

**EXHIBIT NO. \_\_ (RG-3C)  
DOCKET NO. UE-121373  
WITNESS: ROGER GARRATT**

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**Petition of**

**PUGET SOUND ENERGY, INC.**

**for Approval of a Power Purchase Agreement  
for Acquisition of Coal Transition Power, as  
Defined in RCW 80.80.010, and the Recovery  
of Related Acquisition Costs**

**Docket No. UE-121373**

**SECOND EXHIBIT (CONFIDENTIAL) TO THE  
PREFILED DIRECT TESTIMONY OF  
ROGER GARRATT  
ON BEHALF OF PUGET SOUND ENERGY, INC.**

**REDACTED  
VERSION**

**REVISED  
OCTOBER 4, 2012**

**AUGUST 20, 2012**

**COAL TRANSITION POWER PURCHASE AND SALE AGREEMENT**

by and between

**TRANSALTA CENTRALIA GENERATION LLC**

and

**PUGET SOUND ENERGY, INC.**

July 24, 2012

**TABLE OF CONTENTS**

	<b>Page</b>
ARTICLE 1 DEFINITIONS.....	1
<u>Definitions</u> .....	1
<u>Exhibits</u> .....	10
<u>Interpretation</u> .....	10
ARTICLE 2 TERM AND TERMINATION .....	11
<u>Contract Term</u> .....	11
<u>Delivery Term</u> .....	12
<u>Termination</u> .....	12
<u>Survival</u> .....	12
ARTICLE 3 ENERGY OBLIGATIONS.....	12
<u>Hourly Contract Quantity; Contract Price</u> .....	12
<u>Sources of Product Supply</u> .....	13
<u>Delivery Points</u> .....	13
<u>Transmission Costs</u> .....	14
<u>Transmission Arrangements</u> .....	14
<u>Responsibility for Payment for Operating Reserves</u> .....	14
<u>Generator Imbalance Service Charges and Integration Charges</u> .....	14
<u>Taxes</u> .....	14
ARTICLE 4 SCHEDULING .....	15
<u>Preschedules and Hourly Adjustments</u> .....	15
<u>Scheduling</u> .....	15
<u>Accounting for Deliveries</u> .....	16
ARTICLE 5 TITLE AND RISK OF LOSS; INDEMNITY .....	16
<u>Title and Risk of Loss</u> .....	16
<u>Indemnity</u> .....	16
<u>Indemnification Procedures for Third Party Claims</u> .....	16
ARTICLE 6 REPRESENTATIONS AND WARRANTIES.....	17
<u>Representations and Warranties</u> .....	17
<u>Additional Representation and Warranty of Buyer</u> .....	18
<u>No Other Representations and Warranties</u> .....	18
ARTICLE 7 NONPERFORMANCE AND REMEDIES.....	18
<u>Failure to Deliver</u> .....	18
<u>Failure to Receive</u> .....	18
<u>Payment for Nonperformance</u> .....	18
<u>Acknowledgement of the Parties</u> .....	19

ARTICLE 8 EVENTS OF DEFAULT AND REMEDIES ..... 19

Events of Default ..... 19

Section 8.2. Remedies Upon an Event of Default. ..... 20

Non-Defaulting Party’s Right to Setoff of Accounts...... 21

Costs for Exercise of Rights ..... 21

Duty to Mitigate..... 21

ARTICLE 9 FORCE MAJEURE AND LIMITATION OF LIABILITY ..... 22

Force Majeure Defined ..... 22

Effect of Force Majeure ..... 23

Termination or Amendment Relating to Force Majeure Events...... 24

Limitation of Remedies, Liability and Damages ..... 25

Disclaimer of Warranties ..... 26

    [REDACTED] ..... 26

ARTICLE 10 NEW OR REVISED GREENHOUSE GAS STANDARDS; CHANGE IN  
LAW ..... 26

New or Revised Greenhouse Gas Standards...... 26

Seller’s Rights in Event of Change in Law..... 26

ARTICLE 11 BILLING AND PAYMENT..... 27

Billing and Payment...... 27

Netting and Setoff..... 27

Audit ..... 28

ARTICLE 12 PERFORMANCE SECURITY..... 28

Security Requirement...... 28

ARTICLE 13 CONFIDENTIALITY OBLIGATIONS; FINANCIAL REPORTS ..... 28

Confidential Information ..... 28

Obligations of the Parties Concerning Confidential Information ..... 29

Reproduction of Confidential Information ..... 29

Disclosure Requests or Legal Proceedings ..... 29

Information Not Subject to Confidentiality Restrictions ..... 30

Injunctive Relief...... 30

Return of Confidential Information ..... 30

Term of Confidentiality Obligations..... 30

Financial Reports ..... 30

ARTICLE 14 DISPUTE RESOLUTION ..... 31

Submission to Management..... 31

ARTICLE 15 ASSIGNMENT; BINDING EFFECT ..... 31

Assignment ..... 31

Binding Effect..... 32

ARTICLE 16 NOTICES ..... 32

Notices ..... 32

ARTICLE 17 APPROVAL OF AGREEMENT BY WUTC ..... 33

Initial WUTC Approval ..... 33

    [REDACTED] ..... 33

    [REDACTED] ..... 34

Severability ..... 35

    [REDACTED] ..... 35

ARTICLE 18 MISCELLANEOUS ..... 35

Rates and Terms Binding; FERC Standard of Review ..... 35

Entire Agreement; Amendments ..... 36

Governing Law; Jurisdiction and Venue; Waiver of Jury Trial ..... 36

Non-Waiver ..... 37

Severability ..... 37

Headings ..... 37

No Third Party Beneficiaries ..... 37

Relationship of the Parties ..... 37

Counterparts; Execution by Facsimile ..... 37

Attorneys' Fees ..... 37

Forward Contract; Swap Agreement ..... 37

Telephone Recordings ..... 37

Construction ..... 38

Winding Up Arrangements ..... 38

## COAL TRANSITION POWER PURCHASE AND SALE AGREEMENT

THIS COAL TRANSITION POWER PURCHASE AND SALE AGREEMENT (this “Agreement”) is made and entered into as of July 24, 2012 (the “Agreement Date”), by and between TRANSALTA CENTRALIA GENERATION LLC, a Washington limited liability company (“Seller”), and PUGET SOUND ENERGY, INC., a Washington corporation (“Buyer”). Seller and Buyer are sometimes hereinafter referred to individually as a “Party” and collectively as the “Parties.”

WHEREAS, Seller is the owner and operator of the Centralia Transition Coal Facility, a baseload coal-fired electric generating plant of approximately 1340 megawatts of electric generating capacity located at Centralia, Washington (such plant, together with its associated support facilities, the “CTCF”);

WHEREAS, in 2011 the Washington state legislature enacted Engrossed Second Substitute Senate Bill 5769 (“E2SSB 5769”) in order “to provide for the reduction in greenhouse gas emissions from large coal-fired baseload electric power generation facilities, [and] to effect an orderly transition to cleaner fuels in a manner that ensures reliability of the state’s electrical grid”;

WHEREAS, E2SSB 5769 amended the Revised Code of Washington (the “RCW”) to add Section 80.04.570, which authorizes electrical companies (as defined in RCW 80.04.010) to enter into long-term power purchase agreements for the purchase of coal transition power (as defined in RCW 80.80.010(5));

WHEREAS, in light of the foregoing, Buyer wishes to purchase coal transition power from Seller, and Seller wishes to sell coal transition power to Buyer, all on the terms and subject to the conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

### ARTICLE 1 DEFINITIONS

Section 1.1. Definitions. As used in this Agreement, the following terms when appearing in initial capital letters will have the respective meanings set forth below. The singular of any definition will include the plural and the plural will include the singular.

“Action” means any action, claim, suit, proceeding, arbitration, dispute, inquiry or investigation.

“Affiliate” means, with respect to any Person, any other Person (other than an individual) that, directly or indirectly, Controls, or is Controlled by, or is under common Control with, such Person.

“Agreement Date” has the meaning set forth in the first paragraph of this Agreement.

“Alternate Delivery Point” means any Delivery Point that is identified for Scheduling purposes by the TSIN designation listed on Exhibit A.

“Balancing Authority” means a “Balancing Authority” as defined in NERC’s Glossary of Terms, and having the duties and obligations of a Balancing Authority as set forth in NERC’s Reliability Standards.

“Balancing Authority Area” means “Balancing Authority Area” as defined in NERC’s Glossary of Terms.

“Bankrupt” means, with respect to a Party or other entity, that such Party or other entity: (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) 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 creditors’ rights, or a petition is presented for its winding-up or liquidation, which proceeding or proceeding is not dismissed, stayed or vacated within 90 days thereafter; (v) commences a voluntary proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors’ rights; (vi) seeks or consents to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of 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 levied, enforced or sued on or against all or substantially all of 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 (i) to (vii) inclusive; or (ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

“BPA” means the Bonneville Power Administration, or any successor thereto.

“Business Day” means a day on which Federal Reserve member banks in New York City are open for business; and a Business Day will open at 8:00 a.m. and close at 5:00 p.m. PPT.

“Change in Law” means the adoption, enactment, promulgation, modification, amendment or revocation, after the Agreement Date, of any laws, any interpretation, reinterpretation or administrative position relating to any laws, or any material requirements or condition in connection with the issuance, renewal, extension, replacement or modification of any governmental approval required by Seller in connection with this Agreement.

“Change in Law Costs” means the actual and verifiable change (whether on a one-time or cumulative basis) in Seller’s cost of operating the CTCF that results from a Change in Law, excluding costs of any applicable greenhouse gas emissions credits or offsets (which are subject to the provisions of Section 10.1); provided, however, that “Change in Law Costs” will not include any costs or expenses caused by or resulting from any failure by Seller to comply, or delay by Seller in complying, with any Governmental Rule. “Change in Law Costs” include any

additional amounts of federal, state or local Taxes that Seller is required to pay as a result of reimbursement by Buyer of any Change in Law Costs under or pursuant to this Agreement.

“Change in Law Threshold Amount” means USD [REDACTED] per year or USD [REDACTED] in the aggregate during the Contract Term.

“Claiming Party” has the meaning set forth in Section 9.1.

“Claims” means any and all claims, demands, suits or actions, losses, liabilities, fines, penalties, judgments, settlements, damages, costs and expenses, including reasonable attorneys’ fees and expenses and reasonable costs of investigation, litigation, settlement and judgment, and including any costs and expenses incurred by any Indemnitee as a result or arising out of any obligation or election (whether arising out of or in connection with any law, any contract, any charter document, or otherwise) of such Indemnitee to indemnify its Related Parties or successors or assigns, whether incurred by settlement or otherwise, and whether any such claims, demands, suits or actions are groundless, false or fraudulent, or threatened or filed prior to or after the expiration or termination of this Agreement.

“Conditioned Approval” has the meaning set forth in Section 17.2(a).

“Confidential Information” has the meaning set forth in Section 13.1.

“Contract Hours” means all hours ending at 59:59 from 00:00:01 through 23:59:59 PPT, all days of the week, during the Delivery Term.

“Contract Price” has the meaning set forth in Section 3.1(b).

“Contract Term” means the term of this Agreement as set forth in Section 2.1.

