

THIS IS A WORKING DRAFT AGREEMENT FOR THE EXCHANGE OF CAPACITY AND ENERGY. THIS WORKING DRAFT DOES NOT CONSTITUTE A BINDING OFFER, SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE. ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS WORKING DRAFT OR ON STATEMENTS MADE DURING NEGOTIATIONS PURSUANT TO THIS WORKING DRAFT SHALL BE AT THAT PARTY'S OWN RISK. UNTIL THE EXCHANGE AGREEMENT IS SIGNED BY BOTH PARTIES, NEITHER PARTY SHALL HAVE ANY LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS WORKING DRAFT OR IN THE COURSE OF ANY NEGOTIATIONS. PURSUANT TO THE REQUEST FOR PROPOSAL TO WHICH THIS WORKING DRAFT IS ATTACHED, PUGET SOUND ENERGY WILL CONSIDER PRICING STRUCTURES THAT ARE DIFFERENT FROM THE STRUCTURE CONTAINED IN THIS WORKING DRAFT, IF PROPOSED.

Capacity and Energy Exchange Agreement

Between

Puget Sound Energy, Inc.

And

[_____]

Dated as of _____, _____

CAPACITY AND ENERGY EXCHANGE AGREEMENT

This Agreement, dated as of _____, _____, is made by and between [_____] a [state] [corporation][limited liability company] ("**Exchange Party**"); and Puget Sound Energy, Inc., a Washington corporation ("**PSE**"). Both of [Exchange Party]and PSE are sometimes referred to in this Agreement together as "**Parties**"; each of [Exchange Party]and PSE is sometimes referred to in this Agreement as "**Party**." "**First Party**" and "**Second Party**" refer to each Party interchangeably as juxtaposed in the context of the specific usage to the other Party.

Recitals

[A. [Exchange Party] operates a summer peaking electric utility system, the electric generating resources of which primarily comprise thermal electric and hydroelectric generating plants.]

[B. PSE operates a winter peaking electric utility system, the electric generating resources of which primarily comprise thermal electric and hydroelectric generating plants.]

C. [Exchange Party] has peaking capacity and energy available during [the winter][certain] months which it is willing to make available to PSE in return for the exchange of a like amount of peaking capacity and energy in [the summer][other] months.

D. PSE has peaking capacity and energy available during [the summer][certain] months which it is willing to make available to [Exchange Party] in return for the exchange of a like amount of peaking capacity and energy in [the winter][other] months.

[E. The electric systems of [Exchange Party] and PSE are not directly interconnected. However, these electric systems are indirectly interconnected primarily through [the Bonneville Power Administration transmission system] [and _____].]

Agreement

In consideration of the promises herein, [Exchange Party] and PSE agree as follows:

1. Definitions

The following terms, when used in this Agreement with the initial letters capitalized, whether in the singular or the plural, shall have the following meanings:

["**Transmission Provider**" means [_____] or its successor owner or operator of the transmission system that interconnects the respective electric systems of the Parties.]

"**Contract Year**" means a calendar year during the Term.

"**Day**" means the period of time beginning at midnight, 0000 Hours, and ending at the next midnight, 2400 Hours.

"**Delivering Party**" means the Party that is to deliver energy under Section 3.1 or 3.2 below, as the case may be.

"**Effective Date**" means the date this Agreement becomes effective pursuant to Section 2.1.

"[**Exchange Party**] **Point of Delivery**" means:

(a) [_____]; or

(b) such other point or points as may be agreed upon by the Parties' dispatchers or schedulers.

"**FERC**" means the Federal Energy Regulatory Commission or its regulatory successor under the Federal Power Act, as heretofore and hereafter amended.

"**Good Utility Practice**" means those practices, methods and equipment, including characteristics of services and provisions for contingencies, as modified from time to time, that are commonly used in a Party's Service Area to operate electric power facilities to serve a utility's firm power customers.

