment
- Type of Heat rejection equipment (cooling towers, ponds, etc)
- Source of process and/or cooling water
- Wastewater disposal plan
- Description of financing plan
- Description of operation and maintenance plan
- Estimated annual unit availability and any guaranteed minimum annual availability.
- Plan for site control
- Site layout description
- Description of technology and configuration

- Net capability rating and net heat rates at full load, 75%, 50% and minimum sustainable load. If output will vary with ambient temperature, bidders shall specify the net capacities and net heat rates at 95°F, 80°F, 60°F, 40°F, and 20°F.
- Operating Limits - Any limits imposed on the number of startups that may be performed per year or per unit of time. Any limits on the number of hours that a unit may be operated per year or unit of time
- Efficiency (Heat rate) in compliance with all regulatory requirements.
- Primary fuel supply and backup alternatives
- Electrical interconnection (location, transmission provider, and control area)
- Information regarding location and transmission availability.
- Description of emission control technology, including manufacturer
- Any limits on hours of operation
- Estimate of emissions (air, liquid and solid wastes) in pounds per hour per pollutant and/or waste product at 100% load and tons per year per pollutant and/or waste product at a specified capacity factor as selected by the bidder.
- Any limits on emissions
- Project schedule, listing tasks and milestones with estimated completion dates bidders shall also complete Exhibit 1 to document technical aspects of their Proposal.
- Terms of warranties and/or guarantees on major equipment.
- Startup Time for Cold, Warm, and Hot starts. A cold start is defined as a shutdown of the generating equipment for 72 hours or longer. A warm start is defined as a startup with 48 hours of a shutdown. A hot start is defined as a start within 8 hours of a shutdown. Bidder should provide own definitions if different.

**Section 3 - Bidder's Qualifications** – Information in this section should be submitted with information that the Bidder supplies from Appendix D. This section should include, but not be limited to, the following information:

- Corporate structure and primary and secondary businesses.
- Experience in Project development- sitting, delivering on schedule, permitting (air, water, ERC) and financing for facilities in Utah and other areas in the WECC.
- Location of offices
- Biographies of key officers
- Developer projects and independent power supply ventures participated in over the last three to five years.

- At least one contact (name and telephone number) for each project or power supply venture (for reference purposes).
- Description of any current or previous contract dispute(s) involving similar projects in which the bidder is or was involved during the last five years.
- Separate descriptions, as appropriate, for each member of a consortium or partnership of two or more firms and the relationship between the firms for this Proposal.

**Section 4 - Financial Information** – Briefly summarize information provided pursuant to Appendix D.

**Section 5 - Pricing Proposal and Pro Forma Project Financing** – Describe in detail the pricing proposal, including the use of any index, escalation factors, or other costs to PacifiCorp. Provide Pro forma financial projections showing cash flow, income statement, and balance sheet, sources and uses of funds, construction draw schedule, and including all financing assumptions. At a minimum the pro forma should include the following:

- Annual operating expenses including operations and maintenance costs, G&A expenses, land leases, property taxes, insurance and other expenses
- Transmission and ancillary services costs (if any)
- Debt service
- Debt coverage ratios (by year)
- Depreciation
- Taxes and tax credits
- Working capital requirements
- Net income
- Equity rate of return

**Section 6 – Transmission** - Each Proposal must include a description of the location of its proposed transmission facilities, including proposed delivery points, and must specify the transmission provider and all applicable costs.

**Section 7 – Environmental and Siting** - The bidder is exclusively and entirely responsible for meeting and satisfying all federal, state, and local permits, licenses, approvals and /or variances that are required to assure physical delivery of capacity and associated energy in accordance with any PPA or turn-key sale. Bidders must furnish applicable detailed project site, electric transmission, and fuel transportation information, a description of all required permits, and a project timeline so PacifiCorp can assess site suitability, schedule risk, and project viability. The proposed site(s) shall clearly be shown on a United States Geological Survey (USGS) 7.5-minute series map.

**Section 8 - Other Information** –

- Fuel - Bidders should describe their fuel supply plan and the extent to which they desire to provide fuel and transportation and other fuel-related services, including fuel price management (hedging) or a tolling fee in which PacifiCorp will be responsible for all fuel and fuel-related costs. PacifiCorp preference is for proposals that address its need for reliability, management of fuel price risk, and meeting the flexibility of completely dispatchable operations. If the energy cost portion of the bidder's terms includes a fuel cost component, the bidder shall explain its proposed fuel supply program.
- Dispatchability - Describe any constraints and/or limitations on PacifiCorp ability to dispatch the generation and any ability of PacifiCorp to utilize the resource for operating reserves.
- Technical Data – Technical data as provided for on the final page of this Appendix B.

**Section 9 – Contract Terms** - Bidder shall provide a comprehensive listing/description of all contract terms that the bidder would seek during contract negotiations if different contract terms than are found in Appendix E.

**BID SUMMARY**

Net Capacity at 95°F, 20% Relative Humidity, and at Site Conditions \_\_\_\_\_ MW

Minimum Sustainable Load \_\_\_\_\_ MW

Maximum number of starts per day \_\_\_\_\_

Time to bring facility on line (specify if this is to synchronization or sustainable minimum load)  
(bidder to define "cold", "warm", and "hot":

From cold start (minutes) \_\_\_\_\_

From warm start (minutes) \_\_\_\_\_

From hot start (minutes) \_\_\_\_\_

Minimum on-line (hours) \_\_\_\_\_

Minimum off-line (hours) \_\_\_\_\_

Ramp rate: (MW/minute) Increase: \_\_\_\_\_ Decrease: \_\_\_\_\_

Are there any limits to the amount of generation the facility can provide? If so, please indicate below:

Hourly limit: \_\_\_\_\_ Cause: \_\_\_\_\_

Daily limit: \_\_\_\_\_ Cause: \_\_\_\_\_

Monthly limit: \_\_\_\_\_ Cause: \_\_\_\_\_

Annual limit: \_\_\_\_\_ Cause: \_\_\_\_\_

Can the facility provide additional reliable capacity at its net capacity rating? If so, please indicate how the additional capacity is provided and any limitations on its use.

Hourly limit: \_\_\_\_\_ Cause: \_\_\_\_\_

Daily limit: \_\_\_\_\_ Cause: \_\_\_\_\_

Monthly limit: \_\_\_\_\_ Cause: \_\_\_\_\_

Annual limit: \_\_\_\_\_ Cause: \_\_\_\_\_

**Additional Information**

To the extent that pricing, capacity and/or availability vary based on specific characteristics of the facility and/or ambient conditions, the bidder shall clearly identify that relationship in tabular form, including the relationship between temperature and capacity over the local ambient temperature range inclusive of -10°F to 105°F.





## Appendix D

### **Bidder's Credit-Related Information**

Provide the following data so PacifiCorp can assess the financial viability of the bidder as well as the entity providing credit support on behalf of the bidder (if applicable). Include additional sheets and other materials with this Appendix as necessary. Complete additional copies of this data for each participating entity and any partners. As necessary, please specify whether the information provided is for the bidder, its parent or the entity providing the credit support on behalf of the bidder.

Full Legal Name of Bidder:

Type of Organization: Corporation, Corporate Subsidiary, Partnership, or Other (specify)

Bidder's Percent Ownership in Proposed Project:

Full Legal Name(s) of Parent Corporation or Other Affiliates (submit multiple forms if necessary):

Entity Providing Credit Support on Behalf of Bidder:

Address for each entity referenced:

Type of Relationship:

Current Senior Unsecured Debt Rating from each of S&P and Moodys Rating Agencies (please specify which entity these ratings are for):

Current Commercial Paper Rating from each of S&P and Moodys Rating Agencies (if applicable, please specify which entity these ratings are for):

Bank References & Name of Institution:

Bank Contact: Name, Title, Address, Phone number:

Pending Legal Disputes (describe):

## Appendix D

Attach copies of audited financial statements including balance sheet, income statement, and statement of change in financial position (with accompanying footnotes) for the two most recent fiscal years.

Other financial references (if appropriate): \_\_\_\_\_

Bidder's Financial Highlights (\$ x 1000)

	2002	2001	2000	1999
Current Assets				
Fixed Assets				
Current Liabilities				
Current Portion Long-Term Debt				
Long-Term Debt				
Net Worth				
Earning Before Interest, Taxes, Depreciation, & Amortization				
Net Income				

### PROJECT FINANCING

The following data will be used to assess the bidder's ability to provide adequate financing to assure physical delivery of capacity and associated energy. Include additional sheets as necessary.

Amount of Equity Financing: \$

Amount of Debt Financing: \$

Describe Construction-Period Financing:

Describe Operation-Period Financing:

Income tax rate assumed: Federal \_\_\_\_\_ State \_\_\_\_\_

Property Tax Rate: \_\_\_\_\_

# Appendix D

Outline of anticipated major terms and conditions of debt service:

- Term of Loan: (years)
- Interest Rate(s): (%/year)
- List of conditions:
- Attach Amortization Schedule.

On a separate sheet, describe financing arrangement for this project, facility, or financial arrangement including the following:

- Balance sheet versus limited recourse financing.
- Willingness and ability to equity finance construction until financing is secured in order to ensure project schedule.
- All assumptions used in the financing plan covering the entire proposal period including the amount of debt and equity assumed, debt rate assumed, income tax rate assumed, and property tax rate assumed.
- Describe the type of Credit Assurance (re: Performance Bond, Letter of Credit).
- Debt service coverage ratios for first five years of the project.

Show prior project financing.

Project Name	Financed By	Capital Cost (\$ x 1000)	Loan Amount (\$ x 1000)	Equity Amount (\$ x 1000)	Date Placed	Major Terms

# MASTER POWER PURCHASE AND SALE AGREEMENT

## COVER SHEET

This *Master Power Purchase and Sale Agreement* (Version 2.1; modified 4/25/00) ("*Master Agreement*") is made as of the following date: \_\_\_\_\_, 2004 ("Effective Date"). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions (including any confirmations accepted in accordance with Section 2.3 hereto) shall be referred to as the "Agreement." The Parties to this *Master Agreement* are the following:

### Article One:

### General Terms and Conditions

PacifiCorp ("Party A")

("Party B")

#### **All Notices:**

Street: 825 NE Multnomah Street  
City: Portland, OR 97232  
Attn: Contract Administration, Suite 600  
Phone: (503) 813 - 5952  
Facsimile: (503) 813 - 6291  
Duns: 00-790-9013  
Federal Tax ID Number: 93-0246090

#### **All Notices:**

Street:  
City:  
Attn:  
Phone:  
Facsimile:  
Duns:  
Federal Tax ID Number:

#### **Invoices:**

Attn: PACA – Controller, Suite 600  
Phone: (503) 813 - 5697  
Facsimile: (503) 813 – 5580

#### **Invoices:**

Attn:  
Phone:  
Facsimile:

#### **Scheduling:**

Attn: Resource Planning, Suite 600  
Phone: (503) 813 - 6090  
Facsimile: (503) 813 – 6265

#### **Scheduling:**

Attn:  
Phone:  
Facsimile:

#### **Payments:**

Attn: PACA – Controller, Suite 600  
Phone: (503) 813 - 5697  
Facsimile: (503) 813 – 5580

#### **Payments:**

Attn:  
Phone:  
Facsimile:

#### **Wire Transfer:**

BNK: Bank One N.A.  
ABA: 071000013  
ACCT: 55-44688  
NAME: PacifiCorp Wholesale

#### **Wire Transfer:**

BNK:  
ABA:  
ACCT:

#### **Credit and Collections:**

Attn: Nathalie Wessling, Suite 1800  
Phone: (503) 813 - 5684  
Facsimile: (503) 813 – 5609

#### **Credit and Collections:**

Attn:  
Phone:  
Facsimile:

#### **With additional Notices of an Event of Default or Potential Event of Default to:**

Attn: Andrew P. Haller, Esq. and Jeremy D. Weinstein, Esq.  
Phone: (503) 813-6266 and (925) 943-3103  
Facsimile: (503) 813-7262 and (925) 943-3105

#### **With additional Notices of an Event of Default or Potential Event of Default to:**

Attn:  
Phone:  
Facsimile:

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff FERC Electric Tariff, Volume 12 Dated September 22, 2000 Docket Number ER00-3726-000

Party B Tariff

; in each case, as such tariff may be revised from time to time.

**Article Two: Transaction Terms and Conditions**

ζ Optional provision in Section 2.4. If not checked, inapplicable.

**Article Four: Remedies for Failure to Deliver or Receive**

ζ Accelerated Payment of Damages. If not checked, inapplicable.

**Article Five: Events of Default; Remedies**

ζ Cross Default for Party A:

ζ Party A: PacifiCorp

Cross Default Amount \$50,000,000

Other Entity: \_\_\_\_\_

Cross Default Amount: \$

ζ Cross Default for Party B:

ζ Party B: [guarantor]

Cross Default Amount \$

Other Entity: [guarantor]

Cross Default Amount \$25,000,000

**5.6 Closeout Setoff**

Option A (Applicable if no other selection is made.)

Option B - Affiliates shall have the meaning set forth in the Agreement unless otherwise specified as follows: \_\_\_\_\_

Option C (No Setoff)

**Article Eight:**

**8.1 Party A Credit Protection:**

(a) Financial Information:

Option A

ζ Option B Specify: \_\_\_\_\_

Option C Specify: \_\_\_\_\_

(b) Credit Assurances:

Not Applicable

ζ Applicable

**8.1 Party A Credit Protection:**

(c) Collateral Threshold:

Not Applicable

ζ Applicable

If applicable, complete the following:

Party B Collateral Threshold: As determined by reference to Party B's Credit Rating in accordance with the table set forth below; provided, however, that Party B's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party B has occurred and is continuing.

[these and all other credit terms to be as determined by PacifiCorp credit department upon review of counterparty current information and then-prevailing market conditions]

**Credit and Collateral Requirements**

**8.2 Party B Credit Protection:**

(a) Financial Information:

Option A

Option B Specify: \_\_\_\_\_

Option C Specify: \_\_\_\_\_

(b) Credit Assurances:

Not Applicable

ζ Applicable

**8.2 Party B Credit Protection:**

(c) Collateral Threshold:

Not Applicable

ζ Applicable

If applicable, complete the following:

Party A Collateral Threshold: As determined by reference to Party A's Credit Rating in accordance with the table set forth below; provided, however, that Party A's Collateral Threshold shall be zero if an Event of Default or Potential Event of Default with respect to Party A has occurred and is continuing.

[these and all other credit terms to be as determined by PacifiCorp credit department upon review of counterparty current information and then-prevailing market conditions]

A/ A2 and above	\$	A/ A2 and above	\$
A-/A3	\$	A-/A3	\$
BBB+/Baa1	\$	BBB+/Baa1	\$
BBB/Baa2	\$	BBB/Baa2	\$
BBB-/Baa3 Watch negative	\$	BBB-/Baa3 Watch negative	\$
BB+/Ba1 and below	\$	BB+/Ba1 and below	\$
Party B Independent Amount:	\$	Party A Independent Amount:	\$
Party B Rounding Amount:	\$ 100,000.00	Party A Rounding Amount:	\$100,000.00

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

- It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below BBB- from S&P or Baa3 from Moody's or if Party B is not rated by either S&P or Moody's
- Other:  
Specify: \_\_\_\_\_

(e) Guarantor for Party B: [investment grade rated entity required if Party B is not investment grade rated]

Guarantee Amount: \_\_\_\_\_

**Article Ten: Confidentiality**

- Confidentiality Applicable

**Schedule M**

- Party A is a Governmental Entity or Public Power System
- Party B is a Governmental Entity or Public Power System
- Add Section 3.6. If not checked, inapplicable
- Add Section 8.6. If not checked, inapplicable

(d) Downgrade Event:

- Not Applicable
- Applicable

If applicable, complete the following:

- It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below BBB- from S&P or Baa3 from Moody's or if Party A is not rated by either S&P or Moody's
- Other:  
Specify: \_\_\_\_\_

(e) Guarantor for Party A: not applicable

Guarantee Amount: not applicable

If not checked, inapplicable.

**Other Changes** The following changes shall apply:

**Part 1. GENERAL TERMS AND CONDITIONS.**

1. **Article One: General Definitions:** The following definitions are amended as follows:

1.3 "Bankrupt": Section 1.3 is amended to read:

- 1.3 "Bankrupt" means the Defaulting Party or any Guarantor of such Party:
- (i) Is dissolved (other than pursuant to a consolidation, amalgamation or merger);
  - (ii) Becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
  - (iii) Makes a general assignment, arrangement or composition with or for the benefit of its creditors;
  - (iv) Institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditor's rights, or a petition is presented for its winding-up or liquidation;
  - (v) Has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);

- (vi) Seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or substantially all its assets;
- (vii) Has a secured party take possession of all or substantially all of its assets, or has a distress, execution, attachment, sequestration or other legal process is levied, enforced or sued on or against all or substantially all its assets;
- (viii) Causes or is subject to any event with respect to it which, under the applicable laws of any jurisdiction, has an analogous effect to any of the events specified in clauses one to seven inclusive; or
- (ix) Takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

**1.12 "Credit rating":** Sec. 1.12 is amended by deleting in the fourth line the word "issues" and replacing it with the word "issuer".

**1.24 "Gains":** Add the following after "Costs)":

"calculated in a commercially reasonable manner based on the prime rate of interest as published from time to time under the Wall Street Journal for such period and such calculation will be equal to the net present value of the economic gain to it."

**1.27 "Letter(s) of Credit":** Section 1.27 is amended to read as follows:

**"Letter(s) of Credit"** means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank with such bank having a credit rating of at least A+ from S&P or A1 from Moody's, having total assets of at least \$10,000,000,000 and otherwise being acceptable to the Party in whose favor the letter of credit is issued and in a form and in an amount acceptable to such Party. Costs of a letter of credit shall be borne by the applicant for such letter of credit.'

**1.28 "Losses":** Add the following after "Costs)":

"calculated in a commercially reasonable manner based on the prime rate of interest as published from time to time under the Wall Street Journal for such period and such calculation will be equal to the net present value of the economic loss to it."

**1.50 "Recording":** Section 1.50 is revised to read as follows:

**"Recording"** has the meaning set forth in Section 2.5.

**1.51 "Replacement Price":** Section 1.51 is amended by (a) adding "for delivery" immediately before "at the Delivery Point" in the second line and (b) replacing "at Buyer's option" in the fifth line with "absent a purchase".

**1.53. "Sales Price":** Section 1.53 is amended by (i) deleting "at the Delivery Point" from the second line; (ii) deleting "at Seller's option" from the fifth line and replacing it with the following: "absent a sale"; and (iii) inserting after "commercially reasonable manner" in the

sixth line, the following: “; provided, however if the Seller is unable after using commercially reasonable efforts to resell all or a portion of the Product not received by Buyer, the Sales Price with respect to such unsold Product shall be deemed equal to zero (0)”.

**1.62. "Specified Transaction":** Article One is amended by inserting at the end the following new Section 1.62:

1.62 “Specified Transaction” means any contract or transaction (whether or not documented under or effected pursuant to a master agreement) now existing or hereafter entered into between Party A (or any Guarantor of Party A) and Party B (or any Guarantor of Party B or any Affiliate of Party B).

**2. Prior Transactions.** The following is added as a separate second paragraph of Section 2.2:

"Party A and Party B confirm that this Master Agreement shall supersede and replace all prior agreements between the parties hereto with respect to the subject matter hereof, including the Western Systems Power Pool Agreement, \_\_\_\_\_ and the Power Sales Agreement dated \_\_\_\_\_. Party A and Party B confirm the terms of those Transactions referenced on Exhibit B hereto as evidenced by the written confirmations with respect thereto, and agree that such Transactions are, effective as of the Effective Date, governed by this Master Agreement, and are part of the single integrated agreement between the Parties consistent with the first paragraph of this Section 2.2."

**3. Market Redesign.** A new Section 3.5 shall be added as follows:

3.5: Market Redesign. In the event the current definition of the Delivery Point set forth in the Transaction is modified by the California Independent System Operator Corporation (“CAISO”) or a successor control area operator/regional transmission operator, deliveries of Product by Seller shall continue but will be divided among the replacement nodes so that the Parties shall be in the same economic position after such allocation as they were prior to such allocation, or as mutually agreed to by the Parties.”

