

Prototype Natural Gas Tolling Agreement Term Sheet

Background: This Prototype Natural Gas Tolling Agreement Term Sheet (“Term Sheet”) sets forth the current requirements that PSE wants the Respondent to address or incorporate into any proposal made to PSE that contemplates generating energy products for PSE from a natural gas-fired electric generating facility. It is intended to identify certain, but not all, of the elements of a potential transaction that would be embodied in a definitive Tolling Agreement.

PSE prefers proposals consistent with the terms described in this Term Sheet. However, PSE will consider pricing structures that are different from the structure contained in this Term Sheet, if proposed.

By submitting its proposal, Respondent acknowledges that the RFP, including this Term Sheet, has been prepared by PSE as part of PSE's ongoing process of integrated resource planning and that PSE is considering alternative arrangements for the procurement of energy products. This Term Sheet is an integral part of, and subject to, the terms and conditions of the RFP. This Term Sheet shall not be interpreted as an offer, agreement or commitment by PSE to acquire any energy product. Also, this Term Sheet shall not limit, restrict or obligate PSE with regard to the conduct of its integrated resource planning process, the potential implementation of any plan or program of resource procurement or the actual procurement of any energy product.

PSE reserves the right to reject any and all proposals received in response to the RFP, request the submission of different proposals for other energy products and/or seek to acquire energy products from one or more parties other than any Respondent. PSE may also modify, change, supplement or

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delete any and all provisions of this Term Sheet, or withdraw and cancel the RFP.

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

Generating Facility: A natural gas-fired electric generation facility with a [planned] nameplate capacity of [_____] MW to be [developed and] owned by Seller and located [_____].

Transaction: Seller shall provide to Buyer the Tolling Services beginning [_____] ¹ (the “Delivery Date”) through the expiration of the Term whereby Buyer shall deliver fuel to the Generating Facility at the Gas Delivery Point, the fuel shall be converted into energy at the Generating Facility by the Seller and the energy generated shall be delivered to Buyer at the Energy Delivery Point pursuant to a Tolling Agreement. Buyer prefers to be the exclusive recipient of Tolling Services from the Generating Facility, but will consider non-exclusive arrangements.²

All ancillary services from the Generating Facility, as further described and defined below, as well as any associated electrical capacity rights shall accrue to Buyer.

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

Gas Delivery Point: [_____] (“Gas Delivery Point”).

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

¹ If the Generating Facility is under development, the Delivery Date shall be the Commercial Operation Date.

² For purposes of this template, PSE has assumed that it will be the exclusive toller. If Respondent has an alternative proposal, it should cover scheduling issues between the multiple offtakers.

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Contract Price:	The Contract Price, and the components thereof, are set forth in Schedule I attached hereto. The Contract Price includes the Monthly Capacity Payment, Variable O&M Charge, Start-Up Charge and Heat Rate Adjustment (as described in “Guaranteed Heat Rate” and Schedule II).
Gas Arrangements:	Buyer will be responsible for making arrangements and paying all costs associated with fuel supply and transportation to the Gas Delivery Point.
Guaranteed Heat Rate:	[_____] MMBtu/MWh. Seller shall be entitled to an adjustment if the Facility exceeds or fails to meet the Guaranteed Heat Rate in any month during the Term after the Delivery Date, as calculated pursuant to Schedule II attached.
Ancillary Services:	All commercial products produced by or related to the Generating Facility, including but not limited to spinning reserves, operating reserves, black start capability, balancing energy, reactive power and regulation service.
Test Power; Test Fuel:	Buyer and Seller shall, as part of the negotiation of the definitive agreements, mutually decide how to allocate responsibilities with respect to test fuel and test power, including, among other things, the provision of test fuel to the Generating Facility by Seller, the purchase of test power by Buyer or third parties, or other appropriate arrangements.
Commercial Operation³:	Commercial Operation shall mean, with respect to the Generating Facility, that date designated by Seller and confirmed by Buyer on the Generating Facility has been placed in commercial operation, as evidenced by an officer’s certificate of Seller and a confirmation from Buyer (which confirmation shall not be unreasonably withheld or delayed), but such date shall be no earlier than the date upon which the following have occurred: (i) the interconnection agreement for the Generating Facility has been executed, (ii) the Generating Facility has been satisfactorily

³ To be included if the Generating Facility is under development or construction.

tested and (iii) all related facilities and rights have been completed or obtained, including all interconnection facilities and substations, to allow for continuous operation of the Generating Facility and the sale of energy, capacity and Ancillary Services therefrom ("Commercial Operation").

