

**EXHIBIT NO. \_\_\_(KJH-6)**  
**DOCKET NO. UE-09\_\_\_/UG-09\_\_\_**  
**2009 PSE GENERAL RATE CASE**  
**WITNESS: KIMBERLY J. HARRIS**

**BEFORE THE  
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION**

**WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,**

**Complainant,**

**v.**

**PUGET SOUND ENERGY, INC.,**

**Respondent.**

**Docket No. UE-09\_\_\_**  
**Docket No. UG-09\_\_\_**

**FIFTH EXHIBIT (NONCONFIDENTIAL) TO THE  
PREFILED DIRECT TESTIMONY OF  
KIMBERLY J. HARRIS  
ON BEHALF OF PUGET SOUND ENERGY, INC.**

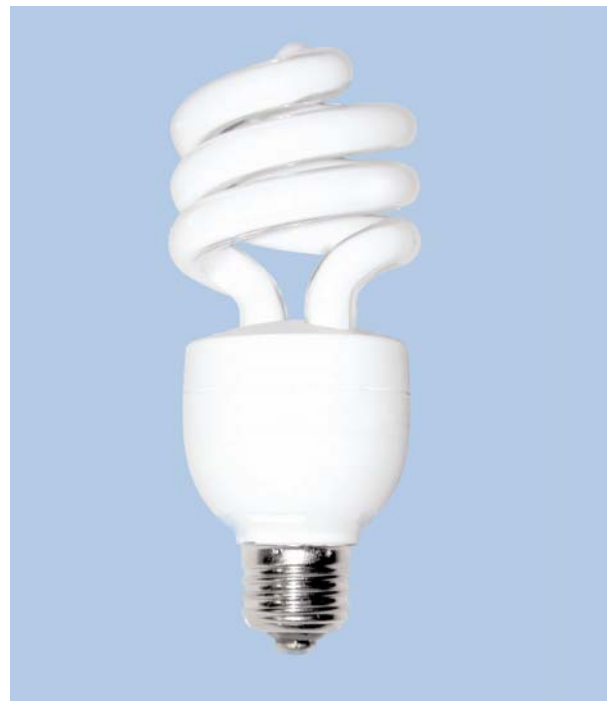
**MAY 8, 2009**

# Request for Proposals

January 2008



All Generation Sources and Demand Side Resources

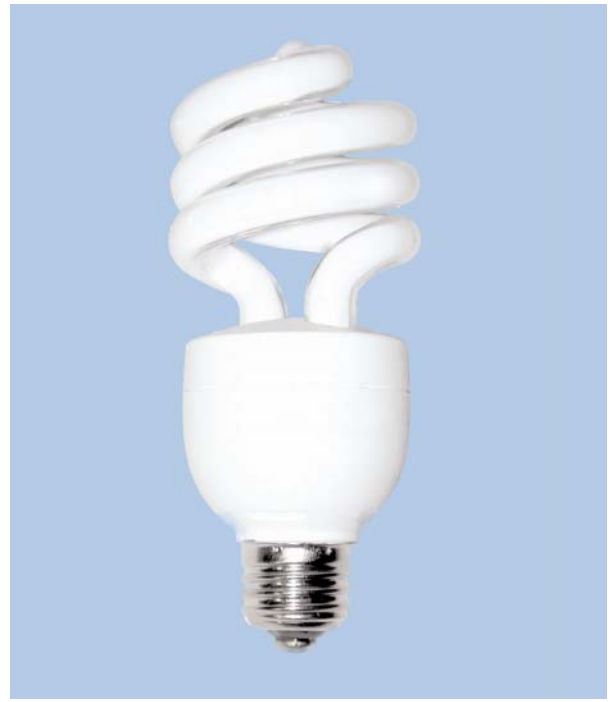


# Request for Proposals

January 2008



## All Generation Sources



# Table of Contents

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## **Introduction and Process**

1	Resource Strategy.....	2
2	Energy and Capacity Need.....	3
3	RFP Schedule .....	4
4	Evaluation Process .....	5
5	Post-Proposal Negotiations and Awarding of Contracts.....	5