**4. Suspension of Performance.** A new Section 4.3 is added to Article Four, worded as follows:

4.3 Suspension of Performance. Notwithstanding, and in addition to the remedies provided pursuant to Sections 4.1, 4.2 and 5.7, if Seller or Buyer fails to schedule, deliver or receive all or part of the Product pursuant to a Transaction for a period of three (3) or more consecutive days, and such failure is not excused under the terms of this Agreement, by the other Party’s failure to perform or by agreement of the Parties, then upon one (1) Business Day prior notice, and for so long as the non-performing Party fails to perform, the performing Party shall have the right to suspend its performance under such Transaction. In the event the performing Party suspends performance pursuant to this Section 4.3, it shall not be obligated to resume performance until it has received notice from the non-performing Party at least one (1) Business Day prior to the date upon which the non-



performing Party intends to resume its performance; provided that, if the performing Party has entered into a replacement contract with a term of 31 days or less, the performing Party may resume performance at the end of the term of such replacement contract. Remedies available under this provision to the performing Party are in addition to, not in replacement for, other remedies specified in this Agreement.

5. **Events of Default.** Section 5.1(f) is amended by adding “or its Guarantor” immediately after the word “Party” on the first line and changing “of such Party under this Agreement” to “Of such entity with respect to this Agreement” in line five. Section 5.1 is further amended by inserting the following new subsections (i), (j) and (k) at the end: “(i) the occurrence with respect to such Party of an Event of Default (howsoever defined) under a Specified Transaction; (j) if, during any consecutive 90 day period under any Transaction, there have occurred 5 or more “Seller Failures” as that term is used in Section 4.1, regarding which the Seller shall be deemed to be the Defaulting Party and regarding which Buyer shall also be entitled to its remedies under Section 4.1; (k) if, during any consecutive 90 day period under any Transaction, there have occurred 5 or more “Buyer Failures” as that term is used in Section 4.2, regarding which the Buyer shall be deemed to be the Defaulting Party and regarding which Seller shall also be entitled to its remedies under Section 4.2.”

5. **Declaration of an Early Termination Date and Calculation of Settlement Amounts.** Section 5.2 is deleted in its entirety and replaced with the following:

5.2 "Effect of Event of Default." If at any time an Event of Default with respect to a Defaulting Party has occurred and is continuing, the Non-Defaulting Party may do one or more of the following: (a) withhold any payments due to the Defaulting Party under this Agreement; (b) suspend performance due to the Defaulting Party under this Agreement; and/or (c) by giving not more than twenty (20) days notice, designate a day not earlier than the day such notice is effective as an Early Termination Date in respect of all outstanding Transactions (each referred to as a "Terminated Transaction"). The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for each such Terminated Transaction as of the Early Termination Date (or, to the extent that in the reasonable opinion of the Non-Defaulting Party certain of such Terminated Transactions are commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, then each such Transaction (individually, an "Excluded Transaction" and collectively, the "Excluded Transactions") shall be terminated as soon thereafter as reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Transactions shall be calculated in accordance with Section 5.3 below. The Gains and Losses for each Terminated Transaction shall be determined by calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. The Non-Defaulting Party (or its agent) may determine its Gains and Losses by reference to information either available to it internally or supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the

relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information."

6. **Net Out of Settlement Amount.** Section 5.3 is amended by inserting "plus, at the option of the Non-Defaulting Party, any cash or other form of security then available to the Defaulting Party pursuant to Article Eight," between the words "that are due to the Non-Defaulting Party," and "plus any and all other amounts" in the sixth line.

7. **Notice of Payment of Termination Payment.** The following is added to the end of Section 5.4:

"Notwithstanding any provision to the contrary contained in this Agreement, the Non-Defaulting Party shall not be required to pay to the Defaulting Party any amount under Article 5 until the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion (which may include an opinion of its counsel) that all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the Non-Defaulting Party or any of its Affiliates under this Agreement or otherwise which are due and payable as of the Early Termination Date (including for these purposes amounts payable pursuant to Excluded Transactions) have been fully and finally performed."

8. **Suspension of Performance.** Section 5.7 is amended by replacing "ten (10) NERC Business Days" with "five (5) NERC Business Days."

9. **Billing Period.** Section 6.1 is amended by replacing "each Party will render to the other Party" in the last sentence with "the Party owing the lesser amount as determined pursuant to standard wholesale electric industry after-the-fact check-out procedures for the point of delivery associated with each Transaction ("check-out procedures" means the coordination between the assigned representative for each respective party as soon as practicable in the calendar month following each delivery day pursuant to any given transaction) will transmit to the other Party"

10. **Timeliness of Payment.** Section 6.2 is amended by (1) replacing in the first sentence "each party's" with "the Party owing the lesser amount as determined by pursuant to standard wholesale electric industry after-the-fact check-out procedures for the point of delivery associated with each Transaction"; (2) deleting from the second sentence: ", or by other mutually agreeable method(s),"; and (3) adding the following sentence at the end: "If on the due date, the aggregate amounts payable by a Party for failing to schedule and/or deliver or receive Product under Article Four with respect to all Transactions and Agreements after the expiration of the month covered by the invoice until and including the due date exceed \$10,000.00, (i) the Party owed such amounts shall recalculate the amount payable and notify the other Party (by telephone, facsimile or other reasonable means), (ii) the due date shall be extended by five (5) calendar days, and (iii) the recalculated amount payable shall be subject to the dispute procedures under Section 6.3."

11. **Netting of Payments.** Section 6.4 is amended by deleting “and owing to each other on the same date”. As of the Effective Date and the date of each subsequent Transaction, each Party represents and warrants to the other Party that it is a “financial institution” as defined in and pursuant to Title VI of the Federal Deposit Insurance Corporation Improvement Act of 1991 (“FDICIA”). Each Party intends that this Agreement constitute a “netting contract” as defined in and subject to FDICIA, and each payment entitlement and payment obligation under this Agreement constitutes a “covered contractual payment entitlement” and “covered contractual payment obligation,” respectively, as defined in and subject to FDICIA.
12. **Limitation of Remedies, Liability and Damages.** The fifteenth and sixteenth lines of Section 7.1 are amended by deleting "UNLESS EXPRESSLY HEREIN PROVIDED,".
13. **Article 8: Collateral Annex.** In addition to Sections 8.1(c) and 8.2(c), the rights and obligations of the parties with respect to Performance Assurance as collateral shall be governed by the Collateral Annex, which is attached hereto and incorporated herein by reference.
14. **Downgrade Event.** Sections 8.1(d) and 8.2(d) are amended by adding after "receipt of notice": "or fails to maintain such Performance Assurance or guaranty or other credit assurance for so long as the Downgrade Event is continuing".
15. **No Investment Advice Given.** Section 10.2(viii) is amended by adding to the end: “;information and explanations of the terms and conditions of each such Transaction shall not be considered investment or trading advice or a recommendation to enter into that Transaction; no communication (written or oral) received from the other party shall be deemed to be an assurance or guarantee as to the expected results of that Transaction; and the other party is not acting as a fiduciary for or an adviser to it in respect of that Transaction;”
16. **FERC Order 888.** The following is added to the end of Section 10.4: "Notwithstanding the foregoing or anything to the contrary herein, in no way shall PacifiCorp have any liability to any party (i) in excess of the amounts to which its liability is limited pursuant to its applicable tariffs or (ii) for any act or omission by its transmission function to the extent it is separated from and out of the control of PacifiCorp's merchant function pursuant to FERC Order 888 or otherwise."
16. **Section 10.5** is amended to replace the word “affiliate” with the defined term “Affiliate”.
17. **Jurisdiction.** Section 10.6 is amended by inserting at its end the following new sentence: “With respect to any proceeding in connection with any claim, counterclaim, demand, cause of action, dispute and controversy arising out of or relating to this Agreement, the parties hereby consent to the exclusive jurisdiction of the federal courts sitting in the borough of Manhattan in New York State.”
18. **Confidentiality.** Section 10.11 is amended by (a) adding "or the completed Cover Sheet to this Master Agreement" immediately before "to a third party"; (b) adding "or the Party's Affiliates" immediately after "(other than the Party's"; (c) replacing “have agreed to” in the fifth line with “who the Party is satisfied will”; (d) inserting “or request by a regulatory authority” in the seventh line between “court or regulatory proceeding” and “; provided, however, each Party

shall,” and (e) inserting at the end of Section 10.11: “Notwithstanding the foregoing, it shall not be a breach of this Section 10.11 if a Party discloses the terms or conditions of a Transaction, provided that the name of and any other identifying information relating to the other Party, including unique attributes and requirements, is redacted and otherwise not disclosed.”

**19. Waiver of Jury Trial.** TO THE FULLEST EXTENT PERMITTED BY LAW, EACH OF THE PARTIES HERETO WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.

**20. Index Transactions.** The following provision is added as Section 10.12:

- a. **Market Disruption.** If a Market Disruption Event has occurred and is continuing during the Determination Period, the Floating Price for the affected Trading Day shall be determined pursuant to the Floating Price specified in the Transaction for the first Trading Day thereafter on which no Market Disruption Event exists; provided, however, if the Floating Price is not so determined within three (3) Business Days after the first Trading Day on which the Market Disruption Event occurred or existed, then the Parties shall negotiate in good faith to agree on a Floating Price (or a method for determining a Floating Price), and if the Parties have not so agreed on or before the twelfth Business Day following the first Trading Day on which the Market Disruption Event occurred or existed, then the Floating Price shall be determined in good faith by PacifiCorp, by taking the average of four dealer quotes, two such quotes to be provided by each Party from dealers of the highest credit standing which satisfy all the criteria that the Seller applies generally at the time.

"Determination Period" means each calendar month during the Delivery Period of the relevant Transaction; provided that if the term of the Transaction is less than one calendar month the Determination Period shall be the term of the Transaction.

"Exchange" means the exchange or market, if any, specified in a Transaction.

"Floating Price" means the price specified in the Transaction as being based upon a Price Source or specified index.

"Market Disruption Event" means, with respect to an index, any of the following events: (a) the failure of the Price Source to announce or publish information necessary for determining the Floating Price; (b) the failure of trading to commence or the permanent discontinuation or material suspension of trading in the relevant options contract or commodity on the Exchange; (c) the temporary or permanent discontinuance or unavailability of the Floating Price; (d) the temporary or permanent closing of any Exchange acting as the index; or (e) a material change in the formula for or the method of determining the Floating Price.

"Price Source" means a publication or other reference, including an Exchange, containing or reporting a specified price or price index, or prices from which the specified price or price index is calculated, specified in the relevant Transaction.

"Trading Day" means a day in respect of which the relevant Price Source published the relevant Floating Price.

- (b) **Corrections to Published Prices.** For purposes of determining the relevant prices for any day, if the price published or announced on a given day and used or to be used to determine a relevant price is subsequently corrected and the correction is published or announced by the person responsible for that publication or announcement, either Party may notify the other Party of (i) that correction and (ii) the amount (if any) that is payable as a result of that correction. If a Party gives notice that an amount is so payable, the Party that originally either received or retained such amount will, not later than three (3) Business Days after the effectiveness of that notice, pay, subject to any applicable conditions precedent, to the other Party that amount, together with interest at the Interest Rate for the period from and including the day on which payment originally was (or was not) made to but excluding the day of payment of the refund or payment resulting from that correction.
- (c) **Calculation of Floating Price.** For the purposes of the calculation of a Floating Price, all numbers shall be rounded to three (3) decimal places. If the fourth (4<sup>th</sup>) decimal number is five (5) or greater, then the third (3<sup>rd</sup>) decimal number shall be increased by one (1), and if the fourth (4<sup>th</sup>) decimal number is less than five (5), then the third (3<sup>rd</sup>) decimal number shall remain unchanged.

## 21. Netting and Setoff.

- (1) **Termination of Specified Transactions.** The occurrence or designation of an Early Termination Date on account of an Event of Default with respect to a party hereto ("Y") shall constitute a material breach and event of default (howsoever described) under all Specified Transactions to which Y is a party, whereupon the Non-defaulting Party ("X") shall have the right to terminate, liquidate and otherwise close out any such Specified Transactions (and Y shall be liable for any damages suffered by X as a result thereof).
- (2) **Setoff.** (a) Upon the occurrence or designation of an Early Termination Date on account of an Event of Default respect to a party hereto ("Y"), any amount payable by the other party ("X") under this Agreement, any Specified Transaction with Y, or in respect of any other matured, liquidated or terminated obligation to Y will, at the option of X (and without prior notice to Y), be reduced by its setoff and recoupment against any amount(s) payable by Y to X under this Agreement, any Specified Transaction with Y or in respect of any other matured, liquidated or terminated obligation of Y (and any such amount(s) payable by Y will be discharged promptly and in all respects to the extent it is so set off). X will give notice to Y after any setoff and recoupment is effected under this paragraph.
- (b) For purposes of the foregoing, X shall be entitled to convert any obligation denominated in one currency into another at such rates of exchange as it deems appropriate in good faith and in a commercially reasonable manner, to convert any obligation to deliver

non-cash property into an obligation to deliver cash in an amount determined by it as it deems appropriate in good faith and in a commercially reasonable manner, and amounts may be set off and recouped irrespective of the currency, place of payment or booking office of any obligation to or from Y.

(c) If an obligation is unascertained, X may in good faith estimate that obligation and set off and recoup in respect of that estimate, subject to the relevant party's accounting to the other(s) when the obligation is ascertained.

(d) Nothing in this subsection shall be effective to create a charge or other security interest. This subsection shall be without prejudice and in addition to any right of setoff, recoupment, combination of accounts, lien or other right to which any party or any of its Affiliates is at any time otherwise entitled (whether by operation of law, contract or otherwise).

- (3) **Condition Precedent to Payments to the Defaulting Party.** All obligations of a Non-defaulting Party ("X") under this Agreement, any Specified Transaction with the other party ("Y") or in respect of any other matured, liquidated or terminated obligation to Y are subject to the condition precedent that Y shall have performed all of its obligations to X under this Agreement, any Specified Transaction with X and in respect of any other matured, liquidated or terminated obligation of Y, whether or not contingent and regardless of the currency, place of payment or booking office of the obligation.
- (4) **Single Relationship.** The parties intend that all Transactions and Specified Transactions shall be treated as mutual and part of a single, indivisible contractual and business relationship.
- (5) **Transfers to Address Reasonable Grounds for Insecurity.** If either party has reasonable grounds for insecurity regarding a potential default by the other party or its Credit Support Provider, that party may transfer its rights and obligations under this Agreement to any Affiliate, and each party hereto agrees to such transfer and to use its best efforts to obtain any required consents from its relevant Affiliate to any such transfer.

## **Part 2. SCHEDULE P**

1. Schedule P, "Products and Related Definitions" is modified by inserting the following at its end:

"Other Products and Service Levels:

If the Parties agree to a service level defined by a different agreement (e.g., the WSPP Agreement, the ERCOT Wholesale Electricity Enabling Agreement, etc.) for a particular Transaction, then, unless the Parties expressly state and agree that all the terms and conditions of such other agreement will apply, such reference to a service level/product shall be defined by such other agreement, including, if applicable, the regional reliability requirements and guidelines as well as the excuses for performance, Force Majeure, Uncontrollable Forces, or other such excuses applicable to such other agreement, to the

extent inconsistent with the terms of this Agreement, but all other terms and conditions of this Agreement shall remain applicable including, without limitation, Section 2.2.”

2. The following definitions are added to Schedule P:

"CAISO Energy" means with respect to a Transaction, a Product under which the Seller shall sell and the Buyer shall purchase a quantity of energy equal to the hourly quantity without Ancillary Services (as defined in the Tariff) that is or will be scheduled as a schedule coordinator to schedule coordinator transaction pursuant to the applicable tariff and protocol provisions of the California Independent System Operator ("CAISO") (as amended from time to time, the "Tariff") for which the only excuse for failure to deliver or receive is an "Uncontrollable Force" (as defined in the Tariff).

"West Firm" means with respect to a Transaction, a Product that is or will be scheduled as firm energy consistent with the most recent rules adopted by the WSCC and service schedules defined by the WSPP for which the only excuses for failure to deliver or receive are if an interruption is (i) due to an Uncontrollable Force as provided in Section 10 of the WSPP Agreement; or (ii) where applicable, to meet Seller's public utility or statutory obligations to its customers. Notwithstanding any other provision in this Agreement, if Seller exercises its right to interrupt to meet its public utility or statutory obligations, Seller shall be responsible for payment of damages for failure to deliver firm energy as provided in Article 4 of this Agreement.

"WSCC" means the Western Systems Coordinating Council.

"WSPP" means the Western Systems Power Pool.

"WSPP Agreement" means the Western Systems Power Pool Agreement as amended from time to time.

IN WITNESS WHEREOF, the Parties have caused this Master Agreement to be duly executed as of the date first above written.

**PACIFICORP**  
("Party A")

("Party B")

By: \_\_\_\_\_  
Name: Stan Watters  
Title: Senior Vice President

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**DISCLAIMER: This Master Power Purchase and Sale Agreement was prepared by a committee of representatives of Edison Electric Institute ("EEI") and National Energy Marketers Association ("NEM") member companies to facilitate orderly trading in and development of wholesale power markets. Neither EEI nor NEM nor any member company nor any of their agents, representatives or attorneys shall be responsible for its**

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## COLLATERAL ANNEX

This Collateral Annex supplements, forms a part of, and is subject to, the *EEI Master Power Purchase and Sale Agreement*, dated \_\_\_\_\_, including the Cover Sheet and any annex thereto (collectively, the "Master Agreement") between PacifiCorp ("Party A") and \_\_\_\_\_ ("Party B"). The obligations of each Party under the Master Agreement shall be secured in accordance with the provisions of this Collateral Annex, which sets forth the conditions under which a Party will be required to deliver cash, securities and other property, as well as the conditions under which a Party will release such Collateral.

### 1. Definitions.

For purposes of this Collateral Annex, the following terms have the respective definitions set forth below (capitalized terms used but not defined in this Collateral Annex shall have the meaning specified in the Master Agreement):

"Business Day" means a weekday on which commercial banks in New York City are not required or authorized by law to close for business.

"Collateral" means (i) cash ("Cash Collateral"); (ii) irrevocable standby letters of credit ("Letters of Credit"), expiring in not less than 90 days, issued by a bank acceptable to Pledgee under language in a form and in an amount acceptable to Pledgee; and (iii) such other property of Pledgor, as Pledgee may, in its sole discretion, agree in writing to accept as Collateral.

"Collateral Amount" means the sum of the Collateral Values.

"Collateral Threshold" shall have the meaning set forth in the Master Agreement.

"Collateral Value" on any date means the fair market value of each item of Collateral on deposit with, or held by, or for the benefit of, Pledgee pursuant to this Collateral Annex as determined by the Valuation Agent in a commercially reasonable manner.

"Custodian" means a bank or trust company located in the State of New York having capital and surplus of at least USD500,000,000.

"Delivery Amount" on any date means the excess, if any, of the Net Exposure Amount over the Collateral Amount.

"Mark-to-Market Value" means with respect to a Transaction as of any MTM Calculation Date, the U.S. Dollar amount determined by the Valuation Agent in a commercially reasonable manner representing: (a) the out-of-the-money amount, if any, owed by Party A to Party B as of such MTM Calculation Date (such amount being expressed as a positive number), or (b) the out-of-the-money amount, if any, owed by Party B to Party A as of such MTM Calculation Date (such amount being expressed as a negative number).

"Minimum Transfer Amount" shall have the meaning set forth in the Master Agreement.

"MTM Calculation Date" means any Business Day on which the Valuation Agent chooses or is requested by Party A to make the determinations referred to in Sections 3, 4 or 5 of this Collateral Annex.

"Net Exposure Amount" shall mean the excess, if any, of (a) the absolute value of the Net Mark-to-Market Value minus (b) the Pledgor's Collateral Threshold.

"Net Mark-to-Market Value" means as of any MTM Calculation Date, the sum expressed in U.S. Dollars of the Mark-to-Market Values for all Transactions outstanding on such MTM Calculation Date.

"Non-default Rate" means a rate per annum equal to the cost (without proof or evidence of any actual cost) to the Party entitled to receive interest (as certified by it) pursuant to Section 8(j).

"Notification Time" means 5:00 p.m., New York time, on the MTM Calculation Date.

"Obligations" has the meaning specified in Section 2 hereof.