"**Hours**" means hours measured by Pacific Time, Standard or Daylight, whichever is in effect at the pertinent time.

"**Loss**" means any loss, cost, charge, expense or damages, whether direct, indirect or consequential.

"**Month**" means a calendar month.

"**MW**" means an amount of capacity equal to one million watts.

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"**MWh**" means an amount of energy equal to one million watt-hours.

"**Off-Peak Day**" means a Saturday, Sunday or national holiday as defined in 5 U.S.C. § 6103(a).

"**Peak Day**" means all Days other than Off-Peak Days.

"**Person**" means any individual, corporation, company, partnership, trust, association, governmental authority or other entity.

"**PSE Point of Delivery**" means:

(a) [_____]; or

(b) such other point or points as may be agreed upon by the Parties' dispatchers or schedulers.

"**PUC**" means the [public utilities commission] of the state of [_____] or its regulatory successor.]

"**Receiving Party**" means the Party that is to receive energy under Section 3.1 or 3.2, as the case may be.

"**Related Persons**" means each of the following with respect to a Party: the directors, officers, employees and agents of such Party.

"**Service Area**" means, with respect to either Party, that area within the exterior geographic boundaries of the several areas electrically served at retail, from time to time, by such Party. [Exchange Party's] Service Area is currently located in [_____], and PSE's Service Area is currently located in northwestern Washington.

"**Summer Month**" means any of the Months of June, July, August or September of any Contract Year.]

"**Term**" means the period which commences and terminates as described in Section 5.

"**Termination Date**" means the date upon which this Agreement terminates pursuant to Section 2.2, 2.3 or 5.1.

"**Third Party**" means any Person that is not a Party.

"Transmission Availability" means and shall occur at such time, if any, that transmission service or use is available pursuant to one or another of the following, sufficient throughout the Term for PSE to transmit from PSE's electric system to the PSE Point of Delivery, and to receive at the [Exchange Party] Point of Delivery and transmit to PSE's electric system, the service to be delivered or received, respectively, by PSE under this Agreement:

(a) the Transmission System is in normal commercial operation and is directly interconnected with PSE's electric system, and PSE has rights to use at least [_____] MW of capacity in the Transmission System; or

(b) PSE has contracts with the Transmission Provider or with one or more Third Parties for [_____] MW of firm transmission service between (i) PSE's electric system and the PSE Point of Delivery and (ii) the [Exchange Party] Point of Delivery and PSE's electric system.

"Transmission System" means the facilities owned, controlled or operated by the Transmission Provider that are used to provide transmission service for the delivery of power to or from the respective electric systems of the Parties pursuant to this Agreement.

"Uncontrollable Forces" means any cause or causes that by the exercise of due diligence the Party unable to perform could not reasonably have been expected to avoid and that by the exercise of due diligence that Party has been unable to overcome, including, but not limited to, the following: emergency or electrical disturbance on or transmitted through a Party's electric system or any electric system with which a Party is directly or indirectly interconnected; failure or threat of failure of equipment or facilities; flood, earthquake, volcanic activity, wind, storm, drought, fire, pestilence, lightning and other natural catastrophes; epidemic, war, riot, civil disturbance or disobedience; sabotage, vandalism, strike, lockout, labor disturbance or labor or material shortage; government priorities; restraint by court order or public authority; action or inaction by any governmental authority or agency; inability to obtain necessary authorizations or approvals from any governmental agency or authority; and inability to obtain needed transmission service from the Transmission Provider.

"Willful Misconduct" means, for purposes of Section 7, any action, by a Party or on behalf of a Party at the direction of any Related Persons of such Party having management responsibility for such action, that is taken or not taken with conscious indifference to consequences or with the intent or knowledge that injury or damage would or probably would result.

["**Winter Month**" means any of the Months of January, February, November or December of any Contract Year.]

"**WUTC**" means the Washington Utilities and Transportation Commission or its regulatory successor.