Seller shall provide a Guaranteed Commercial Operation Date for the Generating Facility. The Guaranteed Commercial Operation Date shall be extended for delays caused by Buyer or force majeure events, subject to compliance by Seller of its obligation to mitigate such delays. In the event Seller fails to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, Seller shall be required to pay to Buyer liquidated damages for each day of delay beyond the Guaranteed Commercial Operation Date in the amount per day of \$[] per MW of the Generating Facility's expected nameplate capacity. If the Commercial Operation Date has not been achieved within [] days after the Guaranteed Commercial Operation Date, Seller shall be in default under the Tolling Agreement and Buyer shall be entitled to terminate the Tolling Agreement and seek damages or exercise other remedies at law or equity.

**Development
Milestones⁴:**

Seller shall use commercially reasonable efforts to achieve the agreed upon Development Milestones for the Generating Facility, which shall include "interim" major milestones, such as receipt of all necessary permits, achieving financial closing, the commencement of physical construction, etc. The guaranteed Development Milestone dates shall be subject to extension for delays caused by Buyer or force majeure events, subject to compliance by Seller of its obligation to mitigate such delays. In the event Seller fails to achieve the agreed upon major Development Milestones on or before the prescribed guaranteed date therefor, Seller shall be required to pay to Buyer "interim" liquidated damages for each day of delay beyond the prescribed date in the amount per day of \$[] per MW of the Generating Facility's expected nameplate capacity. If the Guaranteed

⁴ To be included if the Generating Facility is under development.

Commercial Operation Date ultimately is achieved despite Seller's failure to satisfy one of more of the other major Development Milestones, Buyer shall refund such interim liquidated damages to Seller.

Standard of Operation

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

**Transmission Services;
Interconnection:**

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

Capacity Tests:

Prior to the Delivery Date, Seller shall establish the tested capacity (the "Tested Capacity") of the Generating Facility pursuant to a performance test conducted in accordance with procedures to be agreed upon by the Parties. Each Party shall have the right to request a limited number of additional performance tests at the expense of the requesting party to redetermine the Generating Facility's Tested Capacity. If as the result of any performance test, the Tested Capacity of the Generating Facility is less than [____] MW (the "Minimum

Capacity”), the Monthly Capacity Payment shall be appropriately reduced until such time that Seller shall have demonstrated, to Buyer’s reasonable satisfaction, that the Tested Capacity shall have been restored.

Metering:

Subject to the requirements of the interconnection agreement for the Generating Facility, Seller shall be responsible for the provision, maintenance, reading and testing of all electric and natural gas metering equipment in conformance with all applicable regulatory requirements, with Buyer having rights to inspect, observe tests and conduct its own tests in its reasonable discretion.

**Scheduling
Coordinator;
Imbalances:**

Buyer shall be responsible for arranging all scheduling services necessary to ensure compliance with applicable regional power scheduling regulations and protocols. Buyer and Seller shall prepare and put in place certain mutually acceptable scheduling protocols to be followed by Buyer, including the nature and extent of information to be utilized to prepare schedules and the policies and practices to be applied to such information by Buyer in connection therewith (“Agreed Scheduling Practices”).

Seller shall arrange and be responsible for any transmission services required to deliver energy to the Energy Delivery Point and shall schedule or arrange scheduling services with its transmission providers to so deliver the energy to the Energy Delivery Point. Buyer shall arrange and be responsible for transmission services at and from the Energy Delivery Point and shall schedule or arrange for scheduling services with its transmission providers to receive energy at the Energy Delivery Point.

Buyer shall arrange and be responsible for the costs of any fuel transportation required to deliver fuel to the Gas Delivery Point and shall schedule or arrange scheduling services with its fuel transporters to so deliver the fuel to the Gas Delivery Point.

Buyer shall be responsible for all transmission charges, ancillary service charges, electrical losses and any other transfer-related charges (collectively, "Charges") attributable to or assessed for energy delivered to Buyer at and after the Energy Delivery Point. Seller shall be responsible for all Charges applicable to the Generating Facility's output prior to the Energy Delivery Point.

Buyer shall be obligated to pay, or reimburse Seller for the payment of, any pipeline imbalance charges related to an imbalance of natural gas scheduled to be delivered to the Gas Delivery Point. Seller shall be obligated to pay, or reimburse Buyer for the payment of, any generation imbalance charges related to the over-generation or under-generation of energy scheduled to be generated by the Generating Facility to the extent that such imbalance was caused by the operation of the Generating Facility, the failure of the Generating Facility to operate or Seller's failure to comply with the Agreed Scheduling Practices.