"Pledgee" means (a) Party B if the Net Mark-to-Market Value is a positive number, and (b) Party A if the Net Mark-to-Market Value is a negative number.

"Pledgor" means (a) Party A if the Net Mark-to-Market Value is a positive number, and (b) Party B if the Net Mark-to-Market Value is a negative number.

"Reference Market-maker" means a leading dealer in the relevant market selected by the Valuation Agent in good faith from among dealers of the highest credit standing which satisfy all the criteria that the Valuation Agent applies generally at the time in deciding whether to offer or to make an extension of credit. Each quotation will be for an amount, if any, that would be paid to Valuation Agent (expressed as a negative number) or by Valuation Agent (expressed as a positive number) in consideration of an agreement between Valuation Agent (taking into account this Collateral Annex and the existence of any guarantor with respect to the obligations of Valuation Agent) and the quoting Reference Market-maker to enter into a transaction (the "Replacement Transaction") that would have the effect of preserving for Valuation Agent the economic equivalent of any payment or delivery (whether the underlying obligation was absolute or contingent and assuming the satisfaction of each applicable condition precedent) by the Parties in respect of such Transaction or group of Transactions.

"Rounding Amount" shall have the meaning set forth in the Master Agreement.

"Return Amount" on any date means the excess, if any, of the Collateral Amount over the Net Exposure Amount.

"Security Agreements" means this Collateral Annex and any other document, instrument, agreement or confirmation (including any Confirmation) providing for the delivery of collateral to secure Obligations.

"Valuation Agent" for purposes of this Collateral Annex, the Valuation Agent shall be the party with the greatest Net Exposure Amount.

2. Encumbrance; Grant of Security Interest.

As security for the prompt and complete payment of all amounts due or that may become due from each Party to the other and the performance by each Party to the other of all covenants and obligations to be performed by it pursuant to this Collateral Annex, the Master Agreement and any other document, instrument or agreement in connection therewith (collectively, the "Obligations"), each Party hereby pledges, assigns, conveys and transfers to the other Party, and hereby grants to such other Party a first priority continuing security interest in and to, and a general first lien upon and right of set-off against, all of its right, title and interest in and to all Collateral which has been or may in the future be delivered or otherwise transferred to, or received by, such other Party and/or any agent for the safekeeping of such Collateral for the benefit of such other Party pursuant to Section 4 of this Collateral Annex or otherwise, and all dividends, interest, and other proceeds from time to time received, receivable or otherwise distributed in respect of, or in exchange for, any or all of the foregoing.

3. Calculations and determinations by Valuation Agent.

On each MTM Calculation Date, the Valuation Agent shall determine (i) the Net Mark-to-Market Value, if any, (ii) the Net Exposure Amount, if any, and (iii) the Collateral Amount, if any, and upon request by either Party shall notify Party A in writing of such calculations on or prior to the Notification Time.

4. Delivery of Collateral.

(a) On any MTM Calculation Date on which (i) no Event of Default (or an event or condition that with the giving of notice or the lapse of time, or both, would become an Event of Default; hereinafter, a "Potential Event of Default") has occurred and is continuing under this Collateral Annex and the Master Agreement with

respect to Pledgee, and (ii) the Delivery Amount equal or exceeds the Minimum Transfer Amount, Pledgor shall, after receiving notice from Pledgee, pay or deliver, or cause to be paid or delivered, to Pledgee and/or any Custodian of such Collateral for the benefit of Pledgee, as security for the Obligations, Collateral in an amount and with a Collateral Value at least equal the Delivery Amount. The amount of Collateral required to be paid or delivered hereunder shall be rounded up to the nearest integral multiple of the Rounding Amount. Collateral shall be delivered by Pledgor not later than the close of business on the Business Day immediately following the Business Day on which Pledgor receives such notice.

(b) Cash Collateral shall be paid, in immediately available funds in U.S. Dollars, to the account as set forth in a written notice from Pledgee.

5. Return of Additional Collateral.

(a) On any MTM Calculation Date on which either (i) no Event of Default or Potential Event of Default has occurred and is continuing under this Collateral Annex or the Master Agreement with respect to Pledgor, and (ii) the Return Amount equals or exceeds the Minimum Transfer Amount, Pledgee shall, after receiving notice from Pledgor, return or pay, or cause to be returned or paid, to Pledgor Collateral in an amount at least equal the Return Amount. The amount of Collateral required to be paid or returned hereunder shall be rounded down to the nearest integral multiple of the Rounding Amount. Cash Collateral shall be paid or returned, or caused to be paid or returned, by Pledgee and/or by any Custodian of Pledgee not later than 5:00 p.m., New York time, on the Business Day immediately following the Business Day on which Pledgee receives such notice. All other Collateral shall be paid or returned, or caused to be paid or returned, by Pledgee and/or by the Custodian of Pledgee not later than 5:00 p.m., New York time, on the second Business Day immediately following the day on which Pledgee receives such notice. Pledgee may, at its option, satisfy such obligation through the return of Cash Collateral or Letters of Credit, or both.

(b) Except when an Event of Default or Potential Event of Default with respect to Pledgor shall have occurred and be continuing, Pledgor may substitute Collateral for other existing Collateral of equal Collateral Value upon two Business Days written notice to Pledgee. Upon payment or delivery to Pledgee and/or any Custodian for the benefit of Pledgee of the substitute Collateral, Pledgee and/or any Custodian of Pledgee shall pay or return the relevant replaced Collateral to Pledgor. Notwithstanding anything herein to the contrary, no such substitution shall be permitted unless (i) the substitute Collateral is delivered simultaneously or has been delivered to Pledgee and/or any Custodian for the benefit of Pledgee prior to the release of the Collateral to be returned to Pledgor and the security interest in, and general first lien upon, such substituted Collateral granted pursuant hereto in favor of Pledgee shall have been perfected as required by applicable law and shall constitute a first priority perfected security interest therein and general first lien thereon, and (ii) after giving effect to such substitution, the Collateral Amount shall equal the greater of the Net Exposure Amount or the Minimum Transfer Amount. Each substitution of Collateral shall constitute a reaffirmation by Pledgor that the substituted Collateral shall be subject to and governed by the terms and conditions of this Collateral Annex, including without limitation the security interest in, general first lien on and right of offset against, such substituted Collateral granted pursuant hereto in favor of Pledgee.

(c) Payment and delivery of any Return Amount by Pledgee and/or any Custodian for the benefit of Pledgee in accordance with this Section 5 shall be deemed a release by Pledgee of its security interest, general first lien and right of offset granted pursuant to Section 2 hereof only with respect to such returned Collateral. In connection with each payment of any Return Amount pursuant to this Section 5, Pledgor will, upon request of Pledgee, execute a receipt showing the Collateral paid or returned to it.

6. Administration of Collateral.

(a) Pledgee shall have free and unrestricted use of all Cash Collateral provided to it hereunder and Pledgee shall be under no obligation to pay Pledgor any interest or dividends with respect to such Cash Collateral. The Pledgee will cause all Cash Collateral Transferred to or received by it hereunder to be held in one or more accounts (each a "Collateral Account") maintained by the Pledgee with (i) a domestic office of a commercial bank or trust company organized under the laws of the United States or a political subdivision thereof having assets of at least \$10 billion and a long term debt or deposit rating of at least (ii) A1 from Moody's Investor Services, and (iii) A+ from Standard and Poor's Corporation, which accounts may include property of other parties but will bear a title

indicating that the property in such account is held as collateral. The Pledgee may move the Collateral Accounts to another commercial bank or trust company upon reasonable notice to the Pledgor and satisfaction of subsections (i), (ii), and (iii) above. The Pledgor shall have the right at any time to require the transfer of such Cash Collateral to a Collateral Account designated and paid for by the Pledgor provided that such (i) is acceptable to the Pledgee (with such acceptance not to be unreasonably withheld) and (ii) such commercial bank or trust company has agreed to maintain the Cash Collateral on behalf of the Pledgee (in accordance with documentation satisfactory in form and substance to the Pledgee). Such transfer shall take place promptly following the completion of the required documentation. The Pledgee shall cause statements concerning the Cash Collateral held in each Collateral Account to be delivered to the Pledgor on request, which may not be made more frequently than once in each calendar month. All principal and interest paid to or received by Pledgee and/or its Custodian in respect of non-cash Collateral held by Pledgee and/or its Custodian for safekeeping, shall be held or retained as additional Collateral subject to this Collateral Annex and shall be subject to the security interest in, general first lien on and right of set-off against, such Collateral granted pursuant hereto in favor of Pledgee.

(b) Beyond the exercise of reasonable care in the custody thereof, Pledgee shall have no duty as to any Collateral in its possession or control or in the possession or control of any Custodian or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto. Pledgee shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession, and/or in the possession of its agent for safekeeping, if the Collateral is accorded treatment substantially equal to that which it accords its own property, and shall not be liable or responsible for any loss or damage to any of the Collateral, or for any diminution in the value thereof, by reason of the act or omission of any Custodian selected by Pledgee in good faith except to the extent such loss or damage is the result of such agent's willful misconduct or negligence.

(c) Unless held by a Custodian, Pledgee shall at all times retain possession or control of any Collateral delivered to it.

(d) The holding of Collateral by a Custodian for the benefit of a Pledgee shall be deemed to be the holding and possession of such Collateral by the Pledgee for the purpose of perfecting the security interest in the Collateral. Nothing in this Collateral Annex shall be construed as requiring a Pledgee to select a Custodian for the keeping of Collateral for the benefit of Pledgee.

#### 7. Exercise of Rights Against Collateral.

(a) In the event that any Event of Default with respect to Pledgor has occurred and is continuing, Pledgee may exercise any one or more of the rights and remedies provided under the Master Agreement or the Security Agreements, or as otherwise available under applicable law. Without limiting the foregoing, if at any time (i) an Event of Default with respect to Pledgor has occurred and is continuing, or (ii) an Early Termination Date occurs or is deemed to occur pursuant to the Master Agreement as a result of an Event of Default with respect to the Pledgor, then Pledgee may, in its sole discretion, exercise any one or more of the following rights and remedies without limitation, upon any other rights or remedies which may be available to Pledgee:

- (i) all rights and remedies available to a secured party under the uniform commercial code of the jurisdiction in which the Collateral is being held and any other applicable jurisdiction and other applicable laws with respect to the Collateral held by or for the benefit of Pledgee;
- (ii) the right to set-off any Collateral held by or for the benefit of Pledgee against and in satisfaction of any amount payable by Pledgor in respect of any of its Obligations; and
- (iii) the right to liquidate any Collateral held by or for the benefit of Pledgee through one or more public or private sales or other dispositions with such notice, if any, as may be required by applicable law, free from any claim or right of any nature whatsoever of the Pledgor, including any right of equity or redemption by Pledgor (with Pledgee having the right to purchase any or all of the Collateral to be sold) and to apply the proceeds from the liquidation of such Collateral to and in satisfaction of any amount payable by Pledgor in respect of any of its Obligations in the order as Pledgee may elect.

(b) Pledgor hereby irrevocably constitutes and appoints Pledgee and any officer or agent thereof, with full power of substitution, as Pledgor's true and lawful attorney-in-fact with full irrevocable power and authority to act in the name, place and stead of Pledgor or in Pledgee's own name, from time to time in Pledgee's discretion, for the purpose of taking any and all action and executing and delivering any and all documents or instruments which may be necessary or desirable to accomplish the purposes of this Section 7(a). Pledgee shall be under no obligation to prioritize the order with respect to which it exercises any one or more of its rights and remedies provided under the Master Agreement or the Security Agreements, or as otherwise available under applicable law.

(c) Pledgor shall in all events remain liable to Pledgee for any amount payable by Pledgor in respect of any of its Obligations remaining unpaid after any such liquidation, application and set-off.

#### 8. Disputed Determinations and Calculations

(a) If a Party (the "Disputing Party") disagrees in good faith with any determination (the "Determination") or calculation (the "Calculation") made by the Valuation Agent under Sections 3, 4 or 5 and notifies the other Party and the Valuation Agent (if the Valuation Agent is not the other Party) not later than the close of business of the Business Day immediately following the day during which the Disputing Party receives notice of the determination or calculation in dispute, the following dispute mechanism will apply:

(b) Except in the case in which an Event of Default or Potential Event of Default has occurred and is continuing under this Collateral Annex or the Master Agreement with respect to the other Party, the Party that is required to pay, deliver or return Collateral based on the Determination and Calculation made by the Valuation Agent shall make such payment, delivery or return of Collateral with a value equal to the amount as determined and calculated by the Valuation Agent (as if such Determination or Calculation was not disputed) not later than the close of business on the Business Day on which Collateral would otherwise be required to be paid, delivered or returned pursuant to sections 4(a) or 5(a), as the case may be. The Parties agree to use their best efforts to resolve such disagreement expeditiously, but in any event within one (1) Business Day. If the parties cannot resolve such disagreement within one Business Day, the Valuation Agent shall appoint within two (2) Business Days three Reference Market-makers to make the relevant calculation or determination, in which case the Determination shall be the determination agreed upon by at least two of the Reference Market-makers, and the Calculation shall be the arithmetic mean of the calculations made by the Reference Market-makers. The costs of retaining such Reference Market-makers shall be borne equally by the Parties. The Determination or Calculation made by such Reference Market-makers will be binding and conclusive on the parties absent manifest error. If the Valuation Agent's original Determination or Calculation differs from the Determination or Calculation made by such Reference Market-makers, the appropriate Party shall, upon demand by the other Party following notice received from the Valuation Agent of the Determination or Calculation, make the appropriate payment, delivery or return and pay the other Party interest at the Non-default Rate on the value of the amount paid, delivered or returned pursuant to this sentence.

#### 9. Pledgor Covenants; Representations and Warranties; Miscellaneous.

(a) Pledgor will defend the Collateral against the claims and demands of all other parties, will keep all Collateral free from all security interests or other encumbrances (except the security interest hereunder) and will not sell, transfer, assign, deliver or otherwise dispose of any Collateral or any interest therein without the prior written consent of Pledgee.

(b) Pledgor will execute and deliver to Pledgee (and to the extent permitted by applicable law, Pledgor hereby authorizes Pledgee to execute and deliver, in the name of Pledgor or otherwise) such financing statements, assignments and other documents and do such other things relating to the Collateral and the security interest granted under the Security Agreements including any action Pledgee may deem necessary or appropriate to perfect or maintain perfection of its security interest in the Collateral, and Pledgor shall pay all costs relating thereto.

(c) On each day on which Collateral is held by Pledgee and/or any Custodian for the benefit of Pledgee under the Security Agreements, Pledgor hereby represents and warrants that:

(i) Pledgor has good title to and is the sole owner of such Collateral, and the execution, delivery and performance of the covenants and agreements of the Security Agreements, do not result in the

creation or imposition of any lien or security interest upon any of its assets or properties, including, without limitation, the Collateral, other than the security interests and liens created under the Security Agreements;

(ii) upon payment or delivery of Collateral by Pledgor to Pledgee and/or any Custodian for the benefit of Pledgee, Pledgee shall have a valid and perfected first priority continuing security interest therein, free of any liens, claims or encumbrances, except those liens, security interests, claims or encumbrances arising by operation of law that are given priority over a perfected security interest;

(iii) Pledgee has a valid and perfected first priority continuing security interest in the Collateral, free of any liens, claims or encumbrances, except those liens, claims or encumbrances arising by operation of law that are given priority over a perfected security interest; and

(iv) it is not and will not become a party to or otherwise be bound by any agreement, other than the Security Agreements, which restricts in any manner the rights of any present or future holder of any of the Collateral with respect hereto.

(d) This Collateral Annex has been and is made solely for the benefit of the Parties and their permitted successors and assigns, and no other person, partnership, association, corporation or other entity shall acquire or have any right under or by virtue of this Collateral Annex.

(e) Pledgor shall pay on request and indemnify Pledgee against any taxes (including without limitation, any applicable transfer taxes and stamp, registration or other documentary taxes), assessments, or charges that may become payable by reason of the security interests, general first lien and right of offset granted under the Security Agreements or the execution, delivery, performance or enforcement of the Security Agreements, as well as any penalties with respect thereto (including, without limitation costs and reasonable fees and disbursements of counsel). The parties each agree to pay the other party for all reasonable expenses (including without limitation, court costs and reasonable fees and disbursements of counsel) incurred by the other in connection with the enforcement of, or suing for or collecting any amounts payable by it under, the Security Agreements, and the Master Agreement.

(f) Any amendment, modification, or waiver of any provision of the Security Agreements shall be in writing and executed by both Parties hereto, and any such waiver shall be effective only for the specific purpose for which given and for the specific time period, if any, contemplated therein.

(g) Except as otherwise set forth in the Security Agreements, all notices and other communications required or permitted under the Security Agreements shall be delivered in the manner and shall be effective at the times set forth in the Master Agreement.

(h) No failure or delay by either party hereto in exercising any right, power, privilege, or remedy hereunder shall operate as a waiver thereof.

(i) The headings in the Security Agreements are for convenience of reference only, and shall not affect the meaning or construction of any provision thereof.

(j) THE GOVERNING LAW PROVISION OF SECTION 10.6 OF THE MASTER AGREEMENT SHALL APPLY TO THIS COLLATERAL ANNEX.

IN WITNESS WHEREOF, the Parties hereto have executed this Collateral Annex as of the date first above written.

**PacifiCorp**

By: \_\_\_\_\_  
Name: Stan Watters  
Title: Senior Vice President

By: \_\_\_\_\_  
Name:  
Title:

**POWER PURCHASE AGREEMENT**

**BETWEEN**

[\_\_\_\_\_]

**AND**

**PACIFICORP**

[\_\_\_\_\_ Project]  
[County, State]

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EXHIBITS:

Exhibit A	Description of Seller’s Facility
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Exhibit C	Permits
Exhibit D	Estimated Monthly Output
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Exhibit M	Facility Capacity Degradation Chart
Exhibit N	Ambient Facility Capacity Correction Algorithms

THIS POWER PURCHASE AGREEMENT (this "Agreement"), entered into this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, is between [\_\_\_\_\_] a [describe entity] ("Seller"), and PacifiCorp, an Oregon corporation acting in its merchant function capacity ("Buyer"). Seller and Buyer are referred to collectively as the "Parties" and individually as a "Party".

### RECITALS

A. Seller intends to construct, own, operate and maintain a [\_\_\_\_\_] facility for the generation of electric energy located in [township/range], \_\_\_\_\_ County, Utah, \_\_\_\_\_ with a Nameplate Capability Rating of [\_\_\_\_\_] megawatts (the "Facility").

B. Seller expects that the Facility will deliver to Buyer [\_\_\_\_\_] megawatt-hours (MWh) per calendar year of energy. Seller estimates that the energy will be delivered during each calendar year according to the estimates of monthly output set forth in Exhibit D. Seller acknowledges that Buyer will include this amount of energy in Buyer's resource planning.

C. Seller will deliver to Buyer the Energy provided by the Facility in accordance with the terms and conditions of this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below, the Parties agree as follows:

#### SECTION 1

#### DEFINITIONS; RULES OF INTERPRETATION

1.1 Defined Terms. Unless otherwise required by the context in which any term appears, defined terms used in this Agreement (as indicated by initial capitalization, except as otherwise provided in this Section 1.1) shall have the following meanings:

"AAA" has the meaning set forth in Section 15.2.

"Additional Taxes" has the meaning set forth in Section 6.4.4.

"Affiliate" means, with respect to any entity, each entity that directly or indirectly, controls or is controlled by or is under common control with such designated entity. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any entity, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities or by contract or otherwise.

"Alternate Representative" has the meaning set forth in Section 6.4.2.

“**Ambient Facility Capacity**” means the Capacity determined from the correction algorithms set forth in **Exhibit N**, based upon the Facility Capacity and the ambient conditions in effect in each hour.

“**Ancillary Services**” means those services and products from time to time now or hereafter available that are necessary to support the Capacity of the Facility and transmission of Energy from resources to loads while maintaining reliable operation of the System in accordance with Prudent Electrical Practices. Such services and products include regulation reserve, spinning reserve, non-spinning reserve, voltage support, and black start generating capability.

“**Arbitration Procedures**” has the meaning set forth in Section 15.2.

“**As-built Supplement**” shall be a supplement to **Exhibit A** that describes the Facility as actually built.