2. Effective Date and Termination

2.1 Effective Date. This Agreement shall become effective on the date upon which it is permitted to become effective by FERC; provided, that if FERC accepts this Agreement with any change or new condition, this Agreement shall not be or become effective unless and until the date by which both Parties have agreed in writing to such change or new condition; provided further, that if upon filing FERC enters into a hearing to determine whether this Agreement is just and reasonable, this Agreement shall not become effective unless and until (a) the date, if any, upon which an order no longer subject to judicial review is issued by FERC determining this Agreement to be just and reasonable without any change or new condition, or (b) the date, if any, promptly after an order no longer subject to judicial review is issued by FERC determining this Agreement to be just and reasonable with changes or new conditions, by which both Parties have agreed in writing to each such change or new condition imposed by such order.

2.2 Notice of Termination. Either Party may, by written notice to the other Party pursuant to this Section 2.2, terminate this Agreement, effective on the later of (a) the end of the Contract Year in which such other Party receives such notice of termination, and (b) one hundred eighty (180) days following such other Party's receipt of such notice of termination; provided, that neither Party shall give prior to [date] any such notice of termination of this Agreement pursuant to this Section 2.2.

2.3 Notice of Termination in the Event of Regulatory Order. If FERC or any other regulatory authority of competent jurisdiction or any court of competent jurisdiction:

(a) orders that this Agreement be interpreted, modified, or extended in such a manner that either or both Parties are required to (i) incur any new or different obligation not contemplated by this Agreement to the other Party, (ii) extend any obligation under this Agreement to any Third Party, or (iii) incur any obligation to serve any Third Party; or

(b) determines in an order or judgment that this Agreement, or its operation or effect, is unjust, unreasonable, unlawful or otherwise not in the public interest;

then the Parties promptly shall attempt in good faith to renegotiate the terms and conditions of this Agreement to arrive at a new, mutually acceptable capacity and energy exchange agreement; provided, that nothing in this Section 2.3 shall apply to orders or determinations by [the PUC or] the WUTC or to judicial review of such orders or determinations. If the terms and conditions cannot be so renegotiated within six (6) months following the date such order or determination is issued, either Party thereafter may, by written notice to the other Party pursuant to this Section 2.3, terminate this Agreement, effective on the later of (a) the end of the Contract Year in which such other Party receives such notice, and (b) one hundred eighty (180) days following such other Party's receipt of such notice of termination.

2.4 Termination Time. This Agreement shall terminate at 2400 Hours on the day specified for such termination in Section 2.2, 2.3 or 5.1; provided, however, that all obligations incurred under this Agreement prior to its termination shall continue until satisfied.

3. Capacity and Energy Exchange

3.1 Service to PSE. During [the Winter Months][period] of each Contract Year during the Term, [Exchange Party] shall each Hour deliver to PSE at the [Exchange Party] Point of Delivery and PSE shall accept delivery of the amount of energy scheduled for such Hour by PSE in accordance with Section 4, up to a maximum of [_____] MWh during the Contract Year.

3.2 Service to [Exchange Party]. During [the Summer Months][period] of each Contract Year during the Term, PSE shall each Hour deliver to [Exchange Party] at the PSE Point of Delivery and [Exchange Party] shall accept delivery of the amount of energy scheduled for such Hour by [Exchange Party] in accordance with Section 4, up to a maximum of [_____] MWh during the Contract Year.

3.3 No Deficiency. Except to the extent required by Sections 3.1 and 3.2, this Agreement shall not be deemed to require the First Party to schedule from the Second Party an amount of energy equal to the amount of energy delivered by the First Party to the Second Party. A decision by one Party to schedule an amount of energy during any Contract Year less than the maximum specified in Section 3.1 or 3.2 shall not (a) relieve such Party of its obligation to deliver up to such maximum to the other Party during each Contract Year or (b) entitle either Party to payment of money or other compensation on account of such lesser amount having been scheduled.