“Control” means the possession, directly or indirectly through one or more intermediaries, of the following: (a) in the case of a corporation, more than 50 percent of the outstanding voting securities thereof; (b) in the case of a limited liability company, partnership, limited partnership or joint venture, the right to more than 50 percent of the distributions therefrom (including liquidating distributions); (c) in the case of a trust or estate, more than 50 percent of the beneficial interest therein; (d) in the case of any other entity, more than 50 percent of the economic or beneficial interest therein; or (e) in the case of any entity, the power or authority, through the ownership of voting securities, by contract or otherwise, to direct the management, activities or policies of the entity.

“Costs” has the meaning set forth in Section 8.2(c).

“Covered Agreements” has the meaning set forth in Section 18.1.

“Credit Rating” means (i) with respect to any entity other than a financial institution, the current (A) rating issued or maintained by S&P or Moody’s with respect to such entity’s long-term senior, unsecured, unsubordinated debt obligations (not supported by third party credit enhancements) or (B) corporate credit rating or long-term issuer rating issued or maintained with respect to such entity by S&P or Moody’s, or (ii) if such entity is a financial institution, the



ratings issued or maintained by S&P or Moody's with respect to such entity's long-term, unsecured, unsubordinated deposits.

"CTCF" has the meaning set forth in the recitals to this Agreement.

"Defaulting Party" has the meaning set forth in Section 8.1.

"Delivery Point" means the Primary Delivery Point, Mid-C, any Alternate Delivery Point or any Mutually Agreed Delivery Point, in each case on the terms and subject to the conditions of this Agreement.

"Delivery Term" means the term for the purchase and sale of Product hereunder, as set forth in Section 2.2.

"Derated Hourly Contract Quantity" means an amount, in no event less than zero, equal to the product of (i) the generating capacity of the CTCF following a Force Majeure event that results in a reduction of the generating capacity of the CTCF and (ii) a fraction, the numerator of which is the Hourly Contract Quantity in effect pursuant to Section 3.1 and the denominator of which is the sum of (A) the Hourly Contract Quantity in effect pursuant to Section 3.1 and (B) the aggregate amount of the then-applicable Other Buyers' Hourly Contract Quantities.

"Determination Notice" has the meaning set forth in Section 9.3(b).

"Disclosing Party" has the meaning set forth in Section 13.2.

"Dispute" has the meaning set forth in Section 14.1(a).

"E2SSB 5769" has the meaning set forth in the recitals to this Agreement.

"Early Termination Date" has the meaning set forth in Section 8.2(a).

"Event of Default" has the meaning set forth in Section 8.1.

"FERC" means the Federal Energy Regulatory Commission, or any successor thereto.

"Force Majeure" has the meaning set forth in Section 9.1.

"Forced Derate" means a curtailment of generating capability at the CTCF that is not a Scheduled Outage or the result of a Force Majeure, and that causes the CTCF to function at less than full capacity and reduces (but does not eliminate) the CTCF's ability to provide Product.

"Forced Outage" means an outage at the CTCF that is not a Scheduled Outage or the result of a Force Majeure, and that forces the CTCF out of service and prevents the CTCF from providing any Product.

"Gains" has the meaning set forth in Section 8.2(c).

"Generator Imbalance Service" means the service provided, by the Balancing Authority in whose Balancing Authority Area the CTCF is located, when a difference occurs over a single

hour between the output of the CTCF and a delivery schedule for the CTCF to (i) another Balancing Authority Area or (ii) a load within the Balancing Authority Area in which the CTCF is located.

“Generator Imbalance Service Charges” means any fees, charges, assessments, penalties or other costs or expenses imposed for or in connection with Generator Imbalance Service for the CTCF.

“Governmental Authority” means any national, state, provincial or local government, any political subdivision thereof, or any other governmental, regulatory, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law.

“Governmental Rule” means any law, rule, regulation, ordinance, order, code, permit, interpretation, judgment, decree, directive, resolution, guideline, policy or similar form of decision (including any of the foregoing resulting from citizens acting through the initiative or referendum process), or any action repealing or modifying the same, of any Governmental Authority having the force and effect of law or regulation.

“Guarantor” means a Person guaranteeing under a Guaranty the performance of each and all of the obligations [REDACTED]

“Guaranty” means an instrument or agreement pursuant to which a Guarantor guarantees the performance of each and all of the [REDACTED]

“Guaranty Default” means, with respect to a Guaranty or the Guarantor thereunder, the occurrence of any of the following events, unless the Defaulting Party delivers to the Non-Defaulting Party, on or before the third Business Day after notice of any such event from the Non-Defaulting Party to the Defaulting Party, either (A) a replacement Guaranty in the same face amount and on substantially the same terms as the outstanding Guaranty, (B) a replacement Letter of Credit issued by a Qualified Institution in the same face amount as the outstanding Guaranty, or (C) replacement Performance Assurance in the form of cash in an amount equal to the face amount of such outstanding Guaranty: (i) any representation or warranty made or deemed to be made or repeated by such Guarantor in connection with such Guaranty is false or misleading in any material respect when made or when deemed made or repeated; (ii) such Guarantor fails to pay, when due, any amount required pursuant to such Guaranty; (iii) the failure of such Guarantor to comply with or timely perform any other material covenant or obligation set forth in such Guaranty if such failure is not capable of remedy or is not remedied in accordance with the terms and conditions of such Guaranty; (iv) such Guaranty expires or terminates, or fails or ceases to be in full force and effect and enforceable in accordance with its terms against such Guarantor, in any such case without replacement, prior to the satisfaction of all obligations under this Agreement of the Party whose obligations are guaranteed under such Guaranty; (v) such Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenge the validity of, its Guaranty, or (vi) such Guarantor becomes Bankrupt; provided, however, that no Guaranty Default will occur or be continuing in any event with respect to a

Guaranty after the time such Guaranty is required to be canceled or returned to a Party in accordance with the terms of this Agreement.

“Hourly Contract Quantity” has the meaning set forth in Section 3.1.

“Indemnitee” has the meaning set forth in Section 5.2.

“Indemnitor” has the meaning set forth in Section 5.2.

“Interconnection Facilities” means the electrical interconnection facilities that interconnect the CTCF with BPA’s C.W. Paul Substation.

“Interest Rate” means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under “Money Rates” on such day (or if not published on such day, on the most recent preceding day on which published), plus two percent, and (b) the maximum rate permitted by applicable law.

“Letter of Credit” means an irrevocable, transferable, standby letter of credit, issued by a Qualified Institution, which letter of credit is reasonably acceptable in form and substance to the beneficiary thereof.

“Letter of Credit Default” means, with respect to a Letter of Credit or the issuer thereof, the occurrence of any of the following events, unless the Defaulting Party delivers to the Non-Defaulting Party, on or before the third Business Day after notice of any such event from the Non-Defaulting Party to the Defaulting Party, either (A) a replacement Letter of Credit issued by a Qualified Institution in the same face amount and on substantially the same terms as the outstanding Letter of Credit, (B) a replacement Guaranty in an amount equal to the face amount of the outstanding Letter of Credit, or (C) replacement Performance Assurance in the form of cash in an amount equal to the face amount of such outstanding Letter of Credit: (i) such issuer fails to meet the requirements for a Qualified Institution; (ii) such issuer fails to honor the beneficiary Party’s properly documented request to draw on such Letter of Credit or otherwise fails to comply with or perform its obligations under such Letter of Credit; (iii) such issuer disaffirms, disclaims, repudiates or rejects, in whole or in part, or challenges the validity of, such Letter of Credit; (iv) such Letter of Credit is not renewed at least 20 Business Days prior to the expiration of such Letter of Credit in accordance with its terms, or such Letter of Credit expires or terminates, or fails or ceases to be in full force and effect, at any time during the Term; or (v) such issuer becomes Bankrupt; provided, however, that no Letter of Credit Default will occur or be continuing with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Agreement.

“Losses” has the meaning set forth in Section 8.2(c).

“Mid-C” means any point in the Mid-Columbia area of the state of Washington where Seller has the right to deliver and Buyer has the right to receive electric power.

“Minimum Credit Rating” means: (a) with respect to any assignment, that the prospective assignee or transferee will have long-term, senior, unsecured debt (not supported by third party credit enhancement) that is rated by S&P at [REDACTED] and by Moody’s at [REDACTED] and

(b) with respect to any Guarantor providing a Guaranty of any of the obligations of Seller, that such Guarantor will have long-term, senior, unsecured debt (not supported by third party credit enhancement) that is rated by S&P at [REDACTED] and by Moody's at [REDACTED]

“MOA” means that certain Memorandum of Agreement entered into as of December 23, 2011, by and between the State of Washington, acting through Governor Christine Gregoire, and Seller, as such agreement may be extended or modified from time to time.

“Month” means a calendar month.

“Moody's” means Moody's Investors Services, Inc., or any successor thereto.

“Mutually Agreed Delivery Point” means any Delivery Point that may be agreed to by the Parties, other than (i) the Primary Delivery Point, (ii) Mid-C during the months of April, May, June, July, August, and September in any year during the Delivery Term, or (iii) any Alternate Delivery Point. “Mutually Agreed Delivery Point” includes Mid-C at any time other than during the months of April, May, June, July, August, and September in any year during the Delivery Term.

“MW” means megawatt.

“MWh” means megawatt-hour.

“NERC” means the North American Electric Reliability Corporation, or any successor thereto.

“Non-Defaulting Party” means, in any instance, the Party other than the Defaulting Party.

[REDACTED]

“Off-Peak Hours” means all hours other than On-Peak Hours.

“On-Peak Hours” means all of the hours from and including hour ending 0700 PPT through and including hour ending 2200 PPT, Monday through Saturday except NERC holidays (as such hours may be amended or modified by NERC from time to time during the Contract Term).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

“Performance Assurance” means collateral in the form of either cash or one or more Guaranties or Letters of Credit.

“Person” means an individual, partnership, corporation, limited liability company, association, trust, unincorporated organization, Governmental Authority, or other form of entity.

“PPT” means Pacific Prevailing Time, that is, prevailing Standard Time or Daylight Savings Time in the Pacific Time Zone.

“Present Value” has the meaning set forth in Section 8.2(c).

“Primary Delivery Point” means the point in BPA’s C.W. Paul Substation at which Seller’s Interconnection Facilities are interconnected with BPA’s 500 kV Interconnection Facilities. For Scheduling purposes, such point is the TSIN CENTRALIA point of delivery.

“Product” means the electric energy to be delivered by Seller to Buyer, in accordance with the terms and subject to the terms of this Agreement, as three-phase, alternating 60 Hertz current at the nominal voltage of the Delivery Point.

“Prudent Electric Industry Practice” means those practices, methods, standards and acts engaged in or approved by a significant portion of the merchant electric power generation industry in the Western Interconnection at the relevant time period, or, in the absence of such practices, methods, standards and acts, any of the practices, methods and acts, which in the exercise of reasonable judgment in light of the facts that were known or that should reasonably have been known at the time a decision was made, could have been expected to accomplish the desired result consistent with good business practices, reliability, economy, safety, expedition and unit operational life expectancy, and which practices, methods, standards and acts reflect due regard for applicable operation and maintenance standards, operational limits, and all applicable Governmental Rules. Prudent Electric Industry Practice is not intended to be limited to the optimum practice, method, standard or act to the exclusion of all others but rather to be a spectrum of acceptable practices, methods, standards or acts.