“**Authorized Representative**” has the meaning set forth in Section 6.4.2

“**Availability**” means, with respect to the Facility in any hour and expressed as a percentage of the Facility Capacity, the amount of net MW declared in an Availability Notice delivered by Seller in accordance with the terms of this Agreement; *provided* that (i) in determining Availability, any period of time during which the quantity of Energy or Ancillary Services delivered to Buyer is less than the Facility Capacity, such period will nevertheless be deemed to be a period in which the Facility Capacity was achieved if and to the extent the Facility is mechanically able to operate at the Facility Capacity but does not operate at the Facility Capacity due to (a) any event which prevents Buyer from taking Energy at the Delivery Point other than fault of Seller, (b) a Force Majeure event, or (c) scheduled maintenance set forth on **Exhibit I**; and (ii) as further described in Section 5.1.2, all outages, deratings or curtailments of the Facility for any other reason shall decrease the availability of the Facility for purposes of determining the Facility’s Availability.

“**Availability Notice**” has the meaning set forth in Section 6.5.1.1.

“**Business Day**” means any day on which banks in Portland, Oregon are not authorized or required by Requirements of Law to be closed, beginning at 6:00 a.m. and ending at 5:00 p.m. local time in Oregon.

“**Capacity**” means the output potential a machine or system can produce or carry under specified conditions. Generating equipment capacity is generally expressed in kW or MW. Transmission line capacity refers to the maximum power flow a line is capable of carrying under specified conditions. Capacity is referred to as “capability” in the industry and for purposes of this Agreement the terms are synonymous.

“**Capacity Payment**” means the Monthly Capacity Payments and the Minimum Monthly Capacity Payments made by Buyer to Seller in accordance with Section 5.1.

“**Capacity Payment Rate**” means (i) as of the Commercial Operation Date, \$[ ]/kW/month, [and (ii) commencing on the first Escalation Date and thereafter on each

subsequent Escalation Date, such rate set forth in the immediately preceding clause (i) shall escalate at a rate of [ ]% per Contract Year, as set forth on **Exhibit F**].

“**Capacity Payment Shortfall**” has the meaning set forth in Section 5.1.4.

“**Carry-Over Letter of Credit**” has the meaning set forth in Section 5.1.4.

“**Cash Escrow**” means an escrow account established by Buyer in a commercial bank or trust company organized under the laws of the United States of America or a political subdivision thereof, whose long-term senior unsecured debt is rated at least “A” by S&P or “A2” by Moody’s. Cash deposited to the escrow account shall earn interest at the rate applicable to money market deposits at the banking institution from time to time, and the interest shall be retained in the escrow account as additional security for Seller’s performance under this Agreement.

“**Collateral**” has the meaning set forth in Section 7.5.

“**Commercial Operation Date**” means the date on which Buyer, in its reasonable judgment, deems the Facility to be fully operational and reliable.

“**Contract Year**” means a twelve (12) month period commencing at 00:00 hours on January 1 and ending on 24:00 hours on December 31; *provided, however*, that the first Contract Year shall commence on the Commercial Operation Date and end on the next succeeding December 31, and the last Contract Year shall end on the last day of the Term.

“**Credit Requirements**” means a long-term credit rating (corporate or long-term senior unsecured debt) of (1) “Baa2” or higher by Moody’s, and (2) “BBB” or higher by S&P. *[Note to Bidders: PacifiCorp’s credit department, upon in its discretion review of the counterparty, offered credit support, the transaction, prevailing market conditions and other factors, may set further collateral thresholds at for entities rated Baa2/BBB or higher.]*

“**Daily Delay Damages**” shall be equal to (i) the result of (a) the market price at the Delivery Point of the Total Energy, plus any additional cost or expense that would be incurred as a result of Seller’s failure to deliver such Total Energy, as determined by Buyer in a commercially reasonable manner (but not including any penalties, ratcheted demand or similar charges), minus (b)(1) the Total Energy, stated in MWh, multiplied by (2) the price per MWh specified for the first Contract Year in **Exhibit F**, divided by (ii) 365.

“**Default Security**” has the meaning set forth in Section 7.2.1.

“**Delivery Point**” means [the high side of the generation step-up transformer(s) located at the point of interconnection between the Facility and Transmission Provider’s transmission system, as specified in the Interconnection Agreement and in **Exhibit B**.] *[Note to Bidders: If energy is to be delivered to a transmission provider other than Transmission Provider and wheeled to the Delivery Point, the Delivery Point will be at a point of interconnection with Transmission Provider’s transmission system where the resource can be integrated as a Network Resource.]*

“**Effective Date**” has the meaning set forth in Section 2.1.

“**Energy**” means electric energy either used or generated over a period of time; expressed in terms of kWh or MWh, whether or not initially capitalized.

“**Environmental Law**” means any federal, state or local law including statutes, regulations, rulings, orders, administrative interpretations and other governmental restrictions and requirements having the force and effect of law relating to (i) the discharge or disposal of any substance into the air, soil or water, including pollutants, water pollutants or process waste water, (ii) storage, emissions transportation or disposal of any Regulated Material, (iii) the environment or hazardous substances, all as amended from time to time, (iv) land use requirements pertaining to Regulated Materials, including laws requiring environmental impact studies or other similar evaluations, and (v) environmental issues pertaining to the development, construction, operation or maintenance of the Facility.

[“**Escalation Date**” means each [ ], after [ ]; *provided, however*, if the Commercial Operation Date is later than [ ], it shall mean the anniversary of the Commercial Operation Date.]

“**Event of Default**” has the meaning set forth in Section 10.1.

“**EWG**” means an “exempt wholesale generator,” as defined under PUHCA.

“**Example**” means an example set forth in **Exhibit G**. Each Example is for purposes of illustration only and is not intended to constitute a representation, warranty or covenant concerning the matters assumed for purposes of each Example. If there is a conflict between an Example and the text of this Agreement, the text shall control.

“**Facility**” shall have the meaning given to that term in Recital A. The Facility is more fully described in **Exhibit A**.

“**Facility Capacity**” means the total generating capacity of the Facility, which shall be [ ] MW, as adjusted in accordance with the degradation chart set forth in **Exhibit M**.

“**FERC**” means the Federal Energy Regulatory Commission and its successor agencies.

“**Forced Outage**” shall mean NERC Event Types U1, U2 and U3, as set forth in **Exhibit H**.

“**Governmental Authority**” means any supranational, federal, state or other political subdivision thereof, having jurisdiction over Seller, Buyer or this Agreement, including any municipality, township and county, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any corporation or other entity owned or controlled by any of the foregoing.

“**Guaranteed Commercial Operation Date**” means June 1, 2005.

**“Interconnection Agreement”** means the agreement to be entered into separately between Seller and Transmission Provider providing for the construction and operation of the interconnection facilities at the Delivery Point.

**“Interconnection Facilities”** means all the facilities installed by Seller for the purpose of interconnecting the Facility to the Delivery Point, including electrical transmission lines, upgrades, transformers and associated equipment, substations, relay and switching equipment, and safety equipment.

**“Letter of Credit”** means an irrevocable standby letter of credit in a form reasonably acceptable to Buyer, naming Buyer as the party entitled to demand payment and present draw requests thereunder, which letter of credit:

(1) is issued by a U.S. commercial bank or a foreign bank with a U.S. branch, with such bank having a net worth of at least \$1,000,000,000 and a credit rating on its senior unsecured debt of:

- (a) “A2” or higher from Moody’s; or
- (b) “A” or higher from S&P;

(2) on the terms provided in the letter of credit, permits Buyer to draw up to the face amount thereof for the purpose of paying any and all amounts owing by Seller hereunder;

(3) if a letter of credit is issued by a foreign bank with a U.S. branch, permits Buyer to draw upon a U.S. branch;

(4) permits Buyer to draw the entire amount available thereunder if such letter of credit is not renewed or replaced at least thirty (30) Business Days prior to its stated expiration date;

(5) permits Buyer to draw the entire amount available thereunder if such letter of credit are not increased, replaced or replenished as and when provided in Section 7;

(6) is transferable by Buyer to any party to which Buyer may assign this Agreement under Section 16.7; and

(7) shall remain in effect for at least ninety (90) days after the end of the Term.

**“Licensed Professional Engineer”** means a person acceptable to Buyer in its reasonable judgment who (i) is licensed to practice engineering in the state in which the Facility is located, (ii) has training and experience in the engineering discipline(s) relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion, (iii) has no economic relationship, association, or nexus with Seller, (iv) is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility, and (v) is



licensed in an appropriate engineering discipline for the required certification being made. The engagement and payment of a Licensed Professional Engineer solely to provide the certifications, evaluations and opinions required by this Agreement shall not constitute a prohibited economic relationship, association or nexus with Seller, so long as such engineer has no other economic relationship, association or nexus with Seller.

“**Maintenance Outage**” means NERC Event Type MO, as set forth in **Exhibit H**.

“**Major Equipment**” has the meaning set forth in **Exhibit I**.

“**Major Maintenance Cycle**” means, in respect of each item of Major Equipment, the period of time specified therefor in **Exhibit I**.

“**Mediation Notice**” has the meaning set forth in Section 15.2.1.

“**Minimum Monthly Capacity Payment**” has the meaning set forth in Section 5.1.3.

“**Monthly Capacity Payments**” has the meaning set forth in Section 5.1.2.

“**Moody’s**” shall mean Moody’s Investor Services, Inc. and any successor thereto.

“**MW**” means megawatt.

“**MWh**” means megawatt hour.

“**Nameplate Capability Rating**” means the maximum capability of the Facility, expressed in MW, when operated consistent with the manufacturer’s recommended power factor and operating parameters, as set forth in **Exhibit A**.

“**NERC**” means the North American Electric Reliability Council or its successor organization, if any.

“**Net Replacement Power Costs**” has the meaning set forth in Section 10.7.

“**Network Resource**” means a generation resource which has been fully integrated into Buyer’s system.

“**Operating Procedures**” are set out in **Exhibit K**.

“**Output**” means all Energy produced by the Facility and delivered at the Delivery Point, less station use and less transformation and transmission losses and other adjustments, if any.

“**Pacific Prevailing Time**” means Pacific Standard Time or Pacific Daylight Time, as applicable on the day in question.

“**Permits**” means all authorizations, certificates, permits, licenses and approvals required by any Governmental Authority for the development, construction, ownership, operation and maintenance of the Facility as set forth in **Exhibit C**.

**“Planned Outage”** means NERC Event Type PO, as set forth on **Exhibit H**.

**“Planned Outage Hours”** means, in respect of each item of Major Equipment in each Contract Year, the number of hours during which such Major Equipment is unavailable due to Planned Outage or, to the extent Seller shall elect, due to Maintenance Outage beginning and ending within a period of time consisting only of consecutive hours during a Planned Outage not to exceed [ ] hours during any Major Maintenance Cycle.

**“Potential Event of Default”** means an event which, but for the passing of time or the giving of notice or both, would constitute an Event of Default.

**“Premises”** means the real property on which the Facility is or will be located, as more fully described on **Exhibit A**.

**“Prime Rate”** means the rate per annum equal to the publicly announced prime rate or reference rate for commercial loans to large businesses in effect from time to time quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, N.Y., selected by the Party to whom interest based on the prime rate is being paid.

**“Project Development Security”** has the meaning set forth in Section 7.1.1.

**“Prudent Electrical Practices”** means any of the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry or any of the practices, methods or acts, which, in the exercise of reasonable judgment in the light of the facts known at the time a decision is made, could have been expected to accomplish the desired result at the lowest reasonable cost consistent with reliability, safety and expedition. Prudent Electrical Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts.

**“PUHCA”** shall mean the Public Utility Holding Company Act of 1935, as amended from time to time.

**“Regulated Materials”** means any substance, material, or waste which is now or hereafter becomes listed, defined, or regulated in any manner by any United States federal, state or local law and includes any oil, petroleum, petroleum products and polychlorinated biphenyls.

**“Replacement Price”** means the price at which Buyer, acting in a commercially reasonable manner, purchases for delivery at the Delivery Point a replacement for any energy that Seller is required to deliver under this Agreement, plus (i) costs reasonably incurred by Buyer in purchasing such replacement energy, and (ii) additional transmission charges, if any, reasonably incurred by Buyer in causing replacement energy to be delivered to the Delivery Point. If Buyer elects not to make such a purchase, the Replacement Price shall be the market price at the Delivery Point for such energy not delivered, plus any additional cost or expense incurred as a result of Seller’s failure to deliver, as determined by Buyer in a commercially reasonable manner (but not including any penalties, ratcheted demand or similar charges).

“**Reporting Month**” has the meaning set forth in Section 6.10.1.

“**Requirements of Law**” means collectively, as to Seller and [if Seller is not ultimate parent, any ultimate parent entity], their organizational or governing documents and any federal, state, county or municipal, law, treaty, ordinance, franchise, rule, regulation, order, writ, judgment, injunction, decree, award or determination of any arbitrator, or a court or other Governmental Authority, in each case, now or hereafter applicable to or binding upon this Agreement, the Facility, Seller or [if Seller is not ultimate parent, any parent entity] to which any of their respective properties are subject (including those pertaining to electrical, building, zoning, environmental and occupational health and safety).

“**RTO**” means any person, other than Transmission Provider, that becomes responsible as system operator for, or directs the operation of, the System.

“**S&P**” shall mean Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.) and any successor thereto.

“**Schedule**” or “**Scheduled**” means the acts of Buyer and Seller pursuant to Section 6.5 setting forth a schedule requesting and accepting the delivery of Energy by Seller to Buyer during the Term.

“**Scheduling Fees**” means fees assessed by any person to schedule the delivery of the Energy.

“**Solvency**” or “**Solvent**” has the meaning set forth in Section 3.2.12.

“**Start-Up Testing**” means the completion of required factory and start-up tests as set forth in **Exhibit E**.

“**System**” means the electric transmission sub-station and distribution facilities owned, operated or maintained by Transmission Provider, which shall include, after construction and installation of the Facility, the circuit reinforcements, extensions, and associated terminal facility reinforcements or additions required to complete the Facility, all as set forth in the Interconnection Agreement.

“**Tariff**” means Buyer’s FERC Electric Tariff Fourth Revised Volume No. 11 Pro Forma Open Access Transmission Tariff, as revised from time to time.

“**Term**” has the meaning set forth in Section 2.1.

“**Total Energy**” means the annual energy production from the Facility in megawatt hours per year, which shall be [\_\_\_\_\_] MWh/yr.

“**Transmission Provider**” means [Pacifcorp, an Oregon corporation, acting in its transmission function capacity.] *[Note to Bidders: If Facility is interconnected to another system, identify the appropriate Transmission Provider.]* Seller acknowledges that Buyer, as purchaser under this Agreement, has no responsibility for or control over such Transmission Provider.

“**Turbine Contractor**” means \_\_\_\_\_.

1.2 Rules of Interpretation.

1.2.1 General. Unless otherwise required by the context in which any term appears, (a) the singular shall include the plural and vice versa; (b) references to “Articles,” “Sections,” “Schedules,” “Annexes,” “Appendices” or “Exhibits” (if any) shall be to articles, sections, schedules, annexes, appendices or exhibits of this Agreement; (c) all references to a particular entity shall include a reference to such entity’s successors and permitted assigns; (d) the words “herein,” “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular section or subsection hereof; (e) all accounting terms not specifically defined in this Agreement shall be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied; (f) references to this Agreement shall be deemed to include a reference to all appendices, annexes, schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time; (g) the masculine shall include the feminine and neuter and vice versa; (h) the word “including” shall be construed to mean “without limitation” or “but not limited to” and (i) the word “or” is not necessarily exclusive.

1.2.2 Terms Not to be Construed For or Against Either Party. Each term of this Agreement shall be construed simply according to its fair meaning and not strictly for or against either Party. The Parties have jointly prepared this Agreement, and no term of this Agreement shall be construed against a Party on the ground that the Party is the author of that provision.

1.2.3 Headings. The headings used for the sections and articles this Agreement are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions of this Agreement.

SECTION 2

TERM; FACILITY DEVELOPMENT

2.1 Term. This Agreement shall become effective when it is signed and delivered by both Parties (the “**Effective Date**”) and, unless earlier terminated as provided in this Agreement, shall remain in effect until the \_\_\_\_ anniversary of the Commercial Operation Date (the “**Term**”).

2.2 Milestones. Time is of the essence of this Agreement, and Seller’s ability to meet certain milestones before the Commercial Operation Date and to deliver energy by the Guaranteed Commercial Operation Date is critically important. Therefore, Seller shall achieve the following milestones:

2.2.1 By [\_\_\_\_], Seller shall provide Project Development Security as described in Section 7.1;

2.2.2 By [\_\_\_\_], Seller shall demonstrate to Buyer's reasonable satisfaction that Seller has confirmed the availability of and the means for obtaining fuel sufficient to allow the Facility to generate the Total Energy in each Contract Year for the Term;

2.2.3 By [\_\_\_\_], Seller shall obtain and provide to Buyer copies of all Permits necessary for construction of the Facility;

2.2.4 By [\_\_\_\_], Seller shall provide to Buyer evidence acceptable to Buyer that Seller has obtained construction financing for the Facility (or alternatively permanent financing subject only to construction of the Facility and Seller's execution of the lender's loan documents);

2.2.5 By [\_\_\_\_], Seller shall provide Buyer with an As-built Supplement acceptable to Buyer;

2.2.6 By [\_\_\_\_], Seller shall evidence the ability to provide Default Security required under Section 7.2 of this Agreement;

2.2.7 By [\_\_\_\_], Seller shall begin deliveries of Output for purposes of initiating Start-Up Testing; and

2.2.8 By the Guaranteed Commercial Operation Date, the Commercial Operation Date shall have occurred. This shall require, among other things, that all of the following events have occurred:

(1) Buyer shall have received a certificate addressed to Buyer from a Licensed Professional Engineer stating that the Facility is able to generate electric power reliably in amounts required by this Agreement and in accordance with all other terms and conditions of this Agreement;

(2) Start-Up Testing of the Facility shall have been completed;

(3) After Buyer has received notice of the completion of Start-Up Testing, Buyer shall have endorsed a certificate addressed to Buyer from a Licensed Professional Engineer stating that the Facility has operated for testing purposes under this Agreement uninterrupted for a period of ten (10) consecutive days at a rate of at least the Facility Capacity based upon any sixty (60) minute period for the entire testing period. Seller must provide five (5) working days' written notice to Buyer before the start of the Start-Up Testing period. If the operation of the Facility is interrupted during this initial testing period or any subsequent testing period, the Facility shall start a new consecutive ten (10) day testing period and Seller shall provide Buyer forty-eight (48) hour written notice before the start of such testing period;

(4) Buyer shall have received a certificate addressed to Buyer from a Licensed Professional Engineer stating that, in accordance with the Interconnection Agreement, all required interconnection facilities have been constructed, all required interconnection tests have been completed, the Facility is physically interconnected with the

Transmission Provider's electric system and the Facility Capacity is integrated into the System as an integrated Network Resource;

(5) Buyer shall have received a certificate addressed to Buyer from a Licensed Professional Engineer stating that Seller has obtained all Permits and, if requested by Buyer in writing, Seller shall have provided copies of any or all such requested Permits, together with (i) the certificates of insurance coverage or insurance policies required by Section 12.1, and (ii) copies of all material Permits which Seller is responsible to obtain or are required for the construction and operation of the Facility;

(6) Buyer shall have issued a written certificate to Seller stating that Buyer has received all Facility drawings, plans, specifications, policies, and other documents required by this Agreement;

(7) Buyer shall have received a certificate addressed to Buyer from Seller's primary construction contractor stating that the Facility has been turned over to Seller for permanent operation and maintenance and that the primary construction contractor owes no further construction-related obligations to Seller (other than punch list items);

(8) Buyer shall have provided to Seller its determination that Seller satisfies the Credit Requirements; and

(9) Buyer shall have received a certificate addressed to Buyer from Seller certifying that no Event of Default by Seller or Potential Event of Default by Seller exists under this Agreement.

2.3 Daily Delay Damages. Seller shall cause the Commercial Operation Date to occur on or before the Guaranteed Commercial Operation Date. If the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date, Seller shall pay Buyer delay damages equal to the Daily Delay Damages for each day or portion of a day that the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date, up to a total of forty-five (45) days. Each Party agrees and acknowledges that (a) the damages that Buyer would incur due to delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date would be difficult or impossible to predict with certainty, and (b) the Daily Delay Damages are an appropriate approximation of such damages.