4. Scheduling Requirements

4.1 Establishing Schedules. The Receiving Party shall notify the Delivering Party of the hourly amounts of energy scheduled for delivery during the period from 0000 Hours Monday through 2400 Hours the following Sunday at any time before 0900 Hours on the last Peak Day before the period to which such schedules pertain. The Receiving Party may revise its schedules at any time under this Section 4.1; provided, that any revision after 0900 Hours of the Peak Day immediately prior to the Day or Days on which such energy is to be delivered shall be subject to the Delivering Party's approval, which approval shall not be unreasonably withheld.

4.2 Rate of Delivery. Unless otherwise agreed to by the Delivering Party, the Receiving Party shall not schedule the delivery of any energy under this Section 4:

- (a) at a rate of delivery in excess of [_____] MW for any Hour;
- (b) with more than two changes in the rate of delivery applicable during any Day, except as provided in Section 4.3; or
- (c) at a rate of delivery during any Hour of any Day that is less than twenty-five percent (25%) of the highest rate of delivery scheduled for any Hour during such Day.

4.3 Energy Ramping. The Delivering Party may determine the need to reduce the difference between the rate of delivery of energy scheduled for any two consecutive Hours. In such event, if requested by the Delivering Party at the time schedules are submitted by the Receiving Party in accordance with Section 4.1, the Receiving Party shall submit a revised schedule that, unless otherwise agreed by the Parties, shall spread the change in rate of delivery over three (3) consecutive Hours, with the rate of delivery during the second Hour at the mid-point between the rates of delivery for the first and third Hours.

4.4 Two-Day Schedule Restriction. Unless otherwise agreed to by the Delivering Party, if the Receiving Party schedules delivery during a Day of energy at a maximum hourly rate of delivery of less than 75 MW, such Day [(unless it is the last day of a February or the last day of a September)] shall have been immediately preceded by or shall be immediately followed by another Day during which the maximum hourly rate of delivery scheduled by the Receiving Party is less than 75 MW.

5. Term

5.1 Commencement. The Term shall commence at 0000 Hours on the later to occur of the following:

(a) [date]; or

(b) the date by which PSE has achieved Transmission Availability; provided, that if by [date] PSE has not achieved Transmission Availability, either Party may, by written notice to the other Party pursuant to this Section 5.1, terminate this Agreement, effective at 2400 Hours on the Day such other Party receives such notice of termination. In the event of such termination of this Agreement, the Term shall not commence. If either Party terminates this Agreement by notice pursuant to this Section 5.1, the Parties shall negotiate in good faith for a period of not less than twelve Months after the Termination Date in an attempt to reach a new, mutually acceptable capacity and energy exchange agreement. Promptly after PSE has achieved Transmission Availability, PSE shall provide written notice thereof to [Exchange Party].

5.2 Transmission Availability. PSE shall use reasonable efforts to negotiate and enter into a contract pursuant to which Transmission Availability occurs by [date]; provided, however, that PSE shall not in any event be obligated to enter into any contract or commitment on terms or conditions that in PSE's good faith judgment

(a) impair the value of this Agreement to PSE or

(b) are unduly burdensome or otherwise unacceptable to PSE.

5.3 Termination of Term. The Term shall terminate at 2400 Hours on the Termination Date.

6. Continuity of Service

6.1 Interruptions. Either Party may interrupt, suspend, curtail or allow fluctuation in any service under this Agreement, if such interruption, suspension, curtailment or fluctuation results from any of the following:

(a) Uncontrollable Forces;

(b) work on the Party's electric system (including installation, removal, investigation, inspection, repair, maintenance, improvement, renewal

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or replacement), which work is consistent with Good Utility Practice or determined by that Party to be necessary;

(c) actions, which may occur automatically or manually, taken by a Party consistent with Good Utility Practice or determined by a Party to be necessary, to protect the performance, integrity, reliability or stability of that Party's electric system;

(d) automatic protective devices or other automatic protective methods on a Party's electric system that are installed and operated in accordance with Good Utility Practice or that are determined by that Party to be necessary; or