## **Information Requested from Respondents**

1	Energy and Capacity Resources Requested.....	6
2	Proposals/Contract Type.....	7
3	Eligible Respondents .....	8
4	Proposal Requirements .....	8
5	Other Requirements.....	9
6	Credit Requirements.....	10
7	Confidentiality/Disclosure.....	11
8	Contact Information and Submission of Proposals .....	12
9	List of Exhibits .....	13

# Introduction and Process

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This document constitutes a Request for Proposals (RFP) from qualified third parties (respondents) to supply electric resources to Puget Sound Energy, Inc. (PSE or Company). It is an "All Generation Sources" RFP<sup>1</sup> in that any electric generation source will be considered, consistent with the requirements described herein. The RFP may be found on our web site at <http://www.pse.com/energyEnvironment/pse2008RFP.aspx>.

PSE is seeking the following resources with this RFP:

- Energy generation resources, and
- Capacity generation resources

The Company will consider existing and yet-to-be constructed generation resources with commercial operation dates up to 2015, thereby allowing proposals for resources with long lead times and associated potential transmission solutions to participate.

This RFP solicitation seeks ownership opportunities (e.g., through a transfer to PSE of development assets, as a build-and-transfer, or as a sale of an existing asset), power purchase agreements of varying contract lengths, exchange agreements (e.g., locational and seasonal), and capacity products (including operating reserves) to meet PSE's winter peak requirements. PSE also plans to solicit more broadly among northwest utilities and others to look for arrangements that may accommodate partners.

In keeping with the Company's desire to continue to build a diversified portfolio of resources, PSE encourages qualified respondents representing small-<sup>2</sup> or large-scale projects from all fuel types and technologies to participate in this RFP.

## 1 Resource Strategy

This RFP is consistent with guidance provided by PSE's most recent Integrated Resource Plan (IRP), as filed with the Washington Utilities and Transportation Commission (WUTC) on May 30, 2007. A downloadable copy of the IRP is available to all interested parties on PSE's web site at [www.pse.com/energyEnvironment/pse2007irpView.aspx](http://www.pse.com/energyEnvironment/pse2007irpView.aspx).

The IRP examines PSE's electric and gas resource needs over the next 20 years, and analyzes the mix of conservation programs and supply resources that might best meet those needs. It provides the strategic direction that guides the Company's long-term resource acquisition process. The IRP also identifies key factors related to various resource decisions and provides a method for evaluating a resource acquisition in terms of cost, risk, and other factors at the time a decision needs to be made. The IRP does not commit to or preclude the acquisition of a specific resource type, project or facility.

PSE's overall strategy for integrated resource planning is to develop a diversified, balanced electric resource portfolio that meets customer needs, results in reasonable energy supply costs and mitigates market risks. PSE's planning standards call for adequate energy resources to meet

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<sup>1</sup> PSE is also issuing an Energy Efficiency RFP at the same time as this All Generation Sources RFP.

<sup>2</sup> For projects 2 MW or less, respondents may elect to sell power pursuant to electric tariff rate Schedule 91, cogeneration and small power production.

# Introduction and Process

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the Company's highest deficit month (with such month occurring in January or December) and sufficient capacity resources to meet PSE's one-hour winter peak load at 13 degrees Fahrenheit.

PSE's 2007 IRP strategy includes the Company's 2003 planning target to serve 10 percent of customers' energy needs with renewable resources by 2013 as well as the renewable targets established by the passage of Initiative 937 (the Energy Independence Act) in November 2006. The Act requires Washington state's electric utilities to meet the following renewable targets: 3% of load from qualifying renewables by 2012; 9% of load from qualifying renewables by 2016; 15% of load from qualifying renewables by 2020. PSE is currently meeting approximately 4% of its load with renewable resources.

The Energy Independence Act is posted on the Washington State Legislature's web page at <http://apps.leg.wa.gov/RCW/default.aspx?cite=19.285>.

## 2 Energy and Capacity Need

The following table depicts the Company's monthly energy and capacity needs for 2008 through 2027. These values are based on PSE's May 2007 Integrated Resource Plan.