“Qualified Institution” means a major U.S. or Canadian commercial bank or a U.S. branch office of a foreign bank having, in either case, (i) assets of at least USD \$10 billion and (ii) a Credit Rating from one or both of S&P and Moody’s, which Credit Rating is at least “A-” from S&P (in the event that such bank has a Credit Rating from S&P) and “A3” from Moody’s (in the event that such bank has a Credit Rating from Moody’s).

“RCW” has the meaning set forth in the recitals to this Agreement.

“Recipient Party” has the meaning set forth in Section 13.2.

“Related Parties” means, in the case of either Party, the members, managers, directors, officers, employees, agents, representatives, consultants, advisors, legal counsel and lenders of such Party.

“Remaining Transactions” means, at any point in time during the Contract Term, all sales and purchases of the Hourly Contract Quantity remaining to be performed by the Parties pursuant to this Agreement during the remainder of the Contract Term.

“Replacement Purchase Price” means the price at which Buyer purchases for delivery at one or more of the Delivery Point(s) a replacement for any Hourly Contract Quantity (or portion thereof) not delivered by Seller, plus (i) costs reasonably incurred by Buyer in purchasing such substitute Hourly Contract Quantity at such Delivery Point(s) and (ii) additional transmission charges, if any, reasonably incurred by Buyer to the Delivery Point(s), or, at Buyer’s option, the market price at Mid-C for such Hourly Contract Quantity not delivered; provided, however, in no event will such price include any penalties, ratcheted demand or similar charges, nor will Buyer be required to utilize or change its utilization of its owned or controlled assets or market positions to minimize Seller’s liability. For the purposes of this definition, Buyer will be considered to have purchased replacement Hourly Contract Quantity to the extent Buyer will have entered into one or more arrangements in a commercially reasonable manner whereby Buyer terminates, cancels or otherwise obtains relief from its obligation to sell and deliver the Hourly Contract Quantity (or portion thereof not delivered by Seller) to another party at the Delivery Point(s).

“Replacement Sales Price” means the price at which Seller resells any Hourly Contract Quantity (or portion thereof) not received by Buyer, deducting from such proceeds any (i) costs reasonably incurred by Seller in reselling such Hourly Contract Quantity at such Delivery Point(s) (including any transaction fees and expenses incurred in providing credit assurances or assurances of performance to any Person) and (ii) additional transmission charges, if any, reasonably incurred by Seller in delivering such Hourly Contract Quantity to any third party purchasers, or, at Seller’s option, the market price at Mid-C for such Hourly Contract Quantity not received; provided, however, in no event will such price include any penalties, ratcheted demand or similar charges, nor will Seller be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Buyer’s liability. For purposes of this definition, Seller will be considered to have resold such Hourly Contract Quantity to the extent Seller will have entered into one or more arrangements in a commercially reasonable manner whereby Seller terminates, cancels or otherwise obtains relief from its obligation to purchase and receive the Hourly Contract Quantity (or portion thereof not received by Buyer) from another party at the Delivery Point(s).

“S&P” means the Standard & Poor’s Rating Group, a division of The McGraw-Hill Companies, or any successor thereto.

“Schedule,” “Scheduled” or “Scheduling” means the acts of Seller, Buyer or their designated representatives, including each Party’s Transmission Providers, if applicable, notifying, requesting and confirming to each other the quantity of Product to be delivered hourly on any given day or days during the Delivery Term at one or more specified Delivery Points.

Unless the context clearly requires otherwise, references in this Agreement to “Scheduled” quantities of Product will mean the Hourly Contract Quantity.

“Scheduled Outage” means any planned outage of the CTCF taken by Seller, including for maintenance purposes in accordance with any manufacturer’s recommended procedures or any equipment service agreements between Seller and any Person.

“Taxes” means taxes, rates, levies, assessments, charges or duties, including real estate, property, sales, use, franchise, excise, capital, gross receipts and value added taxes, taxes measured on capital or assets used in a business, customs and import and export duties, taxes measured on income or on gains derived from dispositions of property, and taxes or other fees on the use of property or in-state facilities or natural resources (including the use of water for power generation), generating capacity, production, generation, manufacture, purchase, transmission, distribution, wholesale, sale, resale, or use of electricity or electrical energy, whether the tax is in the form of a property, sales and use, employment, gross receipts, revenue, income, franchise, excise, value-added, excess profits or any other Tax, and regardless of how the Tax is named or structured.

“Termination Payment” has the meaning set forth in Section 8.2(b).

“Transmission Provider” means any entity (including Buyer or any successor, transferee or assignee of Buyer, and any FERC-approved regional transmission organization) transmitting energy on behalf of Seller to any Delivery Point or on behalf of Buyer at or from any Delivery Point.

“TSIN” means the NERC Transmission Service Information Network.

“WECC” means the Western Electricity Coordinating Council, or any successor thereto.

“WUTC” means the Utilities and Transportation Commission of the state of Washington, or any successor thereto.

“WUTC Approval” has the meaning set forth in Section 17.1.

Section 1.2. Exhibits. The exhibits attached to this Agreement form an integral part of this Agreement, and any and all exhibits referred to in this Agreement are, by such reference, incorporated herein and made a part hereof for all purposes.

Section 1.3. Interpretation.

In this Agreement, unless a clear contrary intention appears:

- (a) words singular and plural in number will be deemed to include the other;
- (b) reference to any gender includes each other gender;

(c) reference to any Person includes such Person's successors and assigns but, in the case of a Party, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individuality;

(d) any reference in this Agreement to any Section or Exhibit, Appendix or Annex means and refers to the Section contained in, or Exhibit, Appendix or Annex attached to, this Agreement, and references in any Article or Section or definition to any clause means such clause of such Article, Section or definition;

(e) other grammatical forms of defined words or phrases have corresponding meanings;

(f) a reference to writing includes typewriting, printing, lithography, photography and any other mode of representing or reproducing words, figures or symbols in a lasting and visible form;

(g) unless otherwise expressly provided in this Agreement, a reference to a specific time for the performance of an obligation is a reference to that time in the place where that obligation is to be performed;

(h) unless otherwise expressly provided in this Agreement, reference to any agreement (including this Agreement), document, instrument or tariff means such agreement, document, instrument or tariff as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof;

(i) references in this Agreement to "or" will be deemed to be disjunctive but not necessarily exclusive (*i.e.*, unless the context dictates otherwise, "or" will be interpreted to mean "and/or" rather than "either/or");

(j) if any payment, act, matter or thing hereunder would occur on a day that is not a Business Day, then such payment, act, matter or thing will, unless otherwise expressly provided for herein, occur on the next Business Day;

(k) "hereunder," "hereof," "hereto" and words of similar import will be deemed references to this Agreement as a whole and not to any particular article, section or other provision hereof;

(l) "including" (and with correlative meaning "include") means including without limitation on the generality of any description preceding such term; and

(m) relative to the determination of any period of time, "from" means "from and including," "to" means "to but excluding," and "through" means "through and including."

## ARTICLE 2 TERM AND TERMINATION

Section 2.1. Contract Term. Subject to the provisions of Section 2.4, Article 17 and Section 18.14, the term of this Agreement (the "Contract Term") will begin on the effective date of the



WUTC Approval and, unless earlier terminated in accordance with the terms and conditions of this Agreement, will continue through December 31, 2025.

Section 2.2. Delivery Term. Subject to the provisions of Article 17, the purchase and sale of Product hereunder will commence at 00:00:01 PPT on December 1, 2014, and, unless earlier terminated in accordance with the terms and conditions of this Agreement, will end at 23:59:59 PPT on December 31, 2025 (the "Delivery Term"). No interruption or curtailment of purchases or sales, whether due to Forced Outage, Forced Derate, Force Majeure or otherwise, will operate to extend the Delivery Term.

Section 2.3. Termination. Neither Party will have the right to terminate this Agreement except as provided in Article 8, Article 9, Article 10, and Article 17.

Section 2.4. Survival. Effective as of the expiration or termination of this Agreement for any reason, the Parties will no longer be bound by the terms and conditions of this Agreement, except (a) to the extent necessary to enforce any rights and obligations of the Parties, including payment obligations, arising under this Agreement prior to expiration or termination of this Agreement and not discharged, (b) that the provisions of Section 9.4, Section 9.5, Section 15.2, and Article 18 will survive following the expiration or termination for any reason of this Agreement, and (c) Section 5.2, Section 5.3, Section 9.1, Section 9.2, Section 9.3, Section 11.2, Section 11.3 Article 12, Article 13 and Article 16 will survive for a period of three years following the expiration or termination for any reason of this Agreement.

### **ARTICLE 3 ENERGY OBLIGATIONS**

Section 3.1. Hourly Contract Quantity; Contract Price.

(a) On the terms and subject to the conditions of this Agreement, Seller will sell and deliver, or cause to be delivered, and Buyer will purchase and receive, or cause to be received, at the Delivery Point(s), a quantity of the Product equal to the following amount (such amount, the "Hourly Contract Quantity") during each Contract Hour of each of the following periods during the Delivery Term:

(i) From 00:00:01 PPT on December 1, 2014 to 23:59:59 PPT on November 30, 2015, the amount of 180 MWh/hr.

(ii) From 00:00:01 PPT on December 1, 2015 to 23:59:59 PPT on November 30, 2016, the amount of 280 MWh/hr.

(iii) From 00:00:01 PPT on December 1, 2016 to 23:59:59 PPT on December 31, 2024, the amount of 380 MWh/hr.

(iv) From 00:00:01 PPT on January 1, 2025 to 23:59:59 PPT on December 31, 2025, the amount of 300 MWh/hr.

(b) Buyer will pay Seller, for each of the following periods during the Delivery Term, the applicable price set forth below (the "Contract Price") for each MWh of the Hourly Contract

Quantity delivered by Seller to the Delivery Point(s) in accordance with the terms and conditions of this Agreement:

(i) For each MWh delivered from 00:00:01 PPT on December 1, 2014 to 23:59:59 PPT on November 30, 2020, the amount of USD \$ [REDACTED] per MWh, with such amount escalating at the rate of [REDACTED]% per year effective on December 1 of each year during the Delivery Term, commencing on December 1, 2015 and ending on December 1, 2019.

(ii) For each MWh delivered from 00:00:01 PPT on December 1, 2020 to 23:59:59 PPT on December 31, 2025, the amount of USD \$ [REDACTED] per MWh, with such amount escalating at the rate of [REDACTED]% per year effective on December 1 of each year during the Delivery Term, commencing on December 1, 2020 and ending on December 1, 2025.

Tables setting forth the Hourly Contract Quantities and Contract Prices provide for above are contained in Exhibit B hereto.

Section 3.2. Sources of Product Supply.

(a) Except as provided in Section 3.2(b), Seller will, on the terms and subject to the conditions of this Agreement, supply the Hourly Contract Quantity from the CTCF.

(b) Seller will be entitled, at any time that the output of the CTCF is reduced or curtailed for any reason, to provide the Hourly Contract Quantity from any source or sources that Seller may determine; provided, however, that any such deliveries will be required to be in accordance with the terms and conditions of this Agreement applicable to the Delivery Point(s) to which such deliveries are being made.