Taxes

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

Operation and Maintenance:

Seller and Buyer shall endeavor to develop written operating procedures ("Operating Procedures") for the Generating Facility before the Delivery Date which shall set forth the protocol under which the Parties shall perform their respective obligations under the Tolling Agreement and shall include, without limitation, procedures concerning the following: (i) the method of day-to-day communications, (ii) key personnel lists for Seller and Buyer, including an appointed authorized representative for each Party, and (iii) forced outage and planned outage reporting.

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

Outages:

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

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

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

**Availability
Guarantee:**

Seller shall provide Buyer with a guarantee that the Generating Facility availability shall be no less than the percentages indicated on Schedule III for each month after the Delivery Date (the "Minimum Monthly Availability"). Generating Facility availability shall be calculated using a methodology agreed to by the Parties that is generally consistent with the method prescribed by the Generating Facility's equipment manufacturers.

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

Credit Support: Upon execution of the Tolling Agreement, if Buyer deems it necessary due to the credit position of Seller, Seller shall provide Buyer with a guaranty, cash collateral and/or letter of credit in forms and amounts acceptable to Buyer. In addition to the foregoing security, Seller shall furnish Buyer with a lien on its interest in the Generating Facility to secure Seller's obligations to Buyer. Buyer shall agree to subordinate such lien as may be reasonably necessary to accommodate Seller's first lien construction and/or permanent financing of the Generation Facility. Buyer shall not be required to provide credit support or performance assurance of any kind to Seller.

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

In addition to customary Events of Default, the following shall be additional Events of Default:

- Subsequent to the Delivery Date, Seller fails to achieve the Minimum Monthly Availability for any [] consecutive contract months or for any [] contract months during the Term.
- The Generating Facility fails to demonstrate a Tested Capacity at least equal to the Minimum Capacity in three successive capacity tests performed after the Delivery Date; provided that Seller is provided a reasonable period of time after any failure to achieve the Minimum Capacity in any capacity test to resolve the problem prior to

conducting a subsequent capacity test.

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

Termination: Buyer may terminate the Tolling Agreement if Seller fails to achieve Commercial Operation by [_____].⁵

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

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

Indemnification: The Tolling Agreement shall include customary indemnification obligations between the Parties including for liabilities related to fuel prior to delivery to Seller at the Gas Delivery Point and energy once delivered to Buyer at the Energy Delivery Point.

⁵ To be included if the Generating Facility is under development

Limitation of Liability:	Unless expressly provided in the Tolling Agreement, a Party's liability shall be limited to direct actual damages only, which direct actual damages shall be the sole and exclusive remedy and all other remedies or damages at law or equity are waived. Neither Party shall be liable to the other Party for consequential, incidental, punitive, exemplary or indirect damages, lost profits or other business interruption damages, whether such damages are allowed or provided by statute, in tort, under any indemnity provisions or otherwise except and only to the extent that any actual or liquidated damages expressly provided for in the Tolling Agreement include an element of profit or other type of damages which are otherwise disclaimed and except to the extent required through indemnification on account of third party claims.
Title; Risk of Loss:	Buyer shall retain title to fuel provided by Buyer to Seller to be converted to energy. The title to all energy generated by the Generating Facility as a result of the conversion of such fuel to energy in the Generating Facility shall vest in Buyer immediately upon generation thereof. Notwithstanding the foregoing, risk of loss of fuel supplied by Buyer shall transfer from Buyer to Seller at the Gas Delivery Point and Seller shall bear the risk of loss of energy generated at the Generating Facility until it is transferred from Seller to Buyer at the Energy Delivery Point.
Dispute Resolution:	Certain specified technical disputes shall be referred to a single technical expert (to be designated by the parties in the Tolling Agreement) for expedited, binding resolution; other disputes shall proceed through judicial resolution. The Parties shall waive their rights to jury trial, and shall consent to jurisdiction in King County, Washington.
Governing Law:	The Tolling Agreement shall be governed by the laws of the State of Washington, without regard to conflicts of laws principles. Venue shall be in King County, Washington.

Assignment:

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

Schedule I
Contract Price⁶

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

⁶ Illustrative pricing structure only. Respondent may propose an alternative structure.

Schedule II
Heat Rate Adjustment Calculation⁷

⁷ To be provided by Respondent.

Schedule III
Availability Guarantee and Liquidated Damages⁸

⁸ To be provided by Respondent.