2.4 Rates Not Subject to Review. The rates for service specified in this Agreement shall remain in effect until expiration of the Term, and shall not be subject to change for any reason, including regulatory review, absent agreement of the parties. Neither Party shall petition FERC pursuant to the provisions of sections 205 or 206 of the Federal Power Act (16 U.S.C. § 792 et seq.) to amend such prices or terms, or support a petition by any other person seeking to amend such prices or terms, absent the agreement in writing of the other Party. Further, absent the agreement in writing by both Parties, the standard of review for changes to this Agreement proposed by a Party, a non-party or the FERC acting *sua sponte* shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956).

### SECTION 3

#### REPRESENTATIONS AND WARRANTIES

3.1 Buyer's Representations and Warranties. Buyer represents, covenants, and warrants to Seller that:

3.1.1 Organization. Buyer is duly organized and validly existing under the laws of the State of Oregon.

3.1.2 Authority. Buyer has the requisite corporate power and authority to enter into this Agreement and to perform according to the terms of this Agreement.

3.1.3 Corporate Actions. Buyer has taken all corporate actions required to be taken by it to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

3.1.4 No Contravention. The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Buyer or any valid order of any court, or any regulatory agency or other body having authority to which Buyer is subject.

3.1.5 Valid and Enforceable Agreement. This Agreement is a valid and legally binding obligation of Buyer, enforceable against Buyer in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

3.2 Seller's Representations and Warranties. Seller represents, covenants, and warrants to Buyer that:

3.2.1 Organization. Seller is a **[corporation/other]** duly organized and validly existing under the laws of [\_\_\_\_\_].

3.2.2 Authority. Seller (i) has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof, including all required regulatory authority to make wholesale sales from the Facility; (ii) has the power and authority to own and operate its businesses and properties, to own or lease the property it occupies and to conduct the business in which it currently engaged; and is duly qualified as foreign limited liability companies in Utah; and (iii) is in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification.

3.2.3 Actions. Seller has taken all **[corporate/other]** actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

3.2.4 No Contravention. The execution, delivery, performance and observance by Seller of its obligations under this Agreement do not and will not:

3.2.4.1 contravene, conflict with or violate any provision of any material Requirements of Law presently in effect having applicability to either Seller or [if Seller is not the ultimate parent, Seller's ultimate parent];

3.2.4.2 require the consent or approval of or material filing or registration with any Governmental Authority or other person other than such consents and approvals which are (i) set forth in **Exhibit C** or (ii) required in connection with the construction and/or operation of the Facility and expected to be obtained in due course;

3.2.4.3 result in a breach of or constitute a default under any any provision of any security issued by [ultimate parent of Seller] or any of its Affiliates or any material agreement, instrument or undertaking to which either [ultimate parent of Seller] or any of its Affiliates is a party or by which [ultimate parent of Seller]'s or any of its Affiliates' property is bound.

3.2.5 Valid and Enforceable Agreement. This Agreement is a valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

3.2.6 Litigation. No litigation, arbitration, investigation or other proceeding is pending or, to the best of Seller's knowledge, threatened against either Seller, its parent(s), or any Affiliate with respect to this Agreement and the transactions contemplated hereby and thereby.

3.2.7 Accuracy of Information. To the knowledge of Seller, no exhibit, contract, report or document furnished by Seller to Buyer in connection with this Agreement, or the negotiation or execution of this Agreement contains any material misstatement of fact or omits to state a material fact or any fact necessary to make the statements contained therein not misleading.

3.2.8 Permits. All material Permits are set forth on **Exhibit C** attached hereto. To Seller's knowledge, no unusual or burdensome conditions are expected by Seller to be placed upon, or created by, any Permit; and the anticipated use of the Facility complies with all applicable restrictive covenants affecting the site on which the Facility will be located and all Requirements of Law.

3.2.9 Taxes. Seller has filed or caused to be filed all tax returns which were required to be filed and has paid all taxes shown to be due and payable on said returns or on any assessments made against it or any of its property including the site on which the Facility will be located, and all other taxes, fees or other charges imposed on it or any of its property by any Governmental Authority, and no tax liens have been filed and no claims are being asserted with



respect to any such taxes, fees or other charges, except where such taxes, fees or other charges are being contested in good faith by Seller through appropriate proceedings with adequate reserves set aside in the event of an adverse determination.

3.2.10 Seller's Intent. Seller intends:

3.2.10.1 To construct and operate the Facility in accordance with Prudent Electrical Practices, and in accordance with, and subject to the terms of this Agreement;

3.2.10.2 To supply the Capacity and Output of the Facility throughout the Term of this Agreement in accordance with the provisions of this Agreement; and

3.2.10.3 [if Seller will be a single purpose vehicle, that its sole business shall be the ownership and operation of the Facility].

3.2.11 No Collusion. Neither Seller nor any of its representatives has entered into any form of collusive arrangement with any person or entity which directly or indirectly has to any extent lessened competition between Seller and any other person or entity for the supply of Capacity and Energy sought by Buyer.

3.2.12 Solvency. Seller, its parent(s) and their Affiliates are Solvent. As used herein, "**Solvent**" and "**Solvency**" means with respect to any person or entity on any date of determination, that on such date (a) the book value of the property of such person or entity is greater than the total amount of book liabilities, including contingent liabilities that are probable and estimable, of such person or entity, (b) such person or entity is able to pay its debts as they become absolute and matured, taking into account the possibility of refinancing such obligations and selling assets, (c) such person or entity does not intend to, and does not believe that it will, incur debts or liabilities beyond such person's or entity's ability to pay such debts and liabilities as they mature taking into account the possibility of refinancing such obligations and selling assets and (d) such person or entity is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such person's or entity's property would constitute an unreasonably small capital. The amount of contingent liabilities at any time shall be computed as the amount that are probable and estimable in the light of all the facts and circumstances existing at such time, and that can reasonably be expected to become an actual or matured liability.

3.3 No Other Representations or Warranties. Each Party acknowledges that it has entered into this Agreement in reliance upon only the representations and warranties set forth in this Agreement, and that no other representations or warranties have been made by the other Party with respect to the subject matter of this Agreement.

3.4 Notice. If at any time during the Term, any Party obtains actual knowledge of any event or information which would have caused any of the representations and warranties in this Section 3 to have been materially untrue or misleading when made, such Party shall provide the other Party with written notice of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section shall be given as soon as practicable after the occurrence of each such event.

## SECTION 4

### DELIVERIES OF CAPACITY AND ENERGY

#### 4.1 Purchase and Sale. During the Term:

4.1.1 Seller shall exclusively make available to Buyer all Energy, Capacity and Ancillary Services of the Facility and, subject to Section 5.1, Buyer shall purchase all Capacity of the Facility to the extent such Capacity has been integrated into the System as a Network Resource;

4.1.2 Seller shall sell and make available to Buyer, and Buyer shall purchase and receive, all Output from the Facility on a test energy basis at the price specified in Section 5.2 during the period between the Effective Date and the Commercial Operation Date;

4.1.3 Seller shall provide Ancillary Services to Buyer without additional charge or expense; and

4.1.4 Buyer shall be under no obligation to purchase any Energy under this Agreement other than Output.

4.2 No Sales to Third Parties. During the Term, Seller shall not sell any of the Energy from the Facility to any person other than Buyer.

4.3 Title and Risk of Loss. Seller shall deliver Output to Buyer at the Delivery Point free and clear of all liens, claims and encumbrances. Title to and risk of loss of all Output shall transfer from Seller to Buyer upon delivery of Output to Buyer at the Delivery Point. Seller shall be deemed to be in exclusive control of, and responsible for, any damage or injury caused by, Output up to and at the Delivery Point. Buyer shall be deemed to be in exclusive control of, and responsible for, any damages or injury caused by, Output from the Delivery Point.

## SECTION 5

### PURCHASE PRICE; COSTS

5.1 Capacity Payments. Commencing on the last day of the month in which the Commercial Operation Date occurs, Buyer shall pay to Seller in arrears a Capacity Payment equal to the greater of (i) the Monthly Capacity Payment as determined in Section 5.1.2, or (ii) the Minimum Monthly Capacity Payment as determined in Section 5.1.3.

5.1.1 All Capacity Payments shall be billed on a calendar month basis. In the event that Commercial Operation Date does not occur at the start of a calendar month, the first month's Capacity Payment shall be prorated to reflect the actual number of days of Commercial Operation in such month.

5.1.2 Monthly Capacity Payment. The "**Monthly Capacity Payments**" shall be computed based upon the following formula:

Monthly Capacity Payment =  $(FC \times CPR \times MAAF) - CPS$ , where:

FC = the Facility Capacity;

CPR = Capacity Payment Rate, stated in \$/kW-month, escalated on the Escalation Date;

CPS = Capacity Payment Shortfall, if any; and

MAAF = Availability Adjustment Factor for that month, computed as follows:

a. If  $CAF_m \geq [96]\%$ ,  $MAAF = 1$

b. If  $CAF_m < [96]\%$ ,  $MAAF = 1 - [2] \times ([96] - CAF_m)$

*Provided, however*, MAAF cannot be less than zero (0).

$CAF_m$  = Average Capacity Availability Factor for a month shall equal the sum of the hourly Capacity Availability Factors (“ $CAF_h$ ”) determined for each hour of such month, divided by the total number of hours in such month; and

$CAF_h$  =  $(AD + DD) / AFCE$

where:

AD (Actual Deliveries) shall mean, for any hour, the actual quantity of energy generated by the Facility and delivered by Seller to Buyer at the Delivery Point;

DD (Deemed Deliveries) shall mean, for any hour, (i) a quantity of energy equal to the amount of energy that could have been generated by that portion of the Ambient Facility Capacity that was set forth in the Availability Notice (a) that was not dispatched by Buyer in such hour, unless such failure to dispatch was caused during times and to the extent that Transmission Provider curtails Network Integration Transmission Service (as defined in the Tariff) to Buyer pursuant to the terms of the Tariff or (b) that was not generated and delivered due to an Event of Default by Buyer; and (ii) any amount of energy that was not available from the Facility for dispatch and receipt by Buyer, during the relevant hour, due to any outage or derating that meets the requirements for Scheduled Maintenance established in **Exhibit I**; and

AFCE (Ambient Facility Capacity Energy) shall mean the quantity of energy that could be produced from the Ambient Facility Capacity during such hour.

5.1.3 Minimum Monthly Capacity Payment. During any month, the “**Minimum Monthly Capacity Payment**” shall equal the amount determined by the following formula:

Minimum Monthly Capacity Payment =  $FC \times CPR \times 1000 \times [ \_\_\_\% ]$ , where:

FC = the Facility Capacity;

CPR = Capacity Payment Rate, stated in \$/kW-month, escalated as of the Escalation Date; and

% = \_\_\_\_\_.

5.1.4 Carry-Over Provisions. With respect to any month in which the calculated Monthly Capacity Payment is less than the Minimum Monthly Capacity Payment, the difference between the two payment amounts shall be set forth in a separate account (the amount in such account is referred to herein as the “**Capacity Payment Shortfall**”). The Capacity Payment Shortfall shall be increased by interest at the Prime Rate divided by 365 on the maximum amount of the Capacity Payment Shortfall on that day and shall be recovered by Buyer as a credit against the otherwise applicable Monthly Capacity Payment owed to Seller for such month and by drawing on the Carry-Over-Letter of Credit as provided below. That portion of any Capacity Payment Shortfall which is not recovered in any month shall be carried over to each subsequent month thereafter until recovered by Buyer in full from Seller. If the Capacity Payment Shortfall exceeds \$ \_\_\_\_\_, then Seller shall provide a Letter of Credit for the benefit of Buyer, in form reasonably acceptable to Buyer, with a face amount equal to the full amount of the Capacity Payment Shortfall amounts (“**Carry-Over Letter of Credit**”). The amount of such Carry-Over Letter of Credit shall be adjusted thereafter, at the end of each month, to equal the then-outstanding Capacity Payment Shortfall. At the end of each Contract Year, Buyer shall be entitled to draw down against the Carry-Over Letter of Credit for the amount the Capacity Payment Shortfall that has not been recovered as of that date.

5.2 Test Energy. If Section 4.1 of this Agreement requires Buyer to purchase test energy from the Facility, then for the period between the Effective Date and the Commercial Operation Date, Seller shall sell and deliver Output to Buyer at the Delivery Point as test energy. With respect to such test energy, Buyer shall pay Seller (a) for Output delivered at the Delivery Point during heavy load hours, an amount per MWh equal to [eighty-five] percent [(85%)] of the market price of non-firm energy for heavy load hours as specified in *[identify price index for the market hub closest to the Delivery Point]*, and (b) for Output delivered at the Delivery Point during light load hours, an amount per MWh equal to [eighty-five] percent [(85%)] the market price of non-firm energy for light load hours as specified in *[identify price index for the market hub closest to the Delivery Point]*; provided, however, that the amount to be paid by Buyer for such test energy shall in no event exceed [seventy-five] percent [(75%)] of the price per MWh specified for the first Contract Year.

5.3 Commercial Operation. For the period beginning on the Commercial Operation Date and thereafter during the Term, Buyer shall pay to Seller the amount per MWh specified for a given Contract Year in **Exhibit F**.

5.4 Costs and Charges. Seller shall be responsible for all costs or charges imposed in connection with the delivery of Output at the Delivery Point, including transmission costs and charges. Without limiting the generality of the foregoing, except to the extent otherwise provided in the Interconnection Agreement, Seller shall bear all costs associated with the modifications to Transmission Provider’s interconnection facilities or electric system (including

system upgrades) caused by or related to (a) the interconnection of the Facility with Transmission Provider's system, (b) any increase in generating capability of the Facility, and (c) any increase of delivery of Energy from the Facility.

5.5 Station Service. Seller shall be responsible for arranging and obtaining, at its sole risk and expense, any station service required by the Facility that is not provided by the Facility itself.

5.6 Taxes. Seller shall pay when due all existing and any new sales, use, excise, ad valorem, and any other similar taxes, imposed or levied by any federal, state or local governmental agency on the sale of Output to Buyer under this Agreement regardless of whether such taxes are payable by Buyer or Seller under Requirements of Law.

## SECTION 6

### OPERATION AND CONTROL

6.1 As-Built Supplement. Upon completion of construction of the Facility, Seller shall provide Buyer the As-built Supplement. The As-built Supplement shall be deemed effective and shall be added to **Exhibit A** of this Agreement when it has been reviewed and approved by Buyer. Buyer shall not unreasonably withhold, condition or delay its approval of the As-built Supplement.

6.2 Quality of Output. All Output shall meet all requirements in the Interconnection Agreement. Seller shall instruct Transmission Provider in writing that Buyer is entitled to receive, directly from Transmission Provider, any and all data associated with the Facility and/or the production of Output that Transmission Provider has in its possession.

6.3 Standard of Facility Operation.

6.3.1 General.

6.3.1.1 At Seller's sole cost and expense, Seller shall operate, maintain and repair the Facility and the Interconnection Facilities in accordance with (i) the standards, criteria and formal guidelines of FERC, NERC, any RTO, and any successors to the functions thereof; (ii) the Permits; (iii) the Interconnection Agreement; (iv) all Requirements of Law; (v) the requirements of this Agreement and (vi) Prudent Electrical Practice. During the Term, Seller shall be the sole owner of the Interconnection Facilities. Seller shall defend, indemnify and hold Buyer harmless from and against any requirements to comply with FERC Open Access requirements respecting the Interconnection Facilities caused by Seller's act or omission.

6.3.1.2 Without limiting the generality of Section 6.3.1.1, Seller shall:

6.3.1.2.1 At all times, employ qualified and trained personnel for managing, operating and maintaining the Facility and for coordinating such managing, operating and maintenance with Buyer. Seller shall ensure that prior to or on the first day Seller delivers Energy to the Delivery Point such qualified and

trained personnel are available to Buyer at all times, twenty-four (24) hours per day during the Term.

6.3.1.2.2 Operate and maintain the Facility with due regard for the safety, security and reliability of the System and Buyer's customers and in compliance with the general specifications contained in **Exhibit I**.

6.3.1.2.3 Comply with operating and maintenance standards recommended by the Facility's equipment suppliers.

6.3.1.2.4 Coordinate the Facility's relaying and protection to conform with Prudent Electrical Practice.

6.3.1.2.5 Furnish and install, at Seller's sole expense, a manually operable disconnecting device that can be locked by Buyer in the open position and visually checked to be in the open position, so as to be able to electrically isolate the Facility from the System. This device(s) shall be installed at a location at or near the Delivery Point.

6.3.1.2.6. Have the Facility's protective relays calibrated and operationally checked, at least annually by a person qualified to perform such service and provide Buyer with a written confirmation of the calibration.

6.3.1.2.7 Operate the Facility in such a manner so as not to have an adverse effect on Buyer's voltage level or voltage waveform.

6.3.1.2.9 Operate the Facility in a manner and consistent with the Operating Procedures so as to permit Buyer, at its discretion, to dispatch individuals items of Major Equipment required to generate Energy Scheduled by Buyer.

6.3.2 Interconnection. Pursuant to the Interconnection Agreement, Seller shall be responsible for the costs and expenses associated with interconnection of the Facility at its Nameplate Capability Rating at the Delivery Point, including the costs of any System upgrades beyond the Delivery Point necessary to interconnect the Facility with System and to allow the delivery of Energy to the Delivery Point.

6.3.3 Coordination with System. Pursuant to the Interconnection Agreement, Seller shall be responsible for the coordination and synchronization of the Facility's equipment with the System, and shall be solely responsible for (and shall defend and hold Buyer harmless against) any damage that may occur as a direct result of Seller's improper coordination or synchronization of such equipment with the System.

#### 6.4 Operating Procedures and Compliance.

6.4.1 Without limiting the generality of Section 6.2, during the Term, the Parties shall observe the Operating Procedures.

6.4.2 In the Operating Procedures, each Party has designated an authorized representative (an “**Authorized Representative**”) and an alternate representative (an “**Alternate Representative**”) to act in the Authorized Representative’s absence. A Party’s appointment of an Authorized Representative and Alternate Representative shall remain in full force and effect until the Party delivers written notice of substitution to the other Party. The Authorized Representatives and Alternate Representatives shall be managers well-experienced with regard to matters relating to the implementation of the Parties’ rights and obligations under this Agreement.

6.4.3 Operational Compliance.

6.4.3.1 Permits. Seller shall maintain in full force and effect during the term of this Agreement all Permits now or hereafter required.

6.4.3.2 Hazardous Substances. Seller shall operate the Facility in compliance with all Environmental Laws and permits, licenses, rules or orders promulgated, issued or otherwise required by a Governmental Authority having jurisdiction or enforcement power over any Environmental Law and Seller. Seller shall immediately notify Buyer if Seller or any Affiliate of Seller receives or obtains any actual knowledge of or actual notice of any past, present or future actions or plans which, with respect to the site on which the Facility is located, which may interfere with or prevent compliance or continued compliance with Environmental Laws, affect the construction or operation of the Facility, or may give rise to any material liability under any Environmental Laws or to any common law or legal liability or otherwise form the basis of any claim, action, demand, suit, proceeding, hearing, study or investigation under Environmental Laws.

6.4.4 Taxes. Seller shall pay all now existing or hereinafter imposed federal, state, municipal, or other lawful taxes, charges or fees (however characterized) imposed on or with respect to Seller or the Facility, its operation, or on or with respect to emissions or other environmental impacts of the Facility, including any such tax, fee or charge (however characterized) to the extent payable by a purchaser of Energy, except that Seller shall have the right to contest in good faith any such taxes, charges or fees; *provided* that Seller may only contest in good faith any such taxes, charges or fees if it has provided to Buyer adequate and reasonable assurances or security, as determined by Buyer. Seller and the Facility, by reason of production or sale of electricity, shall receive any new tax credits, allowances, exemptions or other credits related to the Facility. If any Requirements of Law imposed on Buyer by any Governmental Authority adversely affects Buyer’s liability for additional taxes, fees, assessments or impositions of any type or kind for contributions in aid of construction related to the performance of obligations under this Agreement (“**Additional Taxes**”), such Additional Taxes shall constitute an expense pursuant to this Agreement for which Seller shall be liable to reimburse Buyer to the extent these Additional Taxes have been incurred and paid by Buyer. Buyer may bill Seller separately for such Additional Taxes or may setoff these amounts. If Buyer fails to bill Seller, or to provide notice of a proposed set-off, to recover Additional Taxes within two years of the date on which any such Additional Taxes were incurred and paid by Buyer, Buyer shall be deemed to have waived its right to reimbursement of Additional Taxes to that extent.