Section 3.3. Delivery Points.

(a) Seller will deliver the Hourly Contract Quantity to the Primary Delivery Point when the Product is supplied from the CTCF.

(b) In the event that the output of the CTCF is reduced or curtailed for any reason, Seller will be entitled, at its election, to deliver the Hourly Contract Quantity to any of the following Delivery Points:

(i) the Primary Delivery Point;

(ii) Mid-C, at any time during the months of April, May, June, July, August, and September in any year during the Delivery Term;

(iii) any Alternate Delivery Point, subject to approval by Buyer reasonably in advance of the applicable preschedule deadline, which approval will not be unreasonably withheld or delayed. In the event that Seller requests that all or any portion of the Hourly Contract Quantity be delivered and received at an Alternate Delivery Point, and firm transmission capacity is available at such Alternate Delivery Point for receipt by Buyer of

such amount of the Hourly Contract Quantity and for transmission of such amount of Hourly Contract Quantity (on Buyer's electric system or using Buyer's transmission rights) to Buyer's network customers, Buyer will be required to consent to delivery and receipt of such amount at such Alternate Delivery Point; or

(iv) any Mutually Agreed Delivery Point.

(c) Subject to the terms and conditions of this Agreement, deliveries of the Hourly Contract Quantity may be Scheduled in whole or in part in any Contract Hour to a single or multiple Delivery Point(s).

Section 3.4. Transmission Costs. Except as otherwise expressly provided in this Agreement, (a) Seller will be responsible for any costs or charges imposed on or associated with the delivery of the Hourly Contract Quantity up to any Delivery Point, including inadvertent energy flows, transmission losses and loss charges relating to the transmission of the Hourly Contract Quantity up to any Delivery Point, and (b) Buyer will be responsible for any costs or charges imposed on or associated with the Hourly Contract Quantity at, from and after any Delivery Point, including inadvertent energy flows, transmission losses and loss charges relating to the transmission of the Hourly Contract Quantity at, from and after any Delivery Point.

Section 3.5. Transmission Arrangements. Seller will arrange and be responsible for transmission service to the Delivery Point(s) and will Schedule or arrange for Scheduling services with its Transmission Providers to deliver the Product to the Delivery Point(s), and Buyer will arrange and be responsible for transmission service at, from and after the Delivery Point(s) and will Schedule or arrange for Scheduling services with its Transmission Providers to receive the Product at the Delivery Point(s).

Section 3.6. Responsibility for Payment for Operating Reserves. Buyer will be responsible for payment of any charges by a Balancing Authority or a Transmission Provider for any operating reserves that may be required for any Product delivered under this Agreement, and Buyer will reimburse Seller for any such charges that may be incurred by Seller.

Section 3.7. Generator Imbalance Service Charges and Integration Charges. Seller will be obligated to pay, or reimburse Buyer for the payment of (in the event any obligation is imposed in this respect on Buyer), any Generator Imbalance Service Charges, unless such charges result directly from the unexcused failure of Buyer to receive Scheduled Product. Seller will be obligated to pay any generation integration charges or similar charges imposed by BPA with respect to CTCF generation under any interconnection agreement or arrangement.

Section 3.8. Taxes. Except as provided in Article 9, Seller will be solely responsible for all existing and any new sales, use, excise, ad valorem, and any other similar Taxes imposed or levied by any Governmental Authority on the Product sold and delivered hereunder (including any Taxes imposed or levied with respect to the transmission of such Product) up to the delivery of such Product to the Delivery Point(s). Buyer will be solely responsible for all existing and any new sales, use, excise, ad valorem, and any other similar Taxes imposed or levied by any Governmental Authority on the Product sold and delivered hereunder (including any Taxes

imposed or levied with respect to the transmission of such Product) at, from and after the delivery of such Product to the Delivery Point(s).

#### ARTICLE 4 SCHEDULING

Section 4.1. Preschedules and Hourly Adjustments. The Parties will exchange preschedules for all deliveries of Product hereunder, including identification of receiving and generating Balancing Authority Areas, in accordance with applicable WECC and Transmission Provider Scheduling practices. The Parties' respective Schedulers will maintain hourly Schedule coordination to adjust preschedules to reflect changes in Hourly Contract Quantities or Delivery Points.

Section 4.2. Scheduling.

(a) Unless otherwise agreed, Seller is, subject to the provisions of Section 3.5, obligated to Schedule with the appropriate Transmission Providers (or arrange for Scheduling service) to deliver to the Delivery Point(s), and Buyer is obligated to Schedule with the appropriate Transmission Providers (or arrange for Scheduling service) to receive at the Delivery Point(s), the Hourly Contract Quantity for each Contract Hour in accordance with the applicable Transmission Provider's Scheduling notice requirements. Each Party will comply with all applicable NERC, WECC and applicable Transmission Provider Scheduling requirements and criteria.

[REDACTED]

[REDACTED]

Each Party will throughout the duration of this Agreement maintain (either directly or through a third party provider acting on such Party's behalf) a real time Scheduling operation capable of accepting and implementing Scheduling changes on a 24-hour around-the-clock basis.

(d) Each Party will (by notice to the other Party in accordance with the requirements of this Agreement) designate authorized representatives to effect the Scheduling of the Hourly Contract Quantity on behalf of such Party.

Section 4.3. Accounting for Deliveries.

(a) All transactions hereunder will be accounted for on the basis of Scheduled hourly quantities to the Delivery Point(s), except that when deliveries are interrupted or curtailed for any reason, hourly Product Schedules will (without limiting the provisions of Section 3.6) be reduced to reflect such interruptions or curtailments. If Scheduled deliveries and receipt of Product are not maintained for an entire hour, Schedules will be integrated over the hour or otherwise in accordance with the prevailing practice of the Balancing Authority in whose Balancing Authority Area the applicable Delivery Point is located.

(b) The Parties will maintain, in accordance with Prudent Electric Industry Practice, records of all hourly Product deliveries for accounting and operating purposes. Each such record will be maintained for a period of not less than three years from the date of the Schedule to which such record relates.

**ARTICLE 5**  
**TITLE AND RISK OF LOSS; INDEMNITY**

Section 5.1. Title and Risk of Loss.

(a) Seller will have title to, and will be deemed to have exclusive possession and control of, the Product prior to the Delivery Point(s), and Buyer will have title to, and will be deemed to have exclusive possession and control of, the Product at, from and after the Delivery Point(s). As between the Parties, Seller will be deemed to have full responsibility and liability for any injury or damage to Persons or property caused by, resulting from or arising out of or in connection with the Product prior to the Delivery Point(s), and Buyer will be deemed to have full responsibility and liability for any injury or damage to Persons or property caused by, resulting from or arising out of or in connection with the Product at, from and after the Delivery Point(s). Title to and risk of loss related to the Product will transfer from Seller to Buyer at the Delivery Point(s).

(b) Seller warrants that the Product delivered by Seller to Buyer under this Agreement will be free and clear of all liens, claims and encumbrances arising prior to the Delivery Point(s).

Section 5.2. Indemnity. Each Party (such Party, the “Indemnitor”) hereby indemnifies and releases and agrees to defend and hold harmless the other Party (such Party, the “Indemnitee”) from and against any and all Claims caused by, resulting from, arising out of or relating to:

(a) Any act or incident related to Product sold and purchased hereunder occurring at any time when such Product is deemed for purposes of this Agreement to be under the Indemnitor’s possession and control; and

(b) Any Taxes measured by the income of the Indemnitor and any Taxes that are the responsibility of the Indemnitor pursuant to Section 3.8 or Article 10.

Section 5.3. Indemnification Procedures for Third Party Claims. The Indemnitee will promptly notify the Indemnitor of any Claim in respect of which the Indemnitee is entitled to be indemnified under this Article 5. Such notice will be given as soon as is reasonably practicable

after the Indemnitee becomes aware of such Claim; provided, however, that failure to give prompt notice will not adversely affect any Claim for indemnification hereunder except to the extent the Indemnitor's ability to contest any Claim by any third party is materially adversely affected as a result thereof. The Indemnitor will have the right, but not the obligation, at its expense, to contest, defend and litigate, and to control the contest, defense or litigation of, any Claim by any third party alleged or asserted against any Indemnitee arising out of any matter in respect of which the Indemnitee is entitled to be indemnified hereunder. The Indemnitor will promptly notify the Indemnitee of its intention to exercise such right set forth in the immediately preceding sentence and will reimburse the Indemnitee for the reasonable costs and expenses paid or incurred by the Indemnitee prior to the assumption of such contest, defense or litigation by the Indemnitor. If the Indemnitor exercises such right in accordance with the provisions of this Section 5.3 and the Indemnitee notifies the Indemnitor that it desires to retain separate counsel in order to participate in or proceed independently with such contest, defense or litigation, the Indemnitee may do so at its own expense. If the Indemnitor fails to exercise its rights set forth in the third sentence of this Section 5.3, then the Indemnitor will reimburse the Indemnitee for its reasonable costs and expenses incurred in connection with the contest, defense or litigation of such Claim. The Indemnitee will not have the right to settle or compromise any Claim for which indemnity is sought hereunder without the prior written approval of the Indemnitor, which approval will not be unreasonably withheld or delayed.

## **ARTICLE 6 REPRESENTATIONS AND WARRANTIES**

Section 6.1. Representations and Warranties. As a material inducement to the entry by the other Party into this Agreement, each Party, with respect to itself, hereby represents and warrants to the other Party as of the Agreement Date as follows:

(a) it is duly organized, validly existing and in good standing under the Governmental Rules of the jurisdiction of its formation or incorporation and is qualified to conduct its business in those jurisdictions necessary to perform this Agreement;

(b) except for the regulatory approvals as provided in Article 17 hereof, it has all approvals, consents and regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

(c) the execution, delivery and performance of this Agreement are within its statutory and corporate powers, have been duly authorized by all necessary action and do not conflict with or result in a breach of or default (with or without notice or lapse of time or both) under any of the terms or conditions in its governing documents or any contract to which it is a party or any Governmental Rule applicable to it;

(d) this Agreement has been duly executed and delivered on its behalf by a duly authorized representative of such Party;

(e) effective upon WUTC Approval in accordance with the provisions of Article 17, this Agreement will constitute a legal, valid and binding obligation of such Party enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium or

other Governmental Rules affecting creditors' rights generally, and with regard to equitable remedies, to equitable defenses and the discretion of the court before which proceedings to obtain such remedies may be pending;

(f) there are no bankruptcy, insolvency, reorganization, receivership or other arrangement proceedings pending or being contemplated by it, or to its knowledge threatened against it;

(g) there are no suits, proceedings, judgments, rulings or orders by or before any Governmental Authority that materially adversely affect such Party's ability to perform this Agreement;

(h) it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code;

(i) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Product as provided for in this Agreement; and

(j) it is a producer, processor, commercial user or merchant with respect to the Product provided for in this Agreement, and is entering into this Agreement for purposes related to its business as such.

Section 6.2. Additional Representation and Warranty of Buyer. Buyer hereby represents and warrants to Seller that Buyer is a wholesale purchaser under this Agreement, and is purchasing the Product sold and purchased under this Agreement exclusively for resale.