PSE represents its "*average energy (aMW)*" need as its most energy deficit month, generally occurring during the coldest winter month. Average energy is monthly generation (MWh) divided by the hours in the month. PSE's need is the difference between the average load and average generation in the month. In 2008, PSE's most energy deficit month is expected to be January, with a shortfall of 412 average megawatts. This shortfall is expected to grow to more than 1,300 average megawatts by winter 2014/15.

PSE's electric peak capacity is the amount of power required to meet the Company's highest demand hour of the year at 13 degrees Fahrenheit. The Company's *peak deficit*, as shown below, is the difference between the forecasted load during the highest demand hour of the year less the peak capacity of existing resources – generation, transmission and contracts.

When considered together, PSE's energy and capacity need cannot necessarily be viewed as additive. As PSE acquires long-term resources, the characteristics of the resource will determine whether its contribution is to energy and/or to capacity. Therefore, PSE's energy and capacity need may be met in part by a resource that has both an energy and capacity component, which would reduce not only energy need, but also capacity need.

# Introduction and Process

**Table 1. Energy and Capacity Need 2008-2027<sup>3</sup>**

Year	Energy Need (aMW)												13°F Peak Deficit (MW)
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
2008	412	327	233	24	158	-	-	-	98	206	242	266	0
2009	222	194	148	80	104	-	-	-	-	111	147	165	0
2010	288	175	187	-	-	-	-	-	86	131	304	219	27
2011	411	293	303	156	112	-	-	-	222	282	517	450	376
2012	946	770	851	718	432	521	464	603	803	856	1,014	1,034	967
2013	1,137	1,013	961	902	612	549	607	741	944	999	1,160	1,188	1,037
2014	1,302	1,172	1,123	939	642	579	639	764	981	1,036	1,203	1,221	1,117
2015	1,342	1,207	1,161	975	666	611	669	792	1,012	1,069	1,242	1,258	1,195
2016	1,378	1,187	1,197	1,004	690	638	688	825	1,041	1,095	1,277	1,289	1,279
2017	1,412	1,268	1,230	1,030	715	661	710	851	1,065	1,123	1,400	1,408	1,371
2018	1,561	1,413	1,327	1,122	757	701	754	895	1,102	1,173	1,458	1,467	1,551
2019	1,628	1,474	1,384	1,178	805	745	808	943	1,150	1,227	1,518	1,535	1,658
2020	1,693	1,486	1,441	1,232	846	793	857	979	1,202	1,277	1,579	1,599	1,767
2021	1,759	1,594	1,501	1,286	889	839	903	1,026	1,252	1,326	1,638	1,669	1,881
2022	1,831	1,662	1,567	1,344	941	893	950	1,088	1,308	1,385	1,709	1,742	2,003
2023	1,909	1,733	1,637	1,404	997	950	1,008	1,151	1,366	1,450	1,785	1,820	2,131
2024	1,983	1,754	1,703	1,467	1,054	1,004	1,064	1,209	1,430	1,519	1,869	1,895	2,260
2025	2,069	1,880	1,777	1,537	1,111	1,060	1,136	1,262	1,485	1,585	1,938	1,975	2,389
2026	2,152	1,957	1,852	1,608	1,167	1,123	1,199	1,323	1,549	1,652	2,016	2,060	2,532
2027	2,235	2,035	1,929	1,678	1,224	1,184	1,260	1,386	1,615	1,717	2,094	2,142	2,666

### 3 RFP Schedule

October 12, 2007	Draft RFP Filed with WUTC
October 29, 2007	PSE Public Meeting on Draft RFP
December 11, 2007	Public Comments Due
January 10, 2008	WUTC Comments Expected
January 11, 2008	PSE Releases Final RFP Solicitation
January 23, 2008	PSE Hosts Proposal Conference
February 29, 2008	Offers Due to PSE
April 2008	Preliminary "Candidate" Short List Selected
July 2008	Final Short List Selected, Respondents Notified
	Post-proposal Negotiations

<sup>3</sup> Energy and capacity need as defined in the 2007 Integrated Resource Plan (conservation not included)

# Introduction and Process

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The preceding schedule is subject to adjustment based on WUTC review and the actual pace of PSE's evaluation process.