(e) actions taken in good faith by a Party to prevent, reduce or eliminate (i) hazard to life or property or (ii) unsatisfactory, or jeopardy to continuity of, electric service within that Party's Service Area. Without limiting the generality of the foregoing, it is expressly agreed that any service under this Agreement may be interrupted, suspended, curtailed or allowed to fluctuate if transmission by a Third Party of such service from the electric system of PSE, as Delivering Party, to the PSE Point of Delivery or from the [Exchange Party] Point of Delivery to the electric system of PSE, as Receiving Party, is interrupted, suspended, curtailed or allowed to fluctuate due to Uncontrollable Forces or any cause beyond PSE's reasonable control to eliminate such interruption, suspension, curtailment or fluctuation in such transmission.

6.2 Notice of Interruptions. Except in cases of emergency or automatic actions, including the operation of automatic devices, each Party shall endeavor to give reasonable advance notice of any interruption, suspension, curtailment or fluctuation permitted by Section 6.1, and of its probable duration.

6.3 Restoration. If any interruption, suspension, curtailment or fluctuation permitted by Section 6.1 causes, or if any Uncontrollable Forces cause, a Delivering Party to deliver, or a Receiving Party to receive, less energy than the amount of energy to which the Receiving Party is otherwise entitled under this Agreement and has been scheduled in accordance with Section 4, the Delivering Party shall deliver to the Receiving Party at the PSE Point of Delivery or the [Exchange Party] Point of Delivery, as applicable, and the Receiving Party shall accept delivery of, an amount of energy equal to the difference as soon as is practicable thereafter as scheduled by the Receiving Party pursuant to Section 4.

6.4 Protection of Facilities. Each Party shall be responsible for protecting its facilities from possible damage in connection with service under this Agreement

that results from conditions or causes on the other Party's facilities. Nothing in this Section 6.4 shall alter the liability provisions in Section 7.1.

7. Liability and Indemnity

7.1 Between Parties. Neither any Party nor its Related Persons shall be liable to the other Party for any Loss incurred by such other Party in connection with this Agreement other than:

(a) Loss resulting from Willful Misconduct; and

(b) Loss resulting from a breach of this Agreement, other than indirect and consequential damages. Without limiting the generality of the foregoing, neither any Party nor its Related Persons shall be liable to the other Party for any Loss to the other Party's facilities in connection with this Agreement other than such Loss as results from Willful Misconduct.

7.2 Uncontrollable Forces. Neither Party shall be considered to be in breach of this Agreement on account of any failure to perform as required by this Agreement if such failure is the result of Uncontrollable Forces. Nothing in this Section 7.2 shall be construed as requiring a Party to settle any strike, lockout or labor dispute in which it may be involved, or to accept any permit, certificate, contract or any other agreement or authorization necessary for the performance of this Agreement, that contains terms and conditions which a Party in good faith determines are unduly burdensome or otherwise unacceptable.

7.3 Indemnity

7.3.1 Obligation to Indemnify. If a Third Party that is an ultimate use customer in the Service Area of a Party ("First Party") makes a claim or brings an action against the other Party ("Second Party") alleging Loss arising in connection with service under this Agreement or the absence of such service, including interruption, suspension, curtailment or fluctuation in such service, then upon timely written request of the Second Party, the First Party shall hold harmless, defend and indemnify the Second Party and its Related Persons against such claim or action to the fullest extent permitted by law; provided, however, that nothing in this Section 7.3 shall release a Second Party from any liability, or impose on the First Party any obligation to hold harmless or defend or indemnify the Second Party or its Related Persons, for the Willful Misconduct of the Second Party or its Related Persons.

7.3.2 Enforcement. If the Second Party is required to enforce against the First Party the obligation to hold harmless, defend and indemnify set forth in Section 7.3.1, then the First Party shall pay all costs, including reasonable attorneys' fees and other

litigation costs at trial and upon appeal, incurred by the Second Party in such enforcement.