#### 6.4.5 Fines and Penalties.

6.4.5.1 Seller shall pay within thirty (30) days all fines, penalties, or legal costs incurred by Seller or for which Seller is legally responsible for noncompliance by Seller, its agents, employees, contractors or subcontractors, with any provision of this Agreement, any agreement, commitment, obligation or liability incurred in connection with this Agreement or the Facility or any Requirements of Law, except where such fines, penalties or legal costs are being contested in good faith by Seller, its agents or contractors through appropriate proceedings with (i) adequate reserves set aside, or (ii) if requested by Buyer, the posting of adequate security, in the event of an adverse determination.

6.4.5.2 Subject to Section 6.4.4, if fines, penalties, or legal costs are assessed against Buyer by any Governmental Authority due to noncompliance by Seller with any Requirements of Law, with which compliance is required by this Agreement, or if the performance of Seller is delayed or stopped by order of any Governmental Authority due to Seller's noncompliance with any Requirements of Law, Seller shall indemnify and hold harmless Buyer against any and all losses, liabilities, damages, and claims suffered or incurred by Buyer.

6.4.5.3 Seller shall reimburse Buyer for all fees, damages, or penalties imposed by any Governmental Authority, other person or to other utilities for violations to the extent caused by an Event of Default by Seller or a failure of performance by Seller under this Agreement.

#### 6.5 Scheduling Procedures.

##### 6.5.1 Availability Notices and Updates.

6.5.1.1 By 5:00 A.M. Pacific Prevailing Time on the Business Day immediately preceding the next three days on which Energy is to be delivered by Buyer to Seller, Seller shall provide Buyer with an hourly forecast of expected Availability for each hour of the next three days (as set forth in the form of **Exhibit L**, an "**Availability Notice**"); *provided, however*, that an Availability Notice provided on a Day before any non-Business Day shall include forecasts for each day to and including the next Business Day. Delivery of an Availability Notice by Seller to Buyer with respect to any item of Major Equipment declared Available shall be deemed a declaration that all Ancillary Services capable of being provided from such Major Equipment are available for the Days for which such Availability Notice shall be effective. Seller shall promptly update Availability Notices any time information becomes available indicating a change in the forecast of generation of Energy from the then current forecast; and in any event within 15 minutes of each time it becomes aware of a change (favorable or unfavorable) in the Availability, or projected Availability, of the Facility or electric transmission capacity, *provided* that such changes to the daily Availability Notices may be delivered by telephone within the 15-minute initial period and then later confirmed in writing within the hour. To the extent commercially reasonable, the parties shall cooperate to implement and use automatic forecast updates.

6.5.1.2 Availability Notices shall specify any known limitations on the availability of electric transmission capacity made known to Seller that may affect the ability of



the Facility to generate and deliver Scheduled Energy to the Delivery Point. Seller will also provide Buyer with a Monthly Availability Notice six Business Days before the commencement of each such month, and a weekly Availability Notice on each Friday for the next week. Availability Notices identifying reductions in availability will include a short description of the nature of the problem, steps taken or being taken to resolve it and Seller's estimate of the time by which a reduction in availability will be resolved. Availability Notices identifying projected restorations of capacity availability will specify the time and extent that such restoration is projected to occur, and Seller will issue a further notice after restoration of availability is complete. Without limiting the foregoing, Seller will inform Buyer of any major limitations, restrictions, deratings or outages known to Seller affecting the ability to generate Facility Capacity for the following Day and will promptly update Seller's notice to the extent of any material changes in this information.

6.5.1.3 Availability Notices will be used by and relied upon by Buyer to establish and adjust electric transmission schedules. If Seller has provided notice to Buyer of a reduction in availability affecting transmission schedules, then prior to increasing Facility generation for delivery to Buyer as a result of restored availability, Seller will provide Buyer timely notice so as to enable Buyer sufficient time to reestablish its transmission schedules. The failure by Seller to provide revised Availability Notices is not a breach of this Agreement, but rather places Seller at risk for electric imbalance penalties or charges incurred by Buyer due to its lack of notice; *provided, however*, the failure to provide such notices more than \_\_\_ times a Contract Year shall constitute a breach.

#### 6.5.2 Dispatch Notice.

6.5.2.1 No later than 5:00 P.M. Pacific Prevailing Time on each Business Day, Buyer shall deliver to Seller a statement (which may be communicated by fax, e-mail or other electronic medium or a recorded telephone line) setting forth the estimated quantity of Energy to be Scheduled during each hour of the immediately following day(s) at the Delivery Point. These estimates shall not be binding upon Buyer and Buyer may subsequently revise its estimates. The foregoing estimates by Buyer shall not be construed to permit Seller to limit the availability of the Facility such that Buyer is restricted from dispatching Facility Capacity unless the Facility Capacity is physically unavailable due to Force Majeure, Planned Outage or Unplanned Outage, as the case may be. Buyer's written statement may request the delivery of Energy to be Scheduled during any or all hours of any Day.

6.5.2.2 Seller shall be obligated to accept a request for Energy that has been provided to Seller in accordance with the requirements of Section 6.5.2.1 except to the extent Seller declares that the Facility is not available as a result of a previously declared Planned Outage, a Forced Outage or an event of Force Majeure. Seller shall promptly notify Buyer if Seller determines that it will not accept a Schedule submitted by Buyer for any of the foregoing reasons.

6.5.2.3 Buyer may dispatch Energy and Ancillary Services on a real time basis, subject to the Operating Procedures. Seller shall be obligated to accept a request for a change to the applicable schedule for Energy.

6.5.2.4 Buyer shall pay all Scheduling Fees charged by any third parties, if any, associated with the Scheduling of Energy for its benefit or, if applicable, any fees charged by an independent third party for providing Ancillary Services.

6.5.2.5 From time to time during the Term, Buyer may designate a third party to Schedule Energy on behalf of Buyer in accordance with Requirements of Law. Buyer may change the designated entity acting in such capacity from time to time. Accordingly, upon request of Buyer, Seller shall make such arrangements in accordance with Requirements of Law at Buyer's cost as may be reasonably necessary to facilitate the re-designation of the person who may Schedule Energy on Buyer's behalf.

## 6.6 Outages.

6.6.1 Planned Outages. No Planned Outage may be scheduled to occur during any portion of the months of November, December, January, February, June, July, and August.

6.6.2 Maintenance Outages. If Seller reasonably determines that it is necessary to schedule a Maintenance Outage, Seller shall notify Buyer of the proposed Maintenance Outage at least five (5) days before the outage begins (or such shorter period to which Buyer may reasonably consent in light of then existing conditions). Upon such notice, the Parties shall plan the Maintenance Outage to mutually accommodate the reasonable requirements of Seller and the service obligations of Buyer; *provided, however*, that, unless Buyer otherwise consents, such consent not to be unreasonably withheld, no Maintenance Outage may be scheduled between the hour ending 0700 through the hour ending 2200, Monday through Saturday, during the months of November, December, January, February, June, July and August. Notice of a proposed Maintenance Outage shall include the expected start date and time of the outage, the amount of generation capability of the Facility that will not be available, and the expected completion date and time of the outage. Seller shall give Buyer notice of the Maintenance Outage as soon as Seller determines that the Maintenance Outage is necessary. Buyer shall promptly respond to such notice and may request reasonable modifications in the schedule for the outage. Seller shall use all reasonable efforts to comply with any request to modify the schedule for a Maintenance Outage. Seller shall notify Buyer of any subsequent changes in generation capability available to Buyer or any changes in the Maintenance Outage completion date and time. As soon as practicable, any notifications given orally shall be confirmed in writing. Seller shall take all reasonable measures and exercise its best efforts to minimize the frequency and duration of Maintenance Outages.

6.6.3 Forced Outages. Seller shall promptly provide to Buyer an oral report of any Forced Outage of the Facility. This report shall include the amount of the generation capability of the Facility that will not be available because of the Forced Outage and the expected return date of such generation capability. Seller shall promptly update the report as necessary to advise Buyer of changed circumstances. As soon as practicable, if the Forced Outage resulted in more than [10] MW of nameplate capability being unavailable, the oral report shall be confirmed in writing. Seller shall take all reasonable measures and exercise its best efforts to avoid Forced Outages and to minimize their duration.

6.6.4 Notice of Deratings and Outages. Without limiting the foregoing, Seller will inform Buyer of any major limitations, restrictions, deratings or outages known to Seller affecting the Facility for the following day and will promptly update Seller's notice to the extent of any material changes in this information, with "major" defined as affecting more than five percent (5%) of the Nameplate Capability Rating of the Facility.

6.7 Schedule Coordination. If, as a result of this Agreement, Buyer is deemed by an RTO to be financially responsible for Seller's performance under the Interconnection Agreement, due to Seller's lack of a "scheduling coordinator" or other RTO recognized standing or otherwise, then (a) Seller shall use commercially reasonable and diligent efforts to acquire such RTO recognized standing such that Buyer is no longer responsible for Seller's performance under the Interconnection Agreement, and (b) Seller shall defend, indemnify and hold Buyer harmless against any liability arising due to Seller's performance or failure to perform under the Interconnection Agreement.

6.8 No Increase in Nameplate Capability Rating. Except with Buyer's prior written consent (which Buyer may withhold in its sole discretion) Seller shall not increase the Nameplate Capability Rating above that specified in **Exhibit A** or increase the ability of the Facility to deliver Output in quantities in excess of the Facility Capacity through any means including replacement of, modification of, or addition of existing equipment. Buyer shall not be required to purchase any Output above the Facility Capacity, but may in its sole discretion, elect to pay for such additional Output on a non-firm basis.

6.9 Electronic Communications.

6.9.1 Telemetry. Seller shall provide telemetry equipment and facilities capable of transmitting the following information concerning the Facility pursuant to the Interconnection Agreement and to Buyer on a real-time basis and will operate such equipment when requested by Buyer to indicate:

6.9.1.1 instantaneous MW output at the Delivery Point;

6.9.1.2 Output; and

6.9.1.3 the Facility's total capability.

Seller shall also transmit to Buyer any other data from the Facility that Seller receives on a real time basis. Seller shall provide such real time data to Buyer on the same basis as the basis on which Seller receives the data (*e.g.*, if Seller receives the data in four second intervals, Buyer shall also receive the data in four second intervals).

6.9.2 Dedicated Communication Circuit. Seller shall install a dedicated direct communication circuit (which may be by common carrier telephone) between Buyer and the control center in the Facility's control room or such other communication equipment as the Parties may agree.

6.10 Reports and Records.

6.10.1 Monthly Reports. Within thirty (30) days after the end of each calendar month during the Term (each, a “**Reporting Month**”), Seller shall provide to Buyer a report in electronic format, which report shall include (a) summaries of the Facility’s output data for the Reporting Month in intervals not to exceed one hour (or such shorter period as is reasonably possible with commercially available technology), including information from the Facility’s Computer Monitoring System; (b) summaries of any other significant events related to the construction or operation of the Facility for the Reporting Month; and (c) any supporting information that Buyer may from time to time reasonably request (including historical data for the Facility).

6.10.2 Electronic Fault Log. Seller shall maintain an electronic fault log of operations of the Facility during each hour of the Term beginning as of the Commercial Operation Date. Seller shall provide Buyer with a copy of the electronic fault log within thirty (30) days after the end of the calendar month to which the fault log applies.

6.10.3 Other Information to be Provided to Buyer. Seller shall provide to Buyer the following information concerning the Facility:

6.10.3.1 Upon the request of Buyer, the manufacturers’ guidelines and recommendations for maintenance of the Facility equipment;

6.10.3.2 A report summarizing the results of maintenance performed during each Planned Outage and any Forced Outage, and upon request of Buyer any of the technical data obtained in connection with such maintenance;

6.10.3.3 Before the Commercial Operation Date, a monthly progress report stating the percentage completion of the Facility and a brief summary of construction activity during the prior month; and

6.10.3.4 Before the Commercial Operation Date, a monthly report containing a brief summary of construction activity contemplated for the next month.

6.10.4 Seller shall, promptly upon written request from Buyer, provide Buyer with all data which is collected by Seller related to the Facility reasonably required for reports to and information requests from any Governmental Authority. Along with said information, Seller shall provide to Buyer copies of all submittals to these Governmental Authorities directed by Buyer and related to the operation of the Facility with a certificate that the contents of the submittals are true and accurate to the best of Seller’s knowledge. Seller shall use best efforts to provide this information to Buyer soon enough so that Buyer has time to review such information and meet any submission deadlines imposed by the requesting organization or entity.

6.10.5 Information to Governmental Authorities. After the sending or filing any statement, application, and report or any document with any Governmental Authority relating to operation and maintenance of the Facility, Seller shall promptly provide to Buyer with a copy of the same.

6.10.6 Seller shall, promptly upon written request from Buyer, provide Buyer with data reasonably required for information requests from any state or federal agency

intervener or any other party achieving intervenor status in any Buyer rate proceeding or other proceeding before any Governmental Authority. Seller shall use best efforts to provide this information to Buyer soon enough so that Buyer has time to review such information and meet any submission deadlines imposed by the requesting organization or entity.

6.10.7 Seller shall, promptly upon written request from Buyer, provide Buyer with all data reasonably requested by Buyer relating to environmental information under the Permits.

6.10.8 Seller shall provide Buyer monthly operational reports in a form and substance acceptable to Buyer and Seller shall, promptly upon written request from Buyer, provide Buyer with all operational data requested by Buyer with respect to the performance of the Facility and delivery of energy therefrom.

6.10.9 Seller shall provide Buyer within ninety (90) days after the end of each calendar year audited financial statement in accordance with generally accepted accounting principles.

6.10.10 Notice of Default. Seller shall promptly notify Buyer of receipt of written notice or actual knowledge of the occurrence of any event of default under any material agreement to which Seller is a party and of any other development, financial or otherwise, which would have a material adverse effect on Seller, the Facility or Seller's ability to develop, construct, operate, maintain or own the Facility as provided in this Agreement.

6.10.11 Notice of Litigation. Following its receipt of written notice or actual knowledge of the commencement of any action, suit, and proceeding before any court or Governmental Authority which would, if adversely determined, adversely affect Seller, the Premises or the Facility, Seller shall promptly give notice to Buyer of the same.

6.10.12 Additional Information. Seller shall provide to Buyer such other information respecting the condition or operations of Seller and the Facility as Buyer may, from time to time, reasonably request.

6.11 Access Rights. Upon reasonable prior notice and subject to the safety rules and regulations of Seller, Seller shall provide Buyer and its authorized agents, employees and inspectors with reasonable access to the Facility: (a) for the purpose of reading or testing metering equipment, (b) as necessary to witness any required generation capability tests necessary to determine the amount of generation capability associated with the Facility, (c) in connection with the operation and maintenance of the interconnection facilities for the Facility, (d) to provide tours of the Facility to customers and other guests of Buyer (not more than twelve (12) times per year), (e) for purposes of implementing Section 9.5, and (f) for other reasonable purposes at the reasonable request of Buyer.

6.12 EWG. Seller shall provide Buyer with copies of Seller's applications to FERC for EWG status and for authority to sell energy under this Agreement within ten (10) days of filing such application(s). During the Term, Seller shall either (i) maintain its EWG status and its authority to sell power under this Agreement or (ii) otherwise cause Seller to be exempt from federal and state regulations as an electric utility.

## SECTION 7

### SECURITY

#### 7.1 Project Development Security.

7.1.1 Form of Project Security. If Seller does not satisfy the Credit Requirements at any time after the Effective Date and before the date specified in Section 2.2.1, Seller shall post and maintain in favor of Buyer (a) a guaranty from a party that satisfies the Credit Requirements, in a form acceptable to Buyer in its discretion, (b) a Letter of Credit in favor of Buyer, or (c) a Cash Escrow (the “**Project Development Security**”) [*Note to Bidders: Project Development Security will be equal to 730 x Daily Delay Damages*].

7.1.2 Use of Project Development Security to Pay Daily Delay Damages. If the Commercial Operation Date occurs after the Guaranteed Commercial Operation Date, Buyer shall be entitled to draw upon the Project Development Security from time to time an amount equal to the Daily Delay Damages until such time as the Project Development Security is exhausted. Buyer shall also be entitled to draw upon the Project Development Security for damages arising if this Agreement is terminated under Section 10 because of Seller’s default.

7.1.3 Termination of Project Development Security. If after the Guaranteed Commercial Operation Date no damages are owed to Buyer under this Agreement, Seller shall no longer be required to maintain the Project Development Security (or the remaining balance thereof) on and after the thirtieth (30<sup>th</sup>) day after the Facility achieves the Commercial Operation Date; *provided, however*, that with Buyer’s consent, Seller may apply the Project Development Security toward the Default Security required by Section 7.2.

#### 7.2 Default Security.

7.2.1 Duty to Post Default Security. At any time during the Term when Seller does not satisfy the Credit Requirements, Seller shall post and maintain in favor of Buyer (a) a guaranty from a party that satisfies the Credit Requirements, in a form acceptable to Buyer in its discretion, (b) a Letter of Credit, or (c) a Cash Escrow (the “**Default Security**”) as provided in this Section 7.2.

7.2.2 Amount of Default Security. The amount of the Default Security required by Section 7.2.1 shall be sufficient to provide replacement power under this Agreement for the next eighteen (18) calendar months. This amount shall be deemed equal to the positive difference between the forward power prices at [**specify appropriate liquid market hub**] (as determined by Buyer in good faith using information from a commercially reasonable independent source) for the next eighteen (18) calendar months (or, if the remaining Term is less than eighteen (18) calendar months), then for the remainder of the Term) multiplied by 110%, minus the Purchase Price, multiplied by the MWhs that would be delivered for such period under this Agreement (assuming Output based on the total of the estimated monthly outputs set forth on **Exhibit D** for that period); *provided, however*, that the Default Security shall not exceed the purchase price applicable to the next eighteen (18) calendar month period multiplied by the total

estimated monthly output for that period as set forth on **Exhibit D**. An Example illustrating the calculation of this amount under certain stated conditions is included in **Exhibit G**.

7.2.3 Adjustments to Default Security. Seller shall as requested from time to time by Buyer, but no more frequently than daily, (a) adjust the Default Security by increasing or decreasing the Default Security to correspond to the amount reasonably determined by Buyer under Section 7.2.2 and (b) deliver such adjusted Default Security to Buyer. Buyer shall notify Seller of the determination of such amount on or before the preceding December 1. In no event shall Buyer's remedies hereunder be limited to the amount of Default Security.

7.3 Annual and Quarterly Financial Statements. If requested by Buyer, Seller shall within thirty (30) days provide Buyer with copies of its most recent annual and quarterly financial statements prepared in accordance with generally accepted accounting principles.

7.4 Security is Not a Limit on Seller's Liability. The security contemplated by this Section 7: (a) constitutes security for, but is not a limitation of, Seller's obligations under this Agreement, and (b) shall not be Buyer's exclusive remedy for Seller's failure to perform in accordance with this Agreement. To the extent that Buyer draws on the Project Development Security or the Default Security, Seller shall within five (5) Business Days reinstate the security to the full amount required by this Section 7.

7.5 Escrow Account. With respect to any escrow account established pursuant to this Section 7, Seller hereby grants Buyer a security interest in the escrow account and all moneys and other amounts in the account to secure payment and performance of Seller's obligations under this Agreement. Buyer shall have all rights of a secured party under Article 9 of the Uniform Commercial Code and applicable law with respect to the escrow account and all moneys and other amounts in the escrow account. The escrow agreement shall be in a form acceptable to Buyer in its good faith discretion and shall contain the following language: "Escrow Agent acknowledges that Seller has granted Buyer a security interest in the amounts held by Escrow Agent in the [describe escrow accounts and all moneys and other amounts in the account] (collectively, the "**Collateral**"). Escrow Agent acknowledges that it (a) has received and holds possession of the Collateral for the benefit of Buyer and not as the agent of or on behalf of Seller and (b) shall continue to hold possession of the Collateral for Buyer's benefit until Escrow Agent receives notice in an authenticated record from Buyer that Buyer's security interest in the Collateral has been terminated. Escrow Agent acknowledges that it has no rights in and to the Collateral other than its right to receive payment of its fees and expenses pursuant to the Escrow Agreement."