## 4 Evaluation Process

PSE will follow a structured evaluation process to assess the merits of proposals with regard to meeting its need. The process is intended to screen and rank individual proposals. PSE will consider a number of quantitative and qualitative factors designed to reasonably compare proposals with diverse attributes. Each proposal will be evaluated based on its compliance with this RFP (including the term sheet and contractual provisions exhibited to this RFP) and according to the following set of primary criteria:

- Compatibility with Resource Need
- Cost
- Risk Management
- Public Benefits
- Strategic and Financial Considerations

Each of the primary criteria is further delineated with sub-criteria as detailed in **Exhibit B**. Initially, proposals will be evaluated based on an individual proposal cost and on the qualitative criteria. At the close of this initial evaluation, PSE will select a preliminary short list made up of the most attractive proposals. These selected proposals will move on to the second phase of the evaluation process for portfolio evaluation and additional due diligence based on the same five primary criteria. The portfolio evaluation is designed to assess the interaction and risk levels of the most promising resources and combinations of resources within PSE's power portfolio.

Those proposals which provide the greatest benefit to PSE's portfolio will be placed on the final short list for further discussion with the respondent(s). Such proposals may potentially move forward to negotiations of the terms and conditions of Definitive Agreements.

## 5 Post-Proposal Negotiations and Awarding of Contracts

PSE may elect to negotiate both price and non-price factors during post-proposal negotiations with any respondent whose proposal has been selected to the short list for further discussions. During this process, PSE will update its economic and risk evaluation on an ongoing basis until such time as PSE and the respondent might execute Definitive Agreements. Such updates will include any additional factors that may impact the total cost of a project.

PSE has no obligation to enter into Definitive Agreements with any respondent to this RFP and may terminate or modify the RFP at any time without liability or obligation to any respondent. This RFP shall not be construed as preventing PSE from entering into any agreement that it deems appropriate at any time before, during, or after the RFP process is complete. PSE reserves the right to negotiate only with those respondents and other parties who propose transactions that PSE believes, in its sole opinion, to have a reasonable likelihood of being executed substantially as proposed.



# Information Requested from Respondents

## 1 Energy and Capacity Resources Requested

PSE is seeking electric generation proposals from a wide variety of technologies and fuel sources consistent with the requirements and Evaluation Criteria (**Exhibit B**) described herein.

PSE’s energy and capacity needs are greatest in the winter. Therefore, both energy and capacity resources will be shaped through various means to fill winter deficits, while minimizing summer surpluses. PSE will consider the seasonality of the basic electric energy resource’s production, PSE’s ability to control the project’s output to match its needs (up to and including real-time dispatch and displacement), and contractual mechanisms to shape project output to PSE’s need.

As described in tables 2 and 3, PSE is looking for a diverse mix of energy and capacity resource products to meet its requirements.

**Table 2. Energy Resources Sought by PSE**

Energy Resource	Delivery Description
As Produced	e.g. wind, run-of-river hydro
Baseload	7x24, delivered as firm or unit contingent
Intermediate	Dispatchable
On Peak or Heavy Load Hours	6x16 (Mon-Sat) (HE 0600-2200); seasonal (Nov-Feb, Dec-Feb or Nov-Mar)
Exchanges	Seasonal or year round; temporal location exchange with delivery to PSE on west side of Cascades

**Table 3. Capacity Resources Sought by PSE**

Capacity Resource	Delivery Description
Dispatchable/On Peak or Heavy Load Hours	6x16 (Mon-Sat) (HE0600-HE2200); winter only Nov-Feb or Dec-Feb
Operating Reserves (regulating or contingency)	Automatic Generation Control (spinning reserve)
Exchanges	Temporal locational exchanges, November-February; 7x16, 7x24, or 6x16 product with delivery to PSE on west side of Cascades

This All Generation Sources RFP process may result in multiple acquisitions by PSE.<sup>4</sup>

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<sup>4</sup> Use of the term “acquisition” or terms of similar import in this RFP, unless the context otherwise indicates, refers interchangeably to power purchase agreements and the acquisition of ownership interests in generating facilities.