8. Regulatory Authority

8.1 Jurisdiction. This Agreement is subject to the jurisdiction of those governmental authorities having jurisdiction to regulate service under this Agreement.

8.2 Acceptance. Each Party shall make reasonable efforts to secure the acceptance for filing by FERC of this Agreement in its entirety and without change. Each Party that is subject to the jurisdiction of FERC shall submit, without reservation, condition or qualification, this Agreement to FERC for acceptance for filing. Each Party shall state to FERC its agreement with the termination provisions set forth in Sections 2.2, 2.3, 2.4, 5.1 and 8.4.

8.3 Filing Fees. Each Party shall be responsible for all FERC filing fees incurred by such Party in filing this Agreement and any amendment hereto mutually agreed upon by the Parties.

8.4 FERC Termination. No regulatory filings, other than the initial filing of this Agreement, shall be required to effectuate any termination of this Agreement or the services under this Agreement. The termination of this Agreement pursuant its terms shall serve automatically to terminate this Agreement and any tariff, rate and rate schedule

(a) comprised by or which incorporates this Agreement or

(b) that is for service required to be offered as a result of this Agreement. Each Party hereby waives any right it may have to request or require that any regulatory filing, beyond the initial filing of this Agreement with FERC, shall be made to effectuate any termination of this Agreement or any service pursuant to this Agreement. If a regulatory filing is required to effectuate such termination, despite the foregoing express provisions of this Section 8.4, each Party further waives any right it may have to request or to have such termination denied, conditioned, suspended or otherwise deferred for more than five Months after the Termination Date.

9. Miscellaneous

9.1 Notices. Except as provided in Section 9.2, any notice provided for in, or served, given or made in connection with, this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by

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registered or certified United States mail, properly addressed and stamped with the required postage, as follows:

If to [Exchange Party]:

[address]

Attn: [_____]

If to PSE:

Puget Sound Energy, Inc.

PSE Building

10885 N.E. 4th Street

Bellevue, Washington 98004

Attn: [_____]

Either Party may change its address specified in this Section by giving the other Party notice of such change in accordance with this Section.

9.2 Routine Scheduling Notices. Any notice of a routine character between the Parties' respective schedulers or dispatchers in connection with scheduling of service under this Agreement shall be given in such a manner as is mutually acceptable from time to time to the Parties' respective schedulers or dispatchers unless otherwise provided in this Agreement.

9.3 Amendment. No change, modification or amendment of this Agreement shall be valid unless set forth in a written instrument signed by both Parties.

9.4 Assignment. Without the prior written consent of the other Party, which consent shall not be unreasonably withheld, neither Party shall assign or transfer this Agreement, except:

(a) to any Person into which or with which the Party making the assignment or transfer is merged or consolidated or to which such Party transfers substantially all of its electric utility properties; or

(b) to any Person that wholly owns, is wholly owned by or is wholly owned in common with the Party making the assignment or transfer.

No assignment or transfer, with or without the consent of the other Party, shall relieve a Party of any obligation under this Agreement. Subject to the foregoing provisions of this Section 9.4, this Agreement shall be binding upon, inure to the

benefit of and be enforceable by the Parties and their respective successors, transferees and assigns. Any successor to or transferee or assignee of the right of a Party, whether by voluntary transfer, judicial sale, foreclosure sale, or otherwise, shall be subject to all provisions and conditions of this Agreement to the same extent as though each successor, transferee, or assignee were an original party to this Agreement.

9.5 No Agreement to Serve Others. The Parties by entering into this Agreement do not hold themselves out to furnish like or similar service to any other Person.

9.6 No Third Party Beneficiary. Nothing in this Agreement shall be construed to create any rights in or duties to any Third Party, nor any liability to or standard of care with reference to any Third Party. This Agreement shall not confer any right or remedy upon any Person other than the Parties and their respective successors, transferees and assigns permitted under Section 9.4. No action may be commenced or prosecuted against any Party by any Third Party claiming as a third party beneficiary of this Agreement or the transactions contemplated hereby. This Agreement shall not release or discharge any obligation or liability of any Third Party to any Party. This Section 9.6 shall not be construed to limit in any way the rights and benefits afforded to the Related Persons of the respective Parties under Section 7.