Section 6.3. No Other Representations and Warranties. Each Party acknowledges that it has entered into this Agreement based solely upon the express representations and warranties set forth in this Agreement.

## ARTICLE 7 NONPERFORMANCE AND REMEDIES

Section 7.1. Failure to Deliver. Unless excused by Buyer's failure to perform or Force Majeure, if Seller fails to deliver (or to cause to be delivered) all or part of the required Hourly Contract Quantity at the Delivery Point(s), Seller will pay Buyer an amount for each MWh of such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price for the deficient Hourly Contract Quantity from the Replacement Purchase Price.

Section 7.2. Failure to Receive. Unless excused by Seller's failure to perform or Force Majeure, if Buyer fails to receive (or to cause to be received) all or part of the required Hourly Contract Quantity at the Delivery Point(s), Buyer will pay Seller an amount for each MWh of such deficiency equal to the positive difference, if any, obtained by subtracting the Replacement Sales Price from the Contract Price for the deficient Hourly Contract Quantity.

Section 7.3. Payment for Nonperformance. Payment of any amounts due under this Article 7 will be made by the nonperforming Party to the other Party at the applicable payment address

provided in Exhibit C hereto on or before the fifth Business Day following the presentation of the applicable invoice by such other Party; provided, that if such due date is not a Business Day, payment will be due on the next Business Day following such date. Late payments will accrue interest at the Interest Rate from the due date to the date of payment. If the nonperforming Party, in good faith, disputes any such invoice, the nonperforming Party will nonetheless pay the full amount of such invoice no later than the applicable due date, and will provide the other Party with a written explanation specifying in detail the amount in dispute and basis for the dispute. If the nonperforming Party is determined to be entitled to a refund of any such disputed amount, the amount of such refund will be paid to the nonperforming Party by the other Party within five Business Days of such determination, along with interest accrued at the Interest Rate from the date on which such amount was paid by the nonperforming Party until the date of payment of the refund.

Section 7.4. Acknowledgement of the Parties. The Parties hereby stipulate that the payment obligations set forth in this Article 7 are reasonable in light of the anticipated harm and the difficulty of estimation or calculation of actual damages, and each Party hereby waives the right to contest such payments as unfair, unreasonable, inadequate or void as a penalty. Without limiting to any extent the provisions of Article 8 (including with respect to the Events of Default described in Section 8.1(g) and Section 8.1(h)), the remedy set forth in this Article 7 will, with respect to the amount of such damages only, be the sole and exclusive remedy of the Parties for the failure of Seller to sell and deliver, and Buyer to purchase and receive, the Hourly Contract Quantity and all other damages and remedies are hereby waived.

## **ARTICLE 8 EVENTS OF DEFAULT AND REMEDIES**

Section 8.1. Events of Default. An “Event of Default” means, with respect to a Party (a “Defaulting Party”), the occurrence of any of the following

(a) the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five Business Days after notice thereof from the Non-Defaulting Party to the Defaulting Party;

(b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;

(c) any failure to perform any covenant set forth in this Agreement (other than any events that are otherwise specifically covered in this Section 8.1 as a separate Event of Default, or Seller’s obligation to sell and deliver, and Buyer’s obligation to purchase and receive, for which a separate remedy is provided in Article 7), if such failure is not excused by Force Majeure or cured within 20 Business Days after notice thereof from the Non-Defaulting Party to the Defaulting Party; provided, that if such failure is curable but such 20-Business Day period is not sufficient to enable the remedy or cure of such failure in performance, the Defaulting Party will, so long as it promptly after receipt of such notice commences, and thereafter diligently continues, to remedy such failure, have a reasonable additional period of time to remedy or cure such failure;



- (d) such Party becomes Bankrupt;
- (e) with respect to Seller only, the occurrence of a Letter of Credit Default;
- (f) with respect to Seller only, the occurrence of a Guaranty Default;
- (g) [REDACTED]

- (h) [REDACTED]

Section 8.2. Remedies Upon an Event of Default.

(a) If an Event of Default occurs and is continuing at any time, the Non-Defaulting Party may (a) by notice to the Defaulting Party, designate a date, not earlier than the date such notice is effective and not later than ten (10) days after the date such notice is effective, as an early termination date (the “Early Termination Date”) in respect of this Agreement, (b) withhold any payments due to the Defaulting Party under this Agreement; and (c) suspend performance due to the Defaulting Party under this Agreement. In the event that the Non-Defaulting Party designates an Early Termination Date, this Agreement will terminate as of the Early Termination Date.

(b) The Non-Defaulting Party will, effective as of the Early Termination Date, calculate in good faith the Non-Defaulting Party’s Gains or Losses and Costs (as hereafter defined) resulting from the termination of this Agreement. The Gains, Losses and Costs will be determined by comparing (x) the Contract Price for the Remaining Transactions under this Agreement had it not been terminated to (y) the relevant market prices for the Remaining Transactions either as quoted by a bona fide third-party offer or as reasonably expected to be available in the market under a replacement contract for this Agreement. To ascertain the market prices of a replacement contract, the Non-Defaulting Party may consider, among other valuations, quotations from leading dealers in energy contracts and other bona fide third party offers, in each case for firm energy that is generally equivalent to the Product in firmness. It is expressly agreed that the Non-Defaulting Party will not be required to enter into a replacement transaction in order to determine the Termination Payment (as hereafter defined). The Non-Defaulting Party will as quickly as reasonably practicable aggregate such Gains, Losses and Costs with respect to this Agreement into a single net amount (the “Termination Payment”) and notify the Defaulting Party thereof. If the Non-Defaulting Party’s aggregate Losses and Costs exceed its aggregate Gains, the Defaulting Party will, within five Business Days from the latter of (i) receipt of such notice or (ii) the effectiveness of termination of this Agreement, pay the net amount to the Non-Defaulting Party, together with interest on such amount at the Interest Rate from the Early Termination Date until paid. If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the amount of the Termination Payment will be zero.

[REDACTED]

(c) For purposes of this Agreement:

“Costs” means, with respect to a Party, brokerage fees, commissions and other similar transaction costs and expenses, including verifiable transaction break-up costs and costs incurred in providing to any Person credit assurances or assurances of performance, reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations under this Agreement or in entering into new arrangements which replace this Agreement, and attorneys’ fees and expenses and costs of collection, if any, incurred in connection with enforcing such Party’s rights under this Agreement.

“Gains” means, with respect to a Party, an amount equal to the Present Value of the economic benefit (net of Costs), if any, to such Party resulting from the termination of its obligations with respect to this Agreement, determined in a commercially reasonable manner.

“Losses” means, with respect to a Party, an amount equal to the Present Value of the economic loss (exclusive of Costs), if any, to such Party resulting from the termination of its obligations with respect to this Agreement, determined in a commercially reasonable manner.

“Present Value” means a present value calculation derived by using a discount rate equal to the per annum rate of interest equal to the prime lending rate, as published in *The Wall Street Journal* under “Money Rates,” for the date on which such present value calculation is made.

In no event, however, will a Party’s Gains, Losses or Costs include any penalties, ratcheted demand or similar charges, or any Transition Costs. At the time for payment of any amount due under this Section 8.2, each Party will pay all additional amounts payable by it to the other Party under or pursuant to this Agreement, but all such amounts will be netted and aggregated with any Termination Payment payable hereunder.

Section 8.3. Non-Defaulting Party’s Right to Setoff of Accounts. Without prejudice to its exercise of its rights under Section 8.2, the Non-Defaulting Party may from time to time set off any or all amounts which the Defaulting Party owes to it (whether under this Agreement or otherwise and whether or not then due) against any or all amounts which it owes to the Defaulting Party (whether under this Agreement or otherwise and whether or not then due); provided that any amount not then due which is included in such setoff will be discounted to Present Value as of the time of setoff (to take account of the period between the date of setoff and the date on which such amount would otherwise have been due).

Section 8.4. Costs for Exercise of Rights. After the occurrence of an Event of Default, the Defaulting Party will be responsible for all reasonable costs and expenses actually incurred by the Non-Defaulting Party in connection with the enforcement of its rights under this Agreement, including reasonable attorneys’ fees and expenses, both at trial and on any appeal, and costs of collection.

Section 8.5. Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use best commercially reasonable efforts to minimize any damages it may incur as a result of the other Party’s performance or non-performance of this Agreement; provided, however, that nothing in this Agreement will be construed to require a Party to settle any strike or labor dispute in which it may be involved.

## ARTICLE 9 FORCE MAJEURE AND LIMITATION OF LIABILITY

Section 9.1. Force Majeure Defined. “Force Majeure” means, subject to any limitations provided for in this Section 9.1, an event that prevents the Claiming Party from performing any of its obligations under this Agreement, that is not within the reasonable control of the Claiming Party, and that by the exercise of reasonable diligence the Claiming Party is unable to avoid, cause to be avoided, or overcome. Subject to the foregoing, events of Force Majeure may include, but are not restricted to:

(a) flood, washouts, drought, earthquake, landslides, storms, fire, hurricanes, tornadoes, lightning, or extreme weather conditions;

(b) acts of God; acts of the public enemy, acts of civil or military authority, war, blockades, insurrections, civil disturbances or disobedience, riots, and epidemics;

(c) strikes, lock-outs, or other industrial disturbances or labor disputes;

(d) accidents, sabotage, terrorism or vandalism;

(e) labor shortage or inability to obtain or curtailment of supplies of any materials or equipment;

(f) any interruption or curtailment of the CTCF or the operation of any Interconnection Facilities by (i) BPA or any other Transmission Provider under an interconnection agreement relating to the CTCF or (ii) BPA or any other Balancing Authority in whose Balancing Authority Area the CTCF is located;

(g) interruption or curtailment by a Transmission Provider, other than as provided in Section 9.1(f), but only if (i) the Party contracting with such Transmission Provider will have made arrangements with such Transmission Provider for firm transmission service, as defined under such Transmission Provider’s tariff, of the Product to be delivered or received at any Delivery Point(s) hereunder, (ii) such transmission service was interrupted or curtailed by the Transmission Provider, and (iii) the Party contracting with such Transmission Provider has exercised best commercially reasonable efforts to obtain firm or non-firm transmission service from any Transmission Provider over other paths;

(h) subject to Section 9.3(b), damage to or destruction of the CTCF during the Delivery Term;

(i) restraint by court order, or the action or inaction of, or inability to obtain, maintain or renew regulatory approvals from, any Governmental Authority unless such inability was caused by the violation of the terms thereof by the Party holding the applicable regulatory approval; and

(j) electrical disturbances originating in or transmitted through the affected Party’s electrical system or any interconnected system;

provided, that none of the following will constitute an event of Force Majeure: (v) the loss of Buyer's markets or Buyer's inability economically to use or resell Product purchased hereunder; (w) Seller's failure to contract for and reserve sufficient firm transmission capacity and service to deliver the Contract Quantity to any Delivery Point; (x) Buyer's failure to contract for and reserve sufficient firm transmission capacity and service to receive the Contract Quantity at, after and from any Delivery Point; (y) Seller's ability to sell energy to a market at a more advantageous price; or (z) Buyer's ability to purchase energy in or from any market at a more advantageous price.

Section 9.2. Effect of Force Majeure.