# Information Requested from Respondents

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## 2 Proposals/Contract Type

PSE will consider the acquisition of generation from proposals under the following mechanisms: (1) ownership arrangements, including co-ownership arrangements in which PSE retains adequate dispatchability and rights of control; (2) Power Purchase Agreements of varying lengths (>2 years), including Power Bridging Agreements, defined as short-term "bridges" to long-lead resources, (collectively, "PPAs"); and (3) Exchange Agreements.

When submitting proposals for either a PPA or ownership arrangement, PSE is interested in alternatives in which the respondent fully assumes the risk of fuel supply, fuel price, and environmental cost, and which quantify the cost for assuming those risk factors.

### *Ownership*

The PSE ownership mechanism anticipates a proposal pursuant to which PSE would ultimately own the resource or a significant interest therein. This may be accomplished at various stages of development using a variety of approaches such as joint development by the respondent and PSE, development by the respondent followed by transfer to PSE, initial purchase of power by PSE with transfer of ownership occurring later, or other approaches that may be mutually beneficial and result in PSE's ownership of the resource. Although PSE is willing to consider a wide range of arrangements, the prototype term sheet included as **Exhibit I** to this RFP presumes that PSE would acquire its ownership interest in the project prior to the commencement of construction and would fund its ownership share on a pro rata basis.

### *Power Purchase Agreements*

Any proposal for a Power Purchase Agreement (PPA) must specify the generation asset or system assets underlying the agreement, and provide assurances of its commercial availability on or before December 31, 2014. A prototype Power Purchase Agreement is included as **Exhibit J** to this RFP. For shorter-term PPAs, PSE will consider the WSPP Agreement as modified by PSE and included as **Exhibit K** to this RFP.

In considering PPAs, PSE requires proposals pursuant to which the respondent owns and operates or would acquire, construct, own and operate the generation asset, with PSE purchasing the output (energy and capacity) at an agreed upon-delivery point.

With regard to any proposal for the purchase and sale of power from a qualifying facility under PURPA, the respective rights and obligations of PSE and the seller of such power under any agreement that may be entered into by PSE and the respondent will be subject to any federal enactments (e.g., an energy bill passed in 2005) that will by their terms apply to the purchase and sale of such power.

### *Exchange Agreements*

The Company's obligations under any such exchange will be subject to FERC acceptance. Any transmission service component of the exchange would be pursuant to the applicable transmission provider's Open Access Transmission Tariff or reciprocal agreement and would be payable by respondent. A prototype Exchange Agreement is included as **Exhibit L** to this RFP.

# Information Requested from Respondents

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## 3 Eligible Respondents

This RFP will accept proposals from all third-party project developers or owners, marketing entities, or other utilities that meet the project requirements and comply with the process guidelines described herein. PSE believes that consideration of proposals from other utilities and/or their affiliates may increase the number of qualified respondents and thus increase the overall creativity and competitiveness of responses to this RFP. Affiliated generating companies of PSE are not eligible to respond to this RFP.

## 4 Proposal Requirements

***The Confidentiality Agreement (Exhibit G) must be submitted by February 15, 2008, two weeks prior to the proposal due date. Proposals are due no later than February 29, 2008.***

To ensure that all proposals are thorough and complete, PSE requests that respondents present their bid information as outlined below.

### Proposal Requirements (***Exhibit C***)

- ~ Project Description
- ~ Fuel Supply
- ~ Emissions
- ~ Interconnection and Transmission
- ~ Price
- ~ Legal and Financial
- ~ Accounting Regulation
- ~ Experience and Qualifications of the Project Team
- ~ Environmental Inspections, Orders, Suits and Other
- ~ Development Status and Project Schedule

### Project Summary Data Form (***Exhibit D***)

### Other Requirements (***Section 5***, as follows)

Respondents are expected to provide complete information in their original submittals. Failure to provide all of the requested information will not disqualify a respondent, but may result in lower prioritization during the evaluation process. If the respondent elects not to provide the requested information, PSE requests that an explanation be included.

# Information Requested from Respondents

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## 5 Other Requirements

### *Signatures and Certifications*

The proposal must contain the signature of a duly authorized officer or agent of the respondent submitting the proposal.