9.7 No Dedication of Facilities. No undertaking by one Party to the other Party under any provision of this Agreement shall constitute a dedication of the electric system of such Party, or any portion thereof, to the public or to the other Party.

9.8 No Transmission Service Provided. Under this Agreement, neither Party provides or makes available any transmission service over any part of its transmission system to the other Party or to any Third Party. A Party shall not be responsible for the delivery and receipt of energy by the other Party at the PSE Point of Delivery or the [Exchange Party] Point of Delivery, as applicable, under this Agreement, including, but not limited to, reimbursement of any charges by any Third Party for transmission service, energy losses and other costs incurred to transfer energy between such other Party's electric system and such point of delivery.

9.9 Control and Ownership of Facilities. Nothing in this Agreement shall be construed to give a Party any right of ownership, possession, use or control of the electric system of the other Party.

9.10 Captions. All indexes, titles, subject headings or section titles, and similar items are provided for the purpose of reference and convenience and are not intended to affect the meaning of the contents or scope of this Agreement.

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9.11 Construing Meaning of Contract. Ambiguities or uncertainties in the wording of this Agreement shall not be construed for or against either Party, but shall be construed in a manner which most accurately reflects the intent of the Parties at the time of execution of this Agreement.

9.12 Governing Law. This Agreement shall be interpreted and enforced in accordance with the laws of the state of Washington, without regard to such state's choice of law principles.

9.13 Judgments and Determinations. When the terms of this Agreement provide that an action may or must be taken or that the existence of a condition may be established based on the judgment or determination of a Party, such judgment shall be exercised or such determination shall be made in good faith, and shall not be arbitrary or capricious.

9.14 No Partnership. This Agreement shall not be interpreted or construed to create an association, joint venture, franchise or partnership between the Parties or to impose any partnership obligation or liability upon either Party. Further, neither Party shall have, by virtue of this Agreement, any authority to enter into any agreement or undertaking for or on behalf of, to act as or be an agent or representative of, or to otherwise bind the other Party.

9.15 Nonwaiver. The failure of either Party to insist upon or enforce strict performance by the other Party of any provision of this Agreement or to exercise any right under this Agreement shall not be construed as a waiver or relinquishment to any extent of such Party's right to assert or rely upon any such provision or right in any other instance; rather, the same shall be and remain in full force and effect.

9.16 Integration. This Agreement constitutes the complete and final expression of the agreement of the Parties and is intended as a complete and exclusive statement of the terms of their agreement, which supersedes all prior and contemporaneous offers, promises, representations, negotiations, discussions, communications, and contracts that may have been made in connection with the subject matter of this Agreement.

9.17 Severability. In the event that any provision of this Agreement or the application of any such provision shall be held invalid as to any Person or circumstance by any court having jurisdiction, such provision shall remain in force and effect to the maximum extent permitted by law, and all other provisions of this Agreement and their application shall not be affected thereby but shall remain in force and effect unless a court holds they are not severable from the invalid provisions.

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9.18 Section 205. The rates for service specified in this Agreement shall not be subject to change for this Agreement through application to FERC pursuant to the provisions of Section 205 of the Federal Power Act absent the agreement in writing of both Parties. The word "rates" as used in this Section 9.18 means a statement of services as provided in this Agreement, rates and charges for or in connection with those services, and all classifications, practices, rules, regulations or contracts, including but not limited to this Agreement, which in any manner affect or relate to such services, rates and charges.

Puget Sound Energy, Inc.

By _____
[Name]
[Title]

Date Signed: _____, 200__

[Exchange Party]

By _____
[Name]
[Title]

Date Signed: _____, 200__