## SECTION 8

### METERING

8.1 Installation of Metering Equipment. Buyer shall design, furnish, install, own, inspect, test, maintain and replace all metering equipment required pursuant to the Interconnection Agreement. ***[Note to Bidders: This provision will be adjusted as needed if the Facility interconnects with a Transmission Provider other than PacifiCorp Transmission.]***

8.2 Metering. Metering shall be performed at the location and in the manner specified in **Exhibit B** and the Interconnection Agreement. All quantities of energy purchased under this Agreement shall be adjusted to account for electrical losses, if any, between the point of metering and the Delivery Point, so that the purchased amount reflects the net amount of energy flowing into Buyer's system at the Delivery Point. *[Note to Bidders: please propose backup measuring provisions in the event of meter failure, based on the characteristics of the Facility.]*

8.3 Inspection, Testing, Repair and Replacement of Meters. Buyer shall periodically inspect, test, repair and replace the metering equipment as provided in the Interconnection Agreement. If any of the inspections or tests disclose an error exceeding two percent (2%), either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) months, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered. Such correction, when made, shall constitute full adjustment of any claim between Seller and Buyer arising out of such inaccuracy of metering equipment.

8.4 Metering Costs. To the extent not otherwise provided in the Interconnection Agreement, Seller shall bear all costs (including Buyer's costs) relating to all metering equipment installed to accommodate Seller's Facility.

## SECTION 9

### BILLINGS, COMPUTATIONS AND PAYMENTS

9.1 Monthly Invoices. On or before the tenth (10th) day following the end of each month, Seller shall deliver to Buyer a proper invoice showing Seller's computation of Output delivered to Buyer during such month. If such invoice is delivered by Seller to Buyer, on or before the thirtieth (30th) day following the end of each month, Buyer shall send to Seller payment for Seller's deliveries of Output to Buyer, together with computations supporting such payment.

9.2 Offsets. Buyer may offset any payment due under this Agreement against amounts owing from Seller to Buyer pursuant to this Agreement, the Interconnection Agreement, any other agreement between the Parties or otherwise.

9.3 Interest on Late Payments. Any amounts that are not paid when due under this Agreement shall bear interest at the Prime Rate plus two hundred (200) basis points from the date due until paid; *provided, however*, that this interest rate shall at no time exceed the maximum rate allowed by applicable law.

9.4 Disputed Amounts. If either Party, in good faith, disputes any amount due pursuant to an invoice rendered under this Agreement, such Party shall notify the other Party of



the specific basis for the dispute and, if the invoice shows an amount due, shall pay that portion of the statement that is undisputed, on or before the due date. Any such notice shall be provided within two (2) years of the date of the invoice in which the error first occurred. If any amount disputed by such Party is determined to be due the other Party, or if the Parties resolve the payment dispute, the amount due shall be paid within five (5) days of such determination or resolution, along with interest accrued at the rate determined under Section 9.3 from the date due until the date paid.

9.5 Audit Rights. Each Party, through its authorized representatives, shall have the right, at its sole expense and during normal business hours, to examine and copy the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made hereunder or to verify the other Party's performance of its obligations hereunder. Upon request, each Party shall provide to the other Party statements evidencing the quantities of energy delivered at the Delivery Point. If any statement is found to be inaccurate, a corrected statement shall be issued and any amount due thereunder will be promptly paid and shall bear interest calculated at the rate determined under Section 9.3 from the date of the overpayment or underpayment to the date of receipt of the reconciling payment. Notwithstanding the above, no adjustment shall be made with respect to any statement or payment hereunder unless a Party questions the accuracy of such payment or statement within two (2) years after the date of such statement or payment.

## SECTION 10

### DEFAULTS AND REMEDIES

10.1 Defaults. The following events are defaults (each, an "**Event of Default**") under this Agreement:

#### 10.1.1 Events of Default by Either Party.

10.1.1.1 A Party's failure to make a payment when due under this Agreement if the failure is not cured within ten (10) days after the non-defaulting Party gives the defaulting Party a notice of the default.

10.1.1.2 A Party (a) makes an assignment for the benefit of its creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing; (c) becomes insolvent; or (d) is unable to pay its debts when due.

10.1.1.3 A Party's breach of a representation or warranty made by that Party in this Agreement if the breach is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party a notice of the default.

10.1.1.4 A Party otherwise fails to perform any material obligation imposed upon that Party by this Agreement if the failure is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party notice of the default; *provided, however*, that, upon

written notice from the defaulting Party, this thirty (30) day period shall be extended by an additional sixty (60) days if (a) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (b) the default is capable of being cured within the additional sixty (60) day period, and (c) the defaulting Party commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure.

#### 10.1.2 Events of Default by Seller.

10.1.2.1 Seller fails to post or increase the Carry-Over Letter of Credit within ten (10) Business Days after the end of each month as may be required under Section 5.1.4.

10.1.2.2 Seller fails to cause the Facility to achieve an average Availability of at least [ %] in any three consecutive quarters in a Contract Year or at least [ %] in three out of any five consecutive Contract Years;

10.1.2.3 Seller's failure to post and maintain Project Development Security or Default Security as required by Section 7 if the failure is not cured within five (5) days after Buyer gives Seller a notice of the default.

10.1.2.4 Seller's failure to achieve a milestone by the date set forth for the achievement of that milestone in Section 2.2 (other than the failure to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date) if the failure is not cured within thirty (30) days after Buyer gives Seller a notice of the default.

10.1.2.5 Seller's failure to cause the Facility to achieve the Commercial Operation Date on or before the Guaranteed Commercial Operation Date.

10.1.2.6 Seller's failure to cure any default under any commercial or financing agreements or instrument (including the Interconnection Agreement) within the time allowed for a cure under such agreement or instrument.

10.1.2.7 Seller's sale of Output from the Facility to a Party other than Buyer in breach of this Agreement if Seller does not permanently cease such sale and compensate Buyer for the damages arising from the breach within ten (10) days after Buyer gives Seller a notice of default.

10.1.2.8 For reasons other than an event of Force Majeure or an Event of Default by Buyer, the Facility being unavailable to provide Energy for ninety (90) consecutive days or one hundred twenty (120) non-consecutive days in any three hundred sixty-five (365) day period commencing on the Commercial Operation Date and prior to expiration of this Agreement.

#### 10.2 Termination and Remedies.

10.2.1 Upon the occurrence of, and during the continuation of, an Event of Default, the non-defaulting Party may terminate this Agreement by notice to the other Party designating the date of termination and delivered to the defaulting Party no less than ten (10) days before such

termination date. Further, during the continuation of an Event of Default by Seller, and until it has recovered all damages incurred on account of such Event of Default by Seller, without exercising its termination right, Buyer may offset its damages against any Capacity Payment due Seller.

10.2.2 In the event of a termination of this Agreement, the Parties' respective obligations under this Agreement shall terminate (other than those obligations which expressly are to be performed after termination).

10.2.3 In the event of a termination of this Agreement:

10.2.3.1 Each Party shall pay to the other all amounts due the other under this Agreement for all periods prior to termination subject to offset by the non-defaulting Party against damages incurred by such Party.

10.2.3.2 The amounts due pursuant to Section 10.2.3.1 shall be paid within thirty (30) days of the billing date for such charges plus interest thereon at the Prime Rate from the date of termination until the date paid.

10.2.3.3 The provisions of Sections 6.4, 6.10, 9.3, 9.4, 10.2, 10.6, 11 and 14 shall survive the termination of this Agreement.

10.2.3.4 Notwithstanding any other provision of this Agreement, if this Agreement is terminated because Seller sells Output to a party other than Buyer in breach of this Agreement, Buyer shall be entitled to all remedies against Seller available at law and in equity for that breach (including the recovery of all actual damages and costs of replacement power suffered by Buyer on account of such breach) without regard to any limits on liability;

10.2.3.5 If this Agreement is terminated because of the defaulting Party's breach of this Agreement, the non-defaulting Party shall be entitled to all remedies available at law and in equity for that breach (including the recovery of all actual damages suffered by the non-defaulting Party on account of such breach).

10.3 Specific Performance. Buyer shall be entitled to seek and obtain a decree compelling specific performance or granting injunctive relief with respect to, and shall be entitled, without the necessity of filing any bond, to enjoin any actual or threatened breach of any material obligation of Seller under this Agreement. Seller agrees that in view of the nature of bid procedure that caused Seller to be selected, and importance of the Facility and the requirement of Buyer for the energy, specific performance (including temporary and preliminary relief) and injunctive relief, including access to all records of Seller, are proper in the event of any actual or threatened breach of any material obligation by Seller under this Agreement, and that any liability limits contained in this Agreement shall not operate to limit the exercise of Buyer's remedies in equity to cause Seller to perform its obligations under this Agreement. In any action for specific performance or injunctive relief, all expenses incurred by the prevailing party in such proceeding, including reasonable counsel fees, shall be awarded to the prevailing party in such proceeding. Seller agrees that it will not assert as a defense to Buyer's action for specific performance of, or injunctive relief relating to, Seller's obligations hereunder that the amounts payable or paid by Seller in respect of liquidated damages or actual damage constitute an

adequate remedy for the breach of such obligation, and Seller hereby conclusively waives such defense.

10.4 Failure to Meet Guaranteed Availability. If Seller fails to cause the Facility to achieve an average Availability of at least [\_\_%] in any three consecutive quarters in a Contract Year or at least [\_\_%] in three out of any five consecutive Contract Years, Buyer shall have the right to enter the Facility and do all such things as Buyer may consider necessary or desirable to remedy such situation or to improve the Guaranteed Availability, including making any repairs to the Major Equipment or the Facility. Seller shall indemnify and hold harmless Buyer from and against all losses, costs, charges and expenses incurred by Buyer in connection with exercise of its rights under this Section 10.4 other than due to the gross negligence or willful misconduct of Buyer. In connection with the exercise of the step in rights under this Section, Buyer shall have the right to recoup and set off all such losses, costs, charges and expenses against amounts otherwise owed by Buyer under this Agreement. Buyer's exercise of such recoupment and set off rights shall not limit the other remedies available to Buyer under this Agreement or the credit support instruments contemplated by Section 7.

10.5 License to Operate Facility. During the occurrence and continuance of an Event of Default by Seller, Seller hereby irrevocably grants to Buyer the right, license, and authority to enter the Premises, operate the Facility, and to perform Seller's obligations under this Agreement, pursuant to the terms hereof, for the Term of this Agreement. Notwithstanding the license granted to Buyer in this Section 10.5, so long as no Event of Default by Seller which would entitle Buyer to terminate this Agreement has occurred and is continuing, Buyer agrees that Seller may operate the Facility and provide the Energy and Capacity in accordance with its obligations under this Agreement. Upon the occurrence of an Event of Default and the expiration of all applicable opportunities to cure, Buyer may, but shall not be obligated to, exercise its rights as licensee under this Section 10.5 in lieu of termination. Buyer's right to operate the Facility pursuant to the license granted in this Section 10.5 shall be effective for a period not to exceed 365 days from the date Buyer first exercises its license rights. During any period in which Buyer is operating the Facility pursuant to the license granted in this Section, Seller shall, upon request from Buyer, reimburse Buyer for all reasonable costs and expenses incurred by Buyer to operate and maintain the Facility.

10.6 Termination of Duty to Buy. If this Agreement is terminated because of Seller's default, Seller may not require Buyer to purchase energy from the Facility before the date on which the Term would have ended had this Agreement remained in effect. Seller hereby waives its rights to require Buyer to do so.

10.7 Net Replacement Power Costs. If this Agreement is terminated because of Seller's default, Seller shall pay Buyer the positive difference, if any, obtained by subtracting (a) the result of (1) the Energy, stated in MWh, that Seller was obligated to provide to Buyer during the remainder of the Term, multiplied by (2) the price per MWh specified in **Exhibit F** for the remaining Contract Years, from (b) the Replacement Price for any Energy that Seller was obligated to provide during the remainder of the Term ("**Net Replacement Power Costs**"). Amounts owed by Seller pursuant to this Section shall be due within five (5) Business Days after Buyer gives Seller notice of the amount due.

10.8 Default Security. If this Agreement is terminated because of Seller's default, Buyer may proceed against any Default Security provided pursuant to Section 7.2 to reduce any amounts that Seller owes Buyer arising from such default.

## SECTION 11

### INDEMNIFICATION AND LIABILITY

#### 11.1 Indemnities.

11.1.1 Indemnity by Seller. Seller hereby releases, indemnifies and holds harmless Buyer, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees, resulting from, or arising out of or in any way connected with (a) the Energy delivered by Seller under this Agreement to and at the Delivery Point, (b) any facilities on Seller's side of the Delivery Point, (c) Seller's operation and/or maintenance of the Facility, or (d) arising from this Agreement, including any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to Buyer, Seller or others, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of Buyer, its directors, officers, employees, agents or representatives.

11.1.2 Indemnity by Buyer. Buyer hereby releases, indemnifies and holds harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees, resulting from, or arising out of or in any way connected with the energy delivered by Seller under this Agreement after the Delivery Point, including any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of Seller, its directors, officers, employees, agents or representatives.

11.2 No Dedication. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent individual or entity.

11.3 CONSEQUENTIAL DAMAGES. **BUYER SHALL NOT BE LIABLE TO SELLER FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE.**

## SECTION 12

### INSURANCE

12.1 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller under this Agreement, Seller shall secure and continuously carry with an insurance company or companies rated not lower than "A" by the A.M. Best Company the insurance coverage specified on **Exhibit J** during the periods specified on **Exhibit J**.

12.2 Certificates and Certified Copies of Policies. Seller shall provide Buyer with a certified "true and correct" copy of the insurance policies, provisions and endorsements contemplated by **Exhibit J** within ten (10) days after the date by which such policies are required to be obtained (as set forth in **Exhibit J**). If any coverage is written on a "claims-made" basis, the certification accompanying the policy shall conspicuously state that the policy is "claims made."

## SECTION 13

### FORCE MAJEURE

13.1 Definition of Force Majeure. As used in this Agreement, "Force Majeure" or "an event of Force Majeure" means an event (a) is not anticipated as of the date of this Agreement, (b) is not within the reasonable control of the Party affected by the event, (c) is not the result of such Party's negligence or failure to act, and (d) could not be overcome by the affected Party's use of due diligence in the circumstances. Force Majeure includes, but is not restricted to, events of the following types (but only to the extent that such an event, in consideration of the circumstances, satisfies the tests set forth in the preceding sentence): acts of God; fire; explosion; civil disturbance; sabotage; action or restraint by court order or public or government authority (as long as the affected Party has not applied for or assisted in the application for, and has opposed to the extent reasonable, such court or government action). Notwithstanding the foregoing, none of the following constitute Force Majeure: (i) Seller's ability to sell, or Buyer's ability to purchase or energy at a more advantageous price than is provided under this Agreement; (ii) the cost or availability of fuel or motive force to operate the Facility; (iii) economic hardship including lack of money; (iv) the imposition upon Seller of costs or taxes allocated to Seller under Sections 5 or 6 of this Agreement; (v) delay or failure by Buyer to obtain any Permit; and (vi) strikes or labor disturbances occurring at the Facility, the Premises or any of Buyer's facilities.

13.2 Suspension of Performance. If either Party is rendered wholly or in part unable to perform its obligations under this Agreement because of an event of Force Majeure, both Parties shall be excused from the performance affected by the event of Force Majeure, *provided* that:

13.2.1 the Party affected by the Force Majeure, shall, within two (2) weeks after the occurrence of the event of Force Majeure, give the other Party written notice describing the particulars of the event; and

13.2.2 the suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure; and

13.2.3 the affected Party shall use diligent efforts to remedy its inability to perform.

13.3 Force Majeure Does not Affect Other Obligations. No obligations of either Party that arose before the Force Majeure causing the suspension of performance or that arise after the cessation of the Force Majeure shall be excused by the Force Majeure.

13.4 Strikes. Notwithstanding any other provision of this Agreement, neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

13.5 Right to Terminate. If a Force Majeure event prevents a Party from substantially performing its obligations under this Agreement for a period exceeding one hundred eighty (180) days, then either Party may terminate this Agreement by giving ten (10) days prior notice to the other Party. Upon such termination, neither Party will have any liability to the other with respect to period following the effective date of such termination; *provided, however*, that this Agreement will remain in effect to the extent necessary to facilitate the settlement of all liabilities and obligations arising under this Agreement before the effective date of such termination.

## SECTION 14

### CONFIDENTIALITY

14.1 Confidential Business Information. The Parties' proposals and negotiations prior to the date hereof concerning this Agreement, the terms of this Agreement, and the actual charges billed to Buyer under this Agreement, constitute the "Confidential Business Information" of both Parties. Seller and Buyer each agree to hold such Confidential Business Information wholly confidential. Such Confidential Business Information may only be used by the Parties for purposes related to the approval, administration or enforcement of this Agreement and for no other purpose.

14.2 Duty to Maintain Confidentiality. Each Party agrees not to disclose Confidential Business Information to any other person (other than its affiliates, counsel, consultants, lenders, prospective lenders, purchasers, prospective purchasers, contractors constructing or providing services to the Facility, employees, officers and directors who agree to be bound by the provisions of this Section), without the prior written consent of the other Party, *provided* that either Party may disclose Confidential Business Information, if such disclosure is required by law, required in order for Buyer to receive regulatory recovery of expenses related to the Agreement or pursuant to an order of a court or regulatory agency or in order to enforce this Agreement or to seek approval of this Agreement. In the event a Party is required by law or by a court or regulatory agency to disclose Confidential Business Information, such Party shall to the extent possible notify the other Party at least three (3) Business Days in advance of such disclosure.

14.3 Irreparable Injury; Remedies. Each Party agrees that violation of the terms of this Section 14 constitutes irreparable harm to the other, and that the harmed Party may seek any and all remedies available to it at law or in equity, including injunctive relief.

14.4 Non-Confidential Information. Buyer shall be free to use any and all images of the Facility for promotional purposes. Upon Buyer's request and at Buyer's expense, Seller shall install equipment as Buyer may request including video and or web-based imaging equipment. Buyer shall retain full discretion on how images of the Facility are presented including associating images of the Facility with Buyer's corporate logo but not the corporate logo of Seller.

14.5 News Releases and Publicity. Before issuing any news release or promotional material regarding the Facility, Seller shall contact Buyer for language that credits Buyer as purchasing the Delivered Energy from the Facility and shall use such language in such news releases and promotional material.

## SECTION 15

### DISAGREEMENTS

15.1 Negotiations. The Parties shall attempt in good faith to resolve all disputes arising out of or related to or in connection with this Agreement promptly by negotiation, as follows. Any Party may give the other Party written notice of any dispute not resolved in the normal course of business. Executives of both Parties at levels one level above the personnel who have previously been involved in the dispute shall meet at a mutually acceptable time and place within ten (10) days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days from the referral of the dispute to senior executives, or if no meeting of senior executives has taken place within fifteen (15) days after such referral, either Party may initiate litigation as provided hereinafter if neither Party has requested that the dispute be mediated in accordance with Section 15.2 below. All negotiations pursuant to this clause are confidential.

15.2 Mediation. If the dispute is not resolved within thirty (30) days from the referral of the dispute to senior executives, or if no meeting of senior executives has taken place within fifteen (15) days after such referral, either Party may request that the matter be submitted to nonbinding mediation. If the other Party agrees, the mediation will be conducted in accordance with the Construction Industry Arbitration Rules and Mediation Procedures (Including Procedures for Large, Complex Construction Disputes) of the American Arbitration Association (the "AAA"), as amended and effective on July 1, 2003 (the "**Arbitration Procedures**"), notwithstanding any Dollar amounts or Dollar limitations contained therein.

15.2.1 The Party requesting the mediation, may commence the mediation process with AAA by notifying AAA and the other Party in writing ("**Mediation Notice**") of such Party's desire that the dispute be resolved through mediation, including therewith a copy of the Dispute Notice and the response thereto, if any, and a copy of the other Party's written agreement to such mediation.