The respondent's duly authorized officer or agent shall certify in writing that:

- The respondent's proposal is genuine; not made in the interest of, or on behalf of, any undisclosed person, firm, or corporation; and is submitted in conformity with any anti-competitive agreement or rules.
- The respondent has not directly or indirectly induced or solicited any other respondent to submit a false or sham proposal.
- The respondent has not solicited or induced any other person, firm, or corporation to refrain from proposing.
- The respondent has not sought by collusion to obtain for itself any advantage over any other respondent.

### *Production Tax Credit Risk and Environmental Attributes*

All proposals shall acknowledge and state that PSE disclaims and shall not assume any risk associated with the potential expiration of the Federal Production Tax Credit (PTC), or the respondent or other project entity's ability to utilize the PTC, if applicable to the resource proposed.

All proposals must state that all Environmental Attributes<sup>5</sup> associated with the project, if any, will accrue to the ownership and beneficial use of PSE.

### *No Assignment*

All proposals shall state that there will be no assignment of proposals during the evaluation or negotiation stage and that in the event the respondent and PSE negotiate and execute Definitive Agreements based on the respondent's proposal, the Definitive Agreements and obligations thereunder shall not be sold, transferred or assigned or pledged as security or collateral for any obligation without the prior written permission of PSE. Any project lender who takes an assignment of the Definitive Agreements for security and exercises any rights under such agreements will be bound to perform such agreements to the same extent.

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<sup>5</sup> "Environmental Attributes" means generally credits, benefits, reductions, offsets and other beneficial allowances with respect to fuel, emissions, air quality, or other environmental characteristics, resulting from the use of certain resource generation or the avoidance of emissions.

# Information Requested from Respondents

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## *Conflict of Interest Disclosure*

All respondents shall disclose in their proposals any and all relationships between themselves, the project and/or members of their project team and PSE or its employees.

## *Validity, Deadlines and Regulatory Approval*

All proposals shall specify the date through which the proposal is valid. Proposals must also state the dates by which Definitive Agreements must be completed and approved by the boards of directors or other management bodies of PSE and the respondent, and applicable regulatory approvals must be provided to support the proposed project schedule. Respondents should note that regulatory approvals for resources to be acquired may not be obtained until some time after the first quarter of 2009 or later. PSE may seek regulatory review of its anticipated resource purchases, exchanges, or acquisitions as a condition precedent to any transaction. Such regulatory review could include receipt by PSE from the WUTC of approvals and orders, as applicable (for example, through a power cost only rate proceeding), pertaining to and confirming the inclusion of the full amount of any asset purchase price plus PSE's transaction costs and other amounts allocable to the construction, start-up, testing and commissioning of the project, as applicable, in PSE's rate base; such approvals and/or orders to be in form and substance satisfactory to PSE in its sole discretion. In this regard, any proposed price may not be unilaterally changed by the respondent prior to the finalization of such agreements and approvals. It is preferred that the respondent provide proposals that remain valid for a period that allows for negotiation of Definitive Agreements and applicable management and regulatory approvals.

In addition to being subject to the jurisdiction of the Washington Utilities and Transportation Commission, PSE is also regulated by the Federal Energy Regulatory Commission (FERC). FERC's jurisdiction and authority over the activities of PSE are defined in the Federal Power Act and include certain aspects of the acquisition of electric power. In particular, Sections 203 and 205 of the Federal Power Act require: (1) approval by FERC prior to transferring FERC-jurisdictional assets; and (2) certain filings by PSE to support its authorization to sell power and related products at market-based rates.

Pursuant to Section 203 of the Federal Power Act, FERC has approval authority over any acquisition by PSE of public utility facilities subject to FERC jurisdiction. In reviewing filings under Section 203, FERC considers the effect on competition, rates and regulation. FERC's approval of such an acquisition will be based on a finding that it is "consistent with the public interest."

FERC has authorized PSE to sell power at market-based rates pursuant to Section 205 of the Federal Power Act. As a condition of its authority to sell power at market-based rates, PSE must demonstrate to FERC that it does not possess market power in the relevant markets. Acquisition by PSE of generation or power resources may require PSE to demonstrate that it continues to lack market power after the resource acquisition.

Accordingly, PSE will evaluate all proposals in light of the requirements of the Federal Power Act and the effect that such regulatory requirements and review may have on PSE's overall corporate position.