(a) If either Party is rendered unable by an event of Force Majeure to carry out, in whole or in part, its obligations under this Agreement, such Party (the "Claiming Party") will, as soon as practicable after the occurrence of the event, give the other Party notice thereof, including details of the Force Majeure event, the date of its commencement, the anticipated duration if ascertainable, the performance of the Claiming Party that is prevented by the Force Majeure, and the actions being taken to mitigate the effects of the Force Majeure. During the pendency of the Force Majeure but for no longer period, the Claiming Party will be excused, to the extent provided for in this Agreement, from the obligations of the Claiming Party under this Agreement that are prevented by the Force Majeure. The Claiming Party will use its best commercially reasonable efforts to remedy the Force Majeure with all reasonable dispatch. No Party will be relieved of liability for failure of performance to the extent that such failure is due to causes arising out of such Party's own negligence or to removable or remediable causes that such Party fails to remove or remedy within a reasonable time period. Notwithstanding any other provision of this Agreement, in no event will a Force Majeure excuse any obligation to make payments due or becoming due under this Agreement. During a Force Majeure, the non-Claiming Party will not be required to perform or resume performance of its obligations under this Agreement that correspond to the obligations of the Claiming Party that are excused by the Force Majeure.

(b)

[REDACTED]

Section 9.3. Termination or Amendment Relating to Force Majeure Events.

(a) [REDACTED]

(b) [REDACTED]

[REDACTED]

(c) In the event of termination pursuant to this Section 9.3, neither Party will have any liability whatsoever to the other Party (including liability for any Termination Payment) under or in connection with this Agreement; provided, however, that no such termination will relieve either Party of liability for any costs or other obligations incurred prior to the effectiveness of such termination.

Section 9.4. Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY WILL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN OR IN A TRANSACTION, THE OBLIGOR'S LIABILITY WILL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES WILL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. WITHOUT PREJUDICE TO THE CALCULATION OF ANY SETTLEMENT OR TERMINATION PAYMENT AMOUNT, NEITHER PARTY WILL BE LIABLE, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE, FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES; PROVIDED, HOWEVER, THAT IN NO EVENT WILL THE FOREGOING LIMITATIONS OF LIABILITY BE APPLIED TO LIMIT THE EXTENT OF THE LIABILITY OF EITHER PARTY TO THE OTHER FOR OR WITH RESPECT TO ANY INDEMNITY OR OTHER THIRD PARTY CLAIMS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. NOTHING IN THE FOREGOING WILL BE CONSTRUED TO LIMIT ANY LEGAL, EQUITABLE OR STATUTORY RIGHTS OF SETOFF OR ANY RIGHTS UNDER ANY PERFORMANCE ASSURANCE, OR TO PROHIBIT ANY ACTION TO ENFORCE ANY REMEDY PROVIDED UNDER THIS AGREEMENT.

REDACTED  
VERSION

Section 9.5. Disclaimer of Warranties. EXCEPT AS EXPRESSLY SET FORTH HEREIN, SELLER EXPRESSLY NEGATES ANY OTHER REPRESENTATION OR WARRANTY, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATION OR WARRANTY WITH RESPECT TO CONFORMITY TO MODELS OR SAMPLES, MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE.

Section 9.6. [REDACTED]

**ARTICLE 10  
NEW OR REVISED GREENHOUSE GAS STANDARDS; CHANGE IN LAW**

Section 10.1. New or Revised Greenhouse Gas Standards. In the event that a new or revised emission or performance standard or other new or revised operational or financial requirement or limitation directly or indirectly addressing greenhouse gas emissions is imposed by state or federal law, rules or regulatory requirements, this Agreement will be modified to the mutual satisfaction of the Parties; provided, that (i) any such modification will be subject to the review and approval of the WUTC, and (ii) if the Parties do not agree to modification of this Agreement, either Party, if it is adversely affected by the new standard, requirement or limitation, will be entitled to terminate this Agreement upon not less than three calendar days' notice to the other Party, and neither Party will incur any liability (including liability for any Termination Payment) for or on account of any such termination.

Section 10.2. Seller's Rights in Event of Change in Law.

(a) Without limiting any other provision of this Agreement, if Seller reasonably determines that the Change in Law Costs caused by, resulting from [REDACTED] to negotiate in good faith regarding any adjustments that should be made to the amounts payable under this Agreement to compensate Seller for such Change in Law Costs (including, if any Changes in Law require one-time capital improvements in connection with the CTCF, the terms on which the applicable Change in Law Costs are to be amortized over the remainder of the Contract Term). Prior to such negotiations, Seller will provide Buyer with documentation reasonably evidencing Seller's calculation of such Change in Law Costs, and an opportunity to discuss such documentation with Seller. [REDACTED]

[REDACTED]

[REDACTED]

(b) The Change in Law Threshold Amount will constitute a threshold to any sharing by Buyer in Change in Law Costs, and will not constitute a deductible amount unless otherwise agreed by the Parties. Once the aggregate Change in Law Costs have equaled or exceeded the Change Event Threshold Amount, Buyer will, subject to satisfaction of the requirements of Section 10.2(a), be responsible for Buyer's agreed share of any and all Change in Law Costs (unless otherwise agreed by the Parties).

**ARTICLE 11  
BILLING AND PAYMENT**

Section 11.1. Billing and Payment. On or before the 10<sup>th</sup> day of each Month following a full or partial Month during the Delivery Term, Seller will render to Buyer (by email addressed as specified in Exhibit C hereto) an invoice setting forth the total Contract Price for all Hourly Contract Quantities delivered during such preceding Month and any other charges due Seller; provided, that Seller will use its best commercially reasonable efforts to provide to PSE (at such email address), on or before the 2<sup>nd</sup> Business Day of each Month following a full or partial Month during the Delivery Term, an estimated invoice setting forth the total Contract Price for all Hourly Contract Quantities delivered during such preceding Month and any other charges due Seller. Billing and payment will be based on the Contract Price and on Scheduled Hourly Contract Quantities. Payment of any such invoice will be made by Buyer to Seller at the payment address provided in Exhibit C hereto on or before the later of (a) the 20<sup>th</sup> day of the Month] in which the invoice was rendered or (b) the 10<sup>th</sup> calendar day following the timely presentation of such invoice; provided, that if such due date is not a Business Day, payment will be due on the next Business Day following such date. Late payments will accrue interest at the Interest Rate from the due date to the date of payment. If Buyer, in good faith, disputes any such invoice, Buyer will nonetheless pay the full amount of such invoice no later than the applicable due date, and will provide Seller with a written explanation specifying in detail the amount in dispute and basis for the dispute. If Buyer is determined to be entitled to a refund of any such disputed amount, the amount of such refund will be paid by Seller to Buyer within 10 days of such determination, along with interest accrued at the Interest Rate from the date on which such amount was paid by Buyer until the date of payment of the refund.

Section 11.2. Netting and Setoff. If Buyer and Seller are each required to pay to the other an amount in the same Month under this Agreement, then such amounts with respect to each Party may be aggregated and the Parties may discharge their obligations to pay through netting, in which case the Party, if any, owing the greater aggregate amount may pay to the other Party the difference between the amounts owed. Each Party reserves to itself all rights, setoffs, counterclaims and other remedies and defenses consistent with Article 8 (to the extent not expressly herein waived or denied) which such Party has or may be entitled to arising from or



out of this Agreement. The obligations to make payment under this Agreement between the Parties may be set off against each other.

Section 11.3. Audit. Each Party (and its representatives) will have the right during the Contract Term, at such Party's sole expense, upon reasonable advance notice and during normal working hours, at a place of business of the other Party, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Article 11. If requested, a Party will provide to the other Party statements evidencing the quantities of Product delivered at the Delivery Point(s). If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be promptly made and will bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of one year from the rendition thereof; and provided, further, that this Section 11.3 will survive any termination of this Agreement for a period of three years from the date of such termination for the purpose of such statement and payment objections. Any information or documentation provided for purposes of any examination under this Section 11.3 will be considered Confidential Information and will be subject to the confidentiality provisions of Article 13.

## ARTICLE 12 PERFORMANCE SECURITY

Section 12.1. Security Requirement.

(a) [REDACTED]

(b) [REDACTED]

## ARTICLE 13 CONFIDENTIALITY OBLIGATIONS; FINANCIAL REPORTS

Section 13.1. Confidential Information. For purposes of this Agreement, "Confidential Information" will mean (a) any information or documentation disclosed or provided by Seller to Buyer pursuant to Section 9.3(b), Section 10.2, Section 11.3 or Section 13.9, (b) all notes, reports, documents, analyses, compilations, forecasts, studies and other materials of each Party that reflect any of the foregoing, and the substance of any discussions relating thereto, and (c) any other confidential or proprietary information of a Party or its Affiliates or any of its or their representatives relating to this Agreement and revealed to the other Party or its Affiliates or any of its or their representatives during the Contract Term and designated in writing as confidential at the time of such disclosure, and the content or substance of such information, including economic data, load data, market information, and other pricing information.

Section 13.2. Obligations of the Parties Concerning Confidential Information. From and after the Agreement Date, the Party receiving Confidential Information (such Party, the “Recipient Party”) from the other Party (such Party, the “Disclosing Party”) agrees that it will use the Confidential Information only for purposes of monitoring and assessing the Disclosing Party’s creditworthiness and performance security obligations under this Agreement, for purposes of assessing or enforcing the Recipient Party’s rights under this Agreement, or, in the case of information provided pursuant to Section 9.3(b), Section 10.2, Section 11.3 or Section 13.9, for the purposes specifically permitted by the respective such section, and will have no right to use and will not use at any time any part of the Confidential Information directly or indirectly for any other purpose whatsoever. The Recipient Party agrees that it will not, without the prior written consent of the Disclosing Party, disclose any Confidential Information to any Person (other than to the Recipient Party’s Related Parties having a need to know such information for the purpose set forth above, and then only on condition that each such Related Party will be bound by the restrictions of this Article 13 to the same extent as the Recipient Party and that the Recipient Party will be liable to the other Party for any breach by any such Related Party of the restrictions set forth in this Article 13).

Section 13.3. Reproduction of Confidential Information. All written or machine-readable or other tangible Confidential Information will be maintained in a secure location on the premises of the Recipient Party at all times. In order to ensure the confidential and secret nature of the Confidential Information, the Recipient Party is not authorized to and will not under any circumstances copy, print or otherwise reproduce any part of the Confidential Information whatsoever for any purpose, without in each instance the prior written authorization of the Disclosing Party specifically referring to this Agreement; provided, that the Recipient Party may keep a copy of the Confidential Information as provided in Section 13.7 or for purposes of assessing or enforcing its rights under this Agreement.

Section 13.4. Disclosure Requests or Legal Proceedings. If the Recipient Party or any of its Related Parties is requested or required in any legal or regulatory proceeding or process (including, without limitation, pursuant to any request under any state or federal public disclosure law to which the Recipient Party or any of its Related Parties may be subject, or the requirements of any securities exchange) to disclose any Confidential Information, the Recipient Party will, except as and to the extent prohibited by applicable law or regulation, promptly notify the Disclosing Party of such request or requirement so that the Disclosing Party may take steps to resist, clarify or narrow such request or requirement and seek an appropriate protective order or other reliable assurances of nondisclosure, and the Recipient Party will cooperate reasonably with the Disclosing Party, at the Disclosing Party’s cost and expense, in connection therewith. If, in the absence of a protective order or waiver from the Disclosing Party hereunder, the Recipient Party or its Related Parties are compelled to disclose any Confidential Information or else stand liable for contempt or suffer other civil or criminal liability, the Recipient Party and its Related Parties may disclose only such Confidential Information, and then only to the Person compelling disclosure, as is in the opinion of Recipient Party’s counsel required by law and, in connection with such compelled disclosure, the Recipient Party and its Related Parties will use their best commercially reasonable efforts, at the Disclosing Party’s cost and expense, to obtain from any Person to which disclosure is made written assurance that confidential treatment will be accorded to such Confidential Information.