15.2.2 The mediation shall be conducted through, by and at the office of AAA located in Salt Lake City, Utah.

15.2.3 The mediation shall be conducted by a single mediator. The Parties may select any mutually acceptable member from the panel of retired judges at AAA as a mediator. If the parties cannot agree on a mediator within five (5) days after the date of the Mediation Notice, then the AAA's Arbitration Administrator shall send a list and resumes of three (3) available mediators to the parties, each of whom shall strike one name, and the remaining person shall be appointed as the mediator. If more than one name remains, either because one or both parties have failed to respond to the AAA's Arbitration Administrator within five (5) days of receiving the list or because one or both parties have failed to strike a name from the list or because both parties strike the same name, the AAA's Arbitration Administrator will choose the mediator from the remaining names. If the designated mediator shall die, become incapable or, unwilling to, or unable to serve or proceed with the mediation, a substitute mediator shall be appointed in accordance with the selection procedure described above in this Section 15.2.3, and such substitute mediator shall have all such powers as if he or she has been originally appointed herein.

15.2.4 The mediation shall consist of one or more informal, nonbinding meetings between the Parties and the mediator, jointly and in separate caucuses, out of which the mediator will seek to guide the Parties to a resolution of the Dispute. The mediation process shall continue until the resolution of the dispute, or the termination of the mediation process pursuant to Section 15.2.7.

15.2.5 The costs of the mediation, including fees and expenses, shall be borne equally by the Parties.

15.2.6 All verbal and written communications between the parties and issued or prepared in connection with this Section 15.2 shall be deemed prepared and communicated in furtherance, and in the context, of dispute settlement, and shall be exempt from discovery and production, and shall not be admissible in evidence (whether as admission or otherwise) in any arbitration or other proceedings for the resolution of the dispute.

15.2.7 The initial mediation meeting between the Parties and the mediator shall be held within twenty (20) days after the Mediation Notice. Either Party may terminate the mediation process upon the earlier to occur of (A) the failure of the initial mediation meeting to occur within twenty (20) days after the date of the Mediation Notice, (B) the passage of thirty (30) days from the date of the Mediation Notice without the dispute having been resolved, or (C) such time as the mediator makes a finding that there is no possibility of resolution through mediation. The mediation shall follow and be governed by the laws of the State of Oregon.

15.2.8 All deadlines specified in this Section 15.2 may be extended by mutual agreement.

15.3 Choice of Forum. Each Party irrevocably consents and agrees that any legal action or proceeding arising out of this Agreement or the actions of the Parties leading up to the Agreement shall be brought exclusively in the United States District Court for the District of

Oregon, Portland Division. By execution and delivery of this Agreement, each Party (a) accepts the exclusive jurisdiction of such court and waives any objection that it may now or hereafter have to the exercise of personal jurisdiction by such court over each Party, (b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court arising out of such documents or actions, (c) irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceedings arising out of such documents brought in such court (including any claim that any such suit, action or proceeding has been brought in an inconvenient forum), (d) agrees that service of process in any such action may be effected by mailing a copy thereof by registered or certified mail, postage prepaid, to such Party at its address as set forth in this Agreement, and (e) agrees that nothing in this Agreement shall affect the right to effect service of process in any other manner permitted by law.

15.4 Settlement Discussions. The Parties agree that no statements of position or offers of settlement made in the course of the dispute process described in this Section will be offered into evidence for any purpose in any litigation or arbitration between the Parties, nor will any such statements or offers of settlement be used in any manner against either Party in any such litigation or arbitration. Further, no such statements or offers of settlement shall constitute an admission or waiver of rights by either Party in connection with any such litigation or arbitration. At the request of either Party, any such statements and offers of settlement, and all copies thereof, shall be promptly returned to the Party providing the same.

15.5 Waiver of Jury Trial. EACH PARTY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY TO THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT. EACH PARTY HEREBY WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND ANY OTHER AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY MATTER ARISING HEREUNDER OR THEREUNDER IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED.

15.6 Specific Performance. Each Party shall be entitled to seek and obtain a decree compelling specific performance or granting injunctive relief with respect to, and shall be entitled, without the necessity of filing any bond, to enjoin any actual or threatened breach of any material obligation of the other Party under this Agreement. The Parties agree that specific performance (including temporary and preliminary relief) and injunctive relief are proper in the event of any actual or threatened breach of any material obligation of the other Party under this Agreement, and that any liability limits contained in this Agreement shall not operate to limit the exercise of Buyer's remedies in equity to cause Seller to perform its obligations under this Agreement. In any action for specific performance or injunctive relief, all expenses incurred by the prevailing party in such proceeding, including reasonable counsel fees, shall be awarded to

the prevailing party in such proceeding. Seller agrees that it will not assert as a defense to Buyer's action for specific performance of, or injunctive relief relating to, Seller's obligations hereunder that the amounts payable or paid by Seller in respect of liquidated damages constitute an adequate remedy for the breach of such obligation, and Seller hereby conclusively waives such defense. Seller shall at all times during the Term, own, lease, control, hold in its own name or be signatory to (as the case may be) all assets relating to the Facility to the extent necessary to prevent a material adverse effect on Buyer's right to specific performance or injunctive relief.

## SECTION 16

### MISCELLANEOUS

16.1 Several Obligations. Nothing contained in this Agreement shall be construed to create an association, trust, partnership or joint venture or to impose a trust, partnership or fiduciary duty, obligation or liability on or between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

16.2 Choice of Law. This Agreement shall be interpreted and enforced in accordance with the laws of the state of Oregon, excluding any choice of law rules that may direct the application of the laws of another jurisdiction.

16.3 Partial Invalidity. The Parties do not intend to violate any Requirements of Law governing the subject matter of this Agreement. If any of the terms of this Agreement are finally held or determined to be invalid, illegal or void as being contrary to any Requirements of Law or public policy, all other terms of the Agreement shall remain in effect. The Parties shall use best efforts to amend this Agreement to reform or replace any terms determined to be invalid, illegal or void, such that the amended terms (a) comply with and are enforceable under Requirements of Law, (b) give effect to the intent of the Parties in entering into this Agreement, and (c) preserve the balance of the equities contemplated by this Agreement in all material respects.

16.4 Waiver. No waiver of any provision of this Agreement shall be effective unless the waiver is set forth in a writing that (a) expressly identifies the provision being waived, and (b) is signed by the Party waiving the provision. A Party's waiver of one or more failures by the other Party in the performance of any of the provisions of this Agreement shall not be construed as a waiver of any other failure or failures, whether of a like kind or different nature.

16.5 Governmental Jurisdiction and Authorizations. This Agreement is subject to the jurisdiction of those Governmental Authorities having control over either Party or this Agreement. Buyer's duty to comply with this Agreement is conditioned on Seller's submission to Buyer before the Commercial Operation Date and maintaining thereafter copies of all Permits.

16.6 Restriction on Assignments. Except as expressly provided in Section 16.7, neither Party shall assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed.

16.7 Permitted Assignments. Notwithstanding the foregoing, either Party may, without the need for consent from the other Party, (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements; (b) transfer or assign this Agreement to an Affiliate of such Party; or (c) transfer or assign this Agreement to any party succeeding to all or substantially all of the assets or generating assets of such Party. In addition, without the consent of the other Party, (d) Seller must transfer or assign this Agreement to any party succeeding to all or substantially all of the assets comprising the Facility, and (e) Buyer may transfer or assign this Agreement to any person or entity in the event that Buyer ceases to be a load-serving entity. In each and every assignment of this Agreement, the assignee shall (x) agree in writing to be bound by the terms and conditions hereof, (y) possess the same or similar experience, and possess the same or better creditworthiness, as the assignor; and (z) the assignor shall remain liable for its obligations hereunder.

16.8 Entire Agreement. This Agreement (including all attached Exhibits, which are incorporated by this reference) supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding the subject matter of this Agreement. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

16.9 Amendments. This Agreement shall not be altered or amended except by an instrument in writing specifically identifying the provisions to be amended and executed by authorized representatives of both parties.

16.10 No Third Party Beneficiaries. This Agreement does not confer any rights upon any person other than the parties and their respective successors and permitted assigns. There are no third party beneficiaries of this Agreement.

16.11 Agents and Subcontractors. This Agreement may be performed by Buyer through the use of agents and subcontractors (but such use shall not relieve Buyer of any obligation hereunder).

16.12 Notices. All notices, requests, statements or payments shall be made to the addresses set out below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by facsimile or hand delivery shall be deemed to have been given when received or hand delivered. Notice by overnight mail or courier shall be deemed to have been given on the date and time evidenced by the delivery receipt.

To Seller:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

To Buyer: PacifiCorp  
825 NE Multnomah, Suite 2000  
Portland, Oregon 97232-2315  
Attn: Sr. Vice President, Commercial & Trading

with copies to: PacifiCorp  
825 NE Multnomah, Suite 600  
Portland, Oregon 97232-2315  
Attn: Director of Contract Administration, C&T

Jeremy Weinstein, Esq.  
Senior Counsel  
PacifiCorp  
825 NE Multnomah, Suite 1800  
Portland, Oregon 97232-2315

The Parties may change any of the persons to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section.

16.13 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which is an original and all of which constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their respective names as of the date first above written.

[SELLER]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

PACIFICORP

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**EXHIBIT A**

DESCRIPTION OF SELLER'S FACILITY

Seller's Facility consists of a \_\_\_\_\_ generator manufactured by \_\_\_\_\_ . More specifically, the Facility \_\_\_\_\_ [provide description of Facility, etc].

Nameplate Capability Rating: \_\_\_\_\_ MW, under the following conditions:  
[describe manufacturer's stated operating conditions]

Identify the maximum output of the generator(s) and describe any differences between that output and the Nameplate Capability Rating:

Station service requirements are described as follows: \_\_\_\_\_  
\_\_\_\_\_.

Location of the Facility: The Facility is to be constructed in the vicinity of \_\_\_\_\_ in \_\_\_\_\_ County, \_\_\_\_\_. The real property on which the Facility is to be constructed (the "Premises") is more particularly described as follows:

[legal description of parcel]

Power factor requirements:

**EXHIBIT B**

DELIVERY POINT/INTERCONNECTION FACILITIES

*[Note to bidders: include description of point of metering]*

**EXHIBIT C**

PERMITS



**EXHIBIT D**

ESTIMATED MONTHLY OUTPUT

**EXHIBIT E**

START-UP TESTING

*[Note to Bidders: To be determined following evaluation of proposed resource.]*

**EXHIBIT F**

PURCHASE PRICE

**EXHIBIT G**

EXAMPLES

## EXHIBIT H

### EVENT TYPES

The outages in the following table are arranged in order of priority - from most urgent to least urgent. The add screen in the AIS system will only accept these standardized NERC event types.

Event Type	Description of Outages
U1 <sup>1</sup>	<u>Unplanned (Forced) Outage - Immediate</u> - An outage that requires immediate removal of a unit from service, another outage state or a Reserve Shutdown state. This type of outage results from immediate mechanical/electrical/hydraulic control systems trips and operator-initiated trips in response to unit alarms.
U2 <sup>1</sup>	<u>Unplanned (Forced) Outage - Delayed</u> - An outage that does not require immediate removal of a unit from the in-service state but requires removal within six (6) hours. This type of outage can only occur while the unit is in service.
U3 <sup>1</sup>	<u>Unplanned (Forced) Outage - Postponed</u> - An outage that can be postponed beyond six hours but requires that a unit be removed from the in-service state before the end of the next weekend. This type of outage can only occur while the unit is in service.
SF <sup>1</sup>	<u>Startup Failure</u> - An outage that results from the inability to synchronize a unit within a specified startup time period following an outage or Reserve Shutdown. A startup period begins with the command to start and ends when the unit is synchronized. An SF begins when the problem preventing the unit from synchronizing occurs. The SF ends when the unit is synchronized or another SF occurs.
MO	<u>Maintenance Outage</u> - An outage that can be deferred beyond the end of the next weekend, but requires that the unit be removed from service before the next planned outage. (Characteristically, a MO can occur any time during the year, has a flexible start date, may or may not have a predetermined duration and is usually much shorter than a PO.)
ME	<u>Maintenance Outage Extension</u> - An extension of a maintenance outage (MO) beyond its estimated completion date. This is typically used where the original scope of work requires more time to complete than originally scheduled. Do not use this where unexpected problems or delays render the unit out of service beyond the estimated end date of the MO.
PO	<u>Planned Outage</u> - An outage that is scheduled well in advance and is of a predetermined duration, lasts for several weeks and occurs only once or twice a year. (Boiler overhauls, turbine overhauls or inspections are typical planned outages.)
PE	<u>Planned Outage Extension</u> - An extension of a planned outage (PO) beyond its estimated completion date. This is typically used where the original scope of work requires more time to complete than originally scheduled. Do not use this where unexpected problems or delays render the unit out of service beyond the estimated end date of the PO.

<sup>1</sup> These event types are all contributors to the FOR & EFOR calculations in the reports section.

The deratings in the following table are arranged in order of priority - from most urgent to least urgent. The add screen in the AIS system will only accept these standardized NERC event types.

Event Type	Description of Deratings – Restrictions
D1 <sup>2</sup>	<u>Unplanned (Forced) Derating - Immediate</u> - A derating that requires an immediate reduction in capacity.
D2 <sup>2</sup>	<u>Unplanned (Forced) Derating - Delayed</u> - A derating that does not require an immediate reduction in capacity but requires a reduction in capacity within six (6) hours.
D3 <sup>2</sup>	<u>Unplanned (Forced) Derating - Postponed</u> - A derating that can be postponed beyond six hours but requires a reduction in capacity before the end of the next weekend.
D4	<u>Maintenance Derating</u> - A derating that can be deferred beyond the end of the next weekend but requires a reduction in capacity before the next Planned Outage (PO). A D4 can have a flexible start date and may or may not have a predetermined duration.
PD	<u>Planned Derating</u> - A derating that is scheduled well in advance and is of a predetermined duration. (Periodic derating for tests, such as weekly turbine valve tests, should not be reported as PD's. Report deratings for these types as Maintenance Deratings (D4).

The other reportable events listed in the table below are in no particular order. Although these events are reportable, they have no reducing impact on the Equivalent Availability Factor.

Event Type	Description of Other Reportable Events
RS	<u>Reserve Shutdown</u> - An event that exists whenever a unit is available for load but is not synchronized due to lack of demand. This type of event is sometimes referred to as an economy outage or economy shutdown. If a unit is shut down due to any equipment-related problems, whether or not the unit was needed by the system, report an Unplanned (Forced) Outage, Maintenance Outage, or Planned Outage, <u>not</u> a Reserve Shutdown.
NC	<u>Noncurtailing Event</u> - An event that exists whenever equipment or major components are removed for maintenance, testing, or other purposes that does not result in a unit outage or derating.
	<u>Noncurtailing Event</u> - An event that exists whenever a unit is being intentionally dispatched at a level less than its full capacity, when the designated capacity would otherwise be at full capacity, because of lack of demand on the system.

<sup>2</sup> These event types are all contributors to the EFOR calculations in the reports section.

**EXHIBIT I**

MAINTENANCE SCHEDULE

**EXHIBIT J**

REQUIRED INSURANCE

*[Note to Bidders: To be determined by PacifiCorp insurance group based on project and market conditions.]*



**EXHIBIT K**

OPERATING PROCEDURES

**EXHIBIT L**

AVAILABILITY NOTICE

**EXHIBIT M**

FACILITY CAPACITY DEGRADATION CHART

**EXHIBIT N**

AMBIENT FACILITY CAPACITY CORRECTION ALGORITHMS

### PacifiCorp RFP 2004X Questions and Answers

#	Questions	Answers
1	Seems like (PAC) is looking for a physical resource at the exact point of delivery requested. However, you leave the door open for other delivery points...but you want your "Eastern Control Area"...Realistically, the only product we could offer would be call options at Mid-C or 4C...I think your RFP excludes these points as I do not think they are part of your "Eastern Control Area". Will Mid-C and/or 4C fit?	Please refer to footnote #2 on page 7 of the RFP. 4C and Mid-C deliveries will not be considered for this RFP.
2	When PacifiCorp referred to North of Camp Williams and South of Ben Lomond substations are 90th South or Terminal the only POD's PacifiCorp would then take delivery of energy for this RFP?	The resource that this RFP seeks to potentially replace resides North of Camp Williams and South of Ben Lomond. As such, that resource makes deliveries to a portion of PacifiCorp's system in which there are transmission constraints to reach. Other delivery points will be considered but only to the extent that PacifiCorp's transmission function will accept a resource at that point as being a network resource that can be used to serve network loads. To the extent that PacifiCorp Transmission accepts the resource on a contingent basis, those contingencies will be contractually extended to the seller.
3	Would PacifiCorp consider a call option on firm energy from a market resource for the three year proposal?	Yes; provided, the delivery point is acceptable and PacifiCorp Transmission will integrate the resource as network resource.
4	Would PacifiCorp consider a PPA from an off-take agreement from a generator (Hunter) that currently is not sourcing to PAC?	Yes; provided, the delivery point is acceptable and PacifiCorp Transmission will integrate the resource as network resource.
5	What happens if insufficient/non-economic bids are received as a result of the RFP response? Will PacifiCorp still cancel the lease?	All the bids will be analyzed from an economic perspective and from the perspective of how well the resource is capable of helping PacifiCorp meet its load service obligation.  The lease will be canceled to the extent sufficient resources can be obtained that present PacifiCorp and its customers with a superior cost/risk balance.
6	All offers appear to be for 3 year terms – is this correct?	PacifiCorp is interested in any one of 3 separate offers that can consist of either a 3-year term, a 3-year term with an option to extend for nine years or a term from 3-years to 12-years.
7	Do the West Valley Peakers have water injection for emission reduction and performance enhancement?	The West Valley units do not have water injection for emission control. For NOx emission control the units have full SCR on outlet. The units also have full evaporative

		cooling on the air intake.
8	If the offering is an operating lease, then is PacifiCorp calculating imputed (inferred) debt?	It depends on the offer and the term. Please refer to page 6 in the RFP for a discussion relative to direct and inferred debt.
9	Will Navigant Consulting be retained as the external consultant?	No. PacifiCorp intends to utilize a different consulting firm.
10	How long will the bids be required to be held open and if so will bids be able to be refreshed?	During the evaluation period, bidders will not be allowed to refresh their offers. Following the evaluation period, a bidder that is chosen for negotiations may refresh their bid as commercial terms evolve.
11	On page 8 of the RFP, you mention that "purchase of any generation resource considered as part of this RFP process shall be contingent upon PAC being able to add and maintain the resource as a network generation resource. Would a combination of the following products meet the RFP's definition and requirements of a network generation resource?  a) A firm energy product from a generation resource interconnected (with firm transmission into PACE) b) Operating reserves backing up the product	It is anticipated, given an acceptable delivery point, that PacifiCorp's transmission function would consider firm energy deliveries, over firm transmission, that are backed by seller provided operating reserves, to be considered an acceptable network resource.
12	Would the following combination meet the RFP's definition and requirements of a network generation resource?  a) A firm energy product delivered at MONA b) Operating Reserves (purchased separately from a control area interconnected with PAC) c) Back up physical capacity from a high heat rate unit. Such a unit could have firm transmission from busbar into PAC control area, but would only be operating if economical.	Please refer to question #11 with respect to firm energy deliveries. Deliveries to Mona will be considered to the extent that they do not displace currently allocated transmission import capability that is required in order for PacifiCorp to meet its load service obligation.  With respect to item "c)", insufficient information is provided in order to make a determination. PacifiCorp requests that the bidder fully describe in their proposal when and how such "backup" capacity would be scheduled and its proposed delivery point.
13	What specific delivery point should be selected on OASIS for delivery North of Camp William and South of Ben Lomond?	Please contact Larry Soderquist (503-813-6102) at PacifiCorp's transmission function.
14	Can you provide information about your transmission allocation/rights into the desired delivery point (North of Camp Williams and South of Ben Lomond) from Mona? In particular, how much firm transmission do you have, and how much load are you trying to serve?	PacifiCorp considers this information to be proprietary. Available transmission capacity can be viewed on PacifiCorp transmission's OASIS site.
15	PAC is not obligated to accept deliveries during periods when the resource cannot be utilized to serve network load. What are these circumstances you have in mind? How much notice does the buyer have for delivery rejection ?	PacifiCorp must be able to have the proposed resource integrated as a network resource. Rejection of a resource for network load service purposes may be due to a combination of factors and may take place as late as during the hour of

		delivery, depending on contingencies that may be placed upon that resource.
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