## **6 Credit Requirements**

The respondent should be aware that PSE may require negative control provisions (covenants restricting respondent business practices that could jeopardize respondent's ability to perform its

## Information Requested from Respondents

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obligations) in the Definitive Agreements that the respondent and PSE might execute in connection with the respondent's proposal, in addition to any that may be included in the prototype ownership term sheet (**Exhibit I**), prototype Power Purchase Agreement (**Exhibit J**), modified WSPP Agreement for short-term PPAs (**Exhibit K**), or the the prototype Exchange Agreement (**Exhibit L**).

### *PPA Acquisitions (System Power Sales) and Power Exchanges*

Credit terms that may result in the posting of collateral including, but not limited to, collateral thresholds, general adequate assurance language, rating triggers and/or similar financial covenants will not apply to PSE. Credit terms resulting in the posting of collateral may apply to the Respondent, especially if the Respondent has a senior unsecured credit rating equal to or below BB+ and Ba1 by Standard & Poor's and Moody's Investor Services, respectively, or, alternatively, that receives a credit rating from PSE's credit department equivalent to or below BB+, or that provides a parent or affiliate guarantee in form and substance acceptable to PSE from a guarantor with senior unsecured credit ratings equal to or below BB+ and Ba1 by Standard & Poor's and Moody's Investor Services, respectively, or, alternatively, from a guarantor that is assigned a credit rating of BB+ or below by PSE's credit department.

### *Generation Project Acquisitions and Project PPA Acquisitions*

PSE prefers acquisitions that do not impose credit support requirements on PSE. If any respondent intends to propose that PSE provide credit support (e.g., in the form of a letter of credit or otherwise), the respondent must describe in its proposal all desired terms and conditions regarding such credit support.

PSE reserves the right to require adequate credit assurances that provide security for, among other things, the value associated with market-based damages for failure to perform, delays in construction, failure to meet minimum availability levels and/or other forms of default or non-performance. Such assurances may include, without limitation, a parent or affiliate guaranty and/or a letter of credit, each in form and substance, for a term and from a parent, affiliate or a financial institution, acceptable to PSE. In the event PSE anticipates that adequate credit assurances may be required from a respondent, PSE reserves the right to request that the respondent reply in writing regarding its intent to provide such credit assurances prior to the beginning of negotiations of any Definitive Agreement.

Additionally, the credit terms explained above in *PPA Acquisitions (System Power Sales) and Power Exchanges* will apply to the wholesale energy portion of Project PPAs.

## 7 Confidentiality/Disclosure

Respondents are required to provide two (2) signed originals of the Mutual Confidentiality Agreement (**Exhibit G**) no later than February 15, 2008. PSE will countersign and return one fully executed agreement to the respondent.

To the extent required by law or regulatory order, PSE will make available to the public a summary of all proposals received and the final ranking of all such proposals.

PSE may retain all information pertinent to this RFP process for a period of 4 years or until PSE concludes its next general electric rate case, whichever is later. PSE shall have no obligation under this RFP to provide the models and data used in its evaluation process to respondents or

# Information Requested from Respondents

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other third parties except to the extent required by law or regulatory order. PSE may provide such models and data to the extent consistent with its business needs.

## 8 Contact Information and Submission of Proposals

### *Mutual Confidentiality Agreement*

***Mutual Confidentiality Agreements must be received no later than February 15, 2008.***

Respondents shall submit two signed originals of the Mutual Confidentiality Agreement (**Exhibit G**) two weeks prior to the proposal due date.

### *Proposals*

***Proposals must be received no later than 5:00 PM Pacific Time on February 29, 2008.***

Respondents shall submit their proposals, along with all attachments and electronic files, as described below:

- one bound execution copy with an original signature (as described in **Section 5** herein),
- four additional bound copies, and
- one electronic copy (on CD-ROM).

Proposals may be submitted to PSE via U.S. mail, courier service, or hand delivery at the address indicated below.

All costs to participate in this RFP process, including preparation of proposals, negotiations, etc., are the responsibility of the respondent.

Contact for proposal submittals, questions and requests:

Mr. Roger Garratt, Director, Resource Acquisition and Emerging Technologies

425-462-3470

425-462-3175 Fax

[Roger.