Section 13.5. Information Not Subject to Confidentiality Restrictions. The provisions of this Article will not be applicable to information which (i) is or becomes generally available to the public other than as a direct or indirect result of an intentional or inadvertent disclosure by the Recipient Party or any Related Parties of the Recipient Party or anyone to whom the Recipient Party or any of its Related Parties transmits the information, (ii) was available to the Recipient Party prior to its disclosure to the Recipient Party by the Disclosing Party or any of the Disclosing Party's Related Parties, provided that such information is not known to the Recipient Party, after due inquiry, to be subject to another confidentiality agreement with, or other obligation of secrecy to, the Disclosing Party or another party, (iii) becomes available to the Recipient Party from a source other than the Disclosing Party or any of the Disclosing Party's Related Parties, provided that such source is not known to the Recipient Party, after due inquiry, to be subject to another confidentiality agreement with, or other obligation of secrecy to, the Disclosing Party or another party, or (iv) is independently developed by the Recipient Party, other than in connection with this Agreement.

Section 13.6. Injunctive Relief. The Recipient Party acknowledges that a monetary remedy for a breach of this Article 13 will be inadequate and will be impracticable and extremely difficult to prove, and that any such breach would cause the Disclosing Party irreparable harm. In the event of such a breach, in addition to any other available rights and remedies, the Disclosing Party will be entitled to temporary and permanent injunctive relief, including temporary restraining orders, preliminary injunctions and permanent injunctions, without the necessity of posting a bond or making any undertaking in connection therewith and without the necessity of proving actual damages. Any such requirement of a bond or undertaking is hereby waived by the Recipient Party, and the Recipient Party acknowledges that in the absence of such a waiver, a bond or undertaking might be required by the court.

Section 13.7. Return of Confidential Information. Upon (i) the expiration or termination for any reason of this Agreement, (ii) the delivery at any time by the Disclosing Party to the Recipient Party of a written notice or demand requesting the return of the Confidential Information to the Disclosing Party, or (iii) the occurrence of an Event of Default with respect to the Recipient Party, the Recipient Party will immediately return to the Disclosing Party any and all Confidential Information and all other materials related thereto at its own cost and expense; and the Recipient Party will not thereafter make any use whatsoever of any Confidential Information; provided, however, that the Recipient Party will be entitled to retain a copy of any such Confidential Information as is required to satisfy the document retention requirements of any applicable law or regulation or securities exchange.

Section 13.8. Term of Confidentiality Obligations. The obligations of the Parties under this Article 13 will continue for a period of three years from and after the termination or expiration of this Agreement.

Section 13.9. Financial Reports. If Buyer's accounting personnel in good faith determine that, for purposes of generally accepted accounting principles applied in the United States, Seller is a variable interest entity and that, as a result of Seller being a variable interest entity, consolidated financial reporting will be required for Buyer and Seller, Buyer will so notify Seller in writing. Following such notice, if requested by Buyer, Seller will deliver (i) within 90 days following the end of each fiscal year of Seller, a copy of Seller's financial statements containing consolidated

financial statements of Seller for such fiscal year (which financial statements will be audited, if available, and otherwise unaudited and certified by an officer of Seller) and (ii) within 45 days after the end of each of the first three fiscal quarters of each fiscal year of Seller, unaudited consolidated financial statements for such fiscal quarter. In all cases the statements will be for the most recent accounting period and prepared in accordance with generally accepted accounting principles or international financial reporting standards; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certifications, any failure to deliver such financial statements within the applicable such time periods will not be an Event of Default under this Agreement so long as Seller diligently pursues the preparation, certification and delivery of the statements.

#### **ARTICLE 14 DISPUTE RESOLUTION**

##### Section 14.1. Submission to Management.

(a) Seller and Buyer will attempt to resolve any dispute, controversy, claim, counterclaim, demand and cause of action arising out of or relating to this Agreement (including any provision of any Exhibit, Appendix or Annex hereto), or the breach, termination or validity hereof (“Dispute”) by negotiation between representatives who will have the authority to settle the Dispute. Any Party may give the other Party written notice of any Dispute not resolved in the ordinary course of business. Within 10 Business Days after delivery of the disputing Party’s notice, the aforementioned representatives will attempt to meet at a mutually acceptable time and place to resolve the Dispute.

(b) If such designated representatives are unable to resolve a Dispute under Section 14.1(a) within 30 days after the initial meeting of such representatives to resolve the Dispute, then upon request of any Party, such Dispute will be referred to a senior officer designated by Seller and a senior officer designated by Buyer for resolution. If any Dispute is not resolved within 30 days following receipt of any such request for submission to senior officers, such Dispute will be subject to resolution by a court of competent jurisdiction, and neither Party waives any of its rights or remedies in respect of such Dispute. All negotiations held pursuant to this Section 14.1 will be confidential, and evidence thereof will not be admissible in any subsequent proceeding.

#### **ARTICLE 15 ASSIGNMENT; BINDING EFFECT**

##### Section 15.1. Assignment.

(a) Neither Party will assign this Agreement or any of its rights or obligations hereunder (whether by operation of law or otherwise) without the prior written consent of the other Party, which consent will not be unreasonably withheld or delayed. Despite the foregoing, either Party may, without the need for consent from the other Party, (1) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (2) transfer or assign this Agreement to an Affiliate of such Party, or (3) transfer or assign this Agreement to any Person succeeding to all or

substantially all of the assets of such Party; provided, however, that in the case of the foregoing clauses (2) and (3), any such assignee will be required to agree in writing to assume and be bound by each and all of the obligations of the assignor hereunder, either by operation of law or pursuant to an agreement reasonably satisfactory to the other Party and, in the case of any assignment by Seller, will be required to have a Credit Rating not less than the Minimum Credit Rating or to provide a Guaranty from a Guarantor having a Credit Rating not less than the Minimum Credit Rating or other Performance Assurance, in each case in a form and in an amount reasonably acceptable to Buyer. Transfers or assignments not in compliance with the requirements of this section will be void. For purposes of this Article 15, a sale, transfer or assignment of, or merger, consolidation or amalgamation involving 50 percent or more of the assets or outstanding voting securities of or other equity interests in a Party will be deemed to constitute a transfer or assignment of this Agreement by such Party.

(b) Without limiting the provisions of Section 15.1(a), in the event of any sale, transfer or assignment of any or all of the CTCF, Seller will transfer and assign to the purchaser, transferee or assignee with respect to the CTCF, and Seller will cause such purchaser, transferee or assignee to accept and assume, each and all of the obligations of Seller under this Agreement with respect to the CTCF.

Section 15.2. Binding Effect. Subject to the restrictions set forth in Section 15.1, this Agreement will inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Subject to consent of the non-assigning or non-transferring Party to any transfer or assignment as provided in Section 15.1(a), the assigning or transferring Party will, effective upon the effectiveness of such transfer or assignment, be relieved of any of its obligations or liabilities under this Agreement accruing or arising from and after the effectiveness of such transfer or assignment.

## **ARTICLE 16 NOTICES**

Section 16.1. Notices. All notices, requests, statements or payments will be made to the addresses and persons specified in Exhibit C hereto. All notices, requests, statements or payments will be made in writing except where this Agreement expressly provides that notice may be made orally. Notices required to be in writing will be delivered by hand delivery, overnight delivery, facsimile, or e-mail (so long as a copy of such e-mail notice is provided promptly (and in any event not less than one Business Day) thereafter by hand delivery, overnight delivery, or facsimile). Notice by facsimile will (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it will be deemed received on the next Business Day); provided, that Scheduling notifications sent by facsimile will be treated as received when confirmation of successful transmission is received. Notice by hand delivery or overnight delivery will be deemed to have been received when delivered. Notice by e-mail will be deemed to have been received when delivered, so long as a copy of such e-mail notice is provided promptly (and in any event not less than one Business Day) thereafter by hand delivery, overnight delivery, or facsimile. Notice by telephone will be deemed to have been received at the time the call is

received. A Party may change its address by providing notice of the same in accordance herewith.

**ARTICLE 17**  
**APPROVAL OF AGREEMENT BY WUTC**

Section 17.1. Initial WUTC Approval. Notwithstanding any other provision of this Agreement, the obligations of Seller and Buyer under this Agreement are subject to and contingent upon the issuance by the WUTC of a final order approving this Agreement and confirming the inclusion in Buyer's costs of the full amount of the Contract Price, plus all or substantially all of Buyer's transaction costs, and all other amounts permitted by RCW 80.04.570, each of such approvals and orders to be in form and substance substantially the same as the approvals and orders requested by Buyer in its applicable filing with the WUTC (collectively, "WUTC Approval"). If the WUTC has not issued a final order on the petition within 180 days from the date the petition is filed, or if the WUTC disapproves the petition, this Agreement (and each and all of the rights and obligations of both Parties under this Agreement) is null and void and will be deemed terminated *ab initio*.

[REDACTED]

Section 17.2. [REDACTED]

(a) [REDACTED]

[REDACTED]

(b) [REDACTED]

Section 17.3. [REDACTED]

[REDACTED]

Section 17.4. Severability. The provisions of Section 17.1, Section 17.2, Section 17.3 and this Section 17.4 are severable from the other provisions of this Agreement and will survive and remain in full force and effect following any such termination.

Section 17.5. [REDACTED]

## ARTICLE 18 MISCELLANEOUS

Section 18.1. Rates and Terms Binding; FERC Standard of Review.

(a) Absent the agreement of both Parties to the proposed change, the standard of review for changes to any section or any other provision of this Agreement, and any other agreements entered into in connection with this Agreement, including any credit, security, margin, guaranty or similar agreement (this Agreement and each and all of the foregoing, collectively, the “Covered Agreements”) (other than changes to either Party’s market-based rate tariff that do not have any application to or effect on any Covered Agreement), (to the extent that any waiver in subsection (B) below is unenforceable or ineffective as to such Party), a non-party or FERC acting *sua sponte*, may be made only if the person seeking the change demonstrates that such change is may be made only if the person seeking the change demonstrates that such change is required by the “public interest” in accordance with 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) and clarified by Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish County, 554 U.S. 527 (2008), and NRG Power Marketing, LLC v. Maine Public Utilities Commission, 558 U.S. \_\_\_ (2010) (the “Mobile-Sierra” doctrine).

(b) In addition, and notwithstanding the foregoing subsection (a), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party will unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes that may occur in applicable law or market conditions. In the event that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (b) will not apply, provided that, consistent with the foregoing



subsection (a), such change may be made only if the person seeking the change demonstrates that such change is required by the “public interest” as set forth in the foregoing subsection (a).

Section 18.2. Entire Agreement; Amendments. This Agreement and the exhibits hereto constitute the entire agreement between the Parties with respect to the subject matter of this Agreement and such exhibits. There are no prior or contemporaneous agreements or representations affecting the same subject matter other than those herein expressed. Except for any matters which, in accordance with the express provisions of this Agreement, may be resolved by oral agreement between the Parties, no amendment, modification or change herein will be enforceable unless reduced to writing and executed by both Parties.

Section 18.3. Governing Law; Jurisdiction and Venue; Waiver of Jury Trial.

(a) THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER WILL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF WASHINGTON, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW THAT WOULD REQUIRE THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION.

(b) WITH RESPECT TO ANY SUIT, ACTION OR PROCEEDINGS RELATING TO THIS AGREEMENT (“PROCEEDINGS”), EACH PARTY IRREVOCABLY: (I) SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF WASHINGTON AND THE UNITED STATES DISTRICT COURT LOCATED IN KING COUNTY, WASHINGTON; AND (II) WAIVES ANY OBJECTION THAT SUCH PARTY MAY HAVE AT ANY TIME TO THE LAYING OF VENUE OF ANY PROCEEDINGS BROUGHT IN ANY SUCH COURT, WAIVES ANY CLAIM THAT SUCH PROCEEDINGS HAVE BEEN BROUGHT IN AN INCONVENIENT FORUM AND FURTHER WAIVES THE RIGHT TO OBJECT, WITH RESPECT TO SUCH PROCEEDINGS, THAT SUCH COURT DOES NOT HAVE ANY JURISDICTION OVER SUCH PARTY. NOTHING IN THIS AGREEMENT PRECLUDES EITHER PARTY FROM BRINGING PROCEEDINGS IN ANY OTHER JURISDICTION IN ORDER TO ENFORCE ANY JUDGMENT OBTAINED IN ANY PROCEEDINGS REFERRED TO IN THE PRECEDING SENTENCE, NOR WILL THE BRINGING OF SUCH ENFORCEMENT PROCEEDINGS IN ANY JURISDICTION PRECLUDE THE BRINGING OF ENFORCEMENT PROCEEDINGS IN ANY OTHER JURISDICTION.

(c) EACH PARTY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY 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 HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING HEREINTO. EACH PARTY HEREBY WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR 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.

Section 18.4. Non-Waiver. No waiver by any Party hereto of any one or more defaults by the other Party in the performance of any of the provisions of this Agreement will be construed as a waiver of any other default or defaults whether of a like kind or different nature.

Section 18.5. Severability. Except as otherwise provided in this Agreement, any provision or article declared or rendered unlawful by a Governmental Authority with jurisdiction over the Parties, or deemed unlawful because of a change in Governmental Rule, will not otherwise affect the lawful obligations that arise under this Agreement.

Section 18.6. Headings. The headings used for the sections and articles herein are for convenience and reference purposes only and will in no way affect the meaning or interpretation of the provisions of this Agreement.

Section 18.7. No Third Party Beneficiaries. Nothing in this Agreement will provide any benefit to any third party or entitle any third party to any claim, cause of action, remedy or right of any kind, it being the intent of the Parties that this Agreement will not be construed as a third party beneficiary contract.

Section 18.8. Relationship of the Parties. The Parties are independent contractors, and will not be deemed to be partners, joint venturers or agents of each other for any purpose. Nothing contained in this Agreement will be construed to create a partnership, joint venture, agency or other relationship that may invoke fiduciary obligations between the Parties.

Section 18.9. Counterparts; Execution by Facsimile. This Agreement may be executed in any number of counterparts, each of which will be an original and all of which, when taken together, will constitute one agreement, and this Agreement will become effective upon receipt of a counterpart hereof from each of the Parties. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic transmission will be effective as delivery of a manually executed counterpart of this Agreement.

Section 18.10. Attorneys' Fees. In the event of any Action between the Parties relating to this Agreement or the subject matter hereof, the prevailing Party will be entitled to recover its reasonable attorneys' fees and expenses and costs of litigation, in addition to any other relief granted or awarded.

Section 18.11. Forward Contract; Swap Agreement. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" and a "forward agreement" and therefore a "swap agreement" within the meaning of the United States Bankruptcy Code.

Section 18.12. Telephone Recordings. The Parties intend that telephonic communications between the Parties may be employed as a matter of normal course in the administration of the provisions of Article 3 and Article 4 of this Agreement. Each Party agrees that it will not contest or assert any defense (except a defense that the tapes or other recording device has been actively tampered with) to the validity or enforceability of such telephonic communications under laws

relating to whether certain agreements are to be in writing or signed by the Party to be thereby bound or the authority of any employee of such Party to make such communication. Each Party consents to the recording of its representatives' telephone conversations without any further notice. All recordings or electronic communications may be introduced into evidence to prove oral agreements between the Parties, subsequent to the execution of this Agreement, with respect to matters arising under Article 3 and Article 4. The provisions of this section will not under any circumstances apply to any amendment of this Agreement, which will be in writing and signed by both Parties.


Section 18.13. Construction. This Agreement and any documents or instruments delivered pursuant hereto will be construed without regard to the identity of the Person who drafted the various provisions of the same. Each and every provision of this Agreement and such other documents and instruments will be construed as though the Parties participated equally in the drafting of the same. Consequently, the Parties acknowledge and agree that any rule of construction that a document is to be construed against the drafting Party will not be applicable either to this Agreement or such other documents and instruments.

Section 18.14. Winding Up Arrangements. Upon expiration or termination of this Agreement, any monies, penalties or other charges due and owing by either Party to the other will be paid within 90 days after such expiration or termination.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, each Party has caused this Agreement to be executed on its behalf by its duly authorized representative, effective as of the Agreement Date. This Agreement will not become effective as to either Party unless and until executed by both Parties.

**TRANSALTA CENTRALIA GENERATION  
LLC**

By:  \_\_\_\_\_

Its: President \_\_\_\_\_

By:  \_\_\_\_\_

Its: TREASURER \_\_\_\_\_

**PUGET SOUND ENERGY, INC.**

By:  \_\_\_\_\_

Its: SVP & CFO \_\_\_\_\_

**EXHIBIT A**  
**to**  
**Coal Transition Power Purchase and Sale Agreement**

**ALTERNATE DELIVERY POINTS**

- 1. [REDACTED]
- 2. [REDACTED]
- 3. [REDACTED]
- 4. [REDACTED]

**EXHIBIT B**  
**to**  
**Coal Transition Power Purchase and Sale Agreement**

**HOURLY CONTRACT QUANTITY AND CONTRACT PRICE TABLES**

The following tables illustrate the Hourly Contract Quantity and Contract Price for the identified periods after applying the formulas in Section 3.1.

<b>Hourly Contract Quantity</b>		
<b>Starting</b>	<b>Ending</b>	<b>MWH/hr</b>
December 1, 2014	November 30, 2015	180
December 1, 2015	November 30, 2016	280
December 1, 2016	November 30, 2017	380
December 1, 2017	November 30, 2018	380
December 1, 2018	November 30, 2019	380
December 1, 2019	November 30, 2020	380
December 1, 2020	November 30, 2021	380
December 1, 2021	December 31, 2022	380
January 1, 2023	December 31, 2023	380
January 1, 2024	December 31, 2024	380
January 1, 2025	December 31, 2025	300

<b>Contract Price</b>		
<b>Starting</b>	<b>Ending</b>	<b>\$/MWH</b>
December 1, 2014	November 30, 2015	██████
December 1, 2015	November 30, 2016	██████
December 1, 2016	November 30, 2017	██████
December 1, 2017	November 30, 2018	██████
December 1, 2018	November 30, 2019	██████
December 1, 2019	November 30, 2020	██████
December 1, 2020	November 30, 2021	██████
December 1, 2021	November 30, 2022	██████
December 1, 2022	November 30, 2023	██████
December 1, 2023	November 30, 2024	██████
December 1, 2024	November 30, 2025	██████
December 1, 2025	December 31, 2025	██████

**EXHIBIT C**  
**to**  
**Coal Transition Power Purchase and Sale Agreement**

**NOTICES AND PAYMENT**

Seller: TransAlta Centralia Generation  
LLC

Buyer: Puget Sound Energy, Inc.

**All Notices:**

Street: 724 Columbia St NW, Suite 320

City: Olympia, WA 98501

**All Notices:**

Postal Address: P.O. Box 97034  
Bellevue, WA 98009-9734

Street Address: 10885 NE 4<sup>th</sup> Street  
Bellevue, WA 98004  
(unless otherwise specified  
below)

Attn: Corporate Secretary [REDACTED]  
Phone: [REDACTED]  
Facsimile: [REDACTED]  
Duns: N/A  
Federal Tax ID Number: [REDACTED]

Attn: Senior Vice President Energy  
Operations  
Phone: [REDACTED]  
Facsimile: [REDACTED]  
Duns: N/A  
Federal Tax ID Number: [REDACTED]

**Invoices:**

Attn (automated):  
[REDACTED]  
Attn: Accounts Payable [REDACTED]  
Phone: [REDACTED]  
Facsimile: [REDACTED]

**Invoices:**

Attn (automated):  
[REDACTED]  
Attn.: Energy Accounting [REDACTED]  
[REDACTED]  
Phone: [REDACTED]  
Facsimile: [REDACTED]

**Scheduling:**

Attn: Power Scheduling West Desk  
Phone: [REDACTED]  
Facsimile: [REDACTED]

**Scheduling:**

Attn: Supervisor Power Supply  
Operations [REDACTED]  
Phone: [REDACTED]  
Facsimile: [REDACTED]

**Payments:**

Attn (automated):  
[REDACTED]  
Attn: Energy Marketing [REDACTED]  
Phone: [REDACTED]  
Facsimile: [REDACTED]

**Payments:**

Attn: Energy Accounting [REDACTED]  
Phone: [REDACTED]  
Facsimile: [REDACTED]

**Wire Transfer:**

BNK: [REDACTED]  
ABA: [REDACTED]  
ACCT: [REDACTED]  
NAME: TransAlta Centralia Generation  
LLC

**Wire Transfer:**

BNK: [REDACTED]  
ABA: [REDACTED]  
ACCT: [REDACTED]  
NAME: Puget Sound Energy, Inc.

**Credit and Collections:**

Attn (automated):  
[REDACTED]  
Attn: Energy Marketing [REDACTED]  
Phone: [REDACTED]  
Facsimile: [REDACTED]

**Credit and Collections:**

Attn: Credit Risk Department  
355 110th Avenue, NE (P2)  
Bellevue, WA 98004  
Phone: [REDACTED]  
Facsimile: [REDACTED]

**With additional Notices of an Event of Default to:**

Attn: Director, Plant Operations [REDACTED]  
[REDACTED]  
Phone: [REDACTED]  
Facsimile: [REDACTED]

**With additional Notices of an Event of Default to:**

Attn: General Counsel  
Phone: [REDACTED]  
Facsimile: [REDACTED]

Attn (automated):  
[REDACTED]  
Attn: Corporate Secretary TransAlta  
Corp [REDACTED]  
Phone: [REDACTED]  
Facsimile: [REDACTED]



**EXHIBIT D**  
to  
**Coal Transition Power Purchase and Sale Agreement**

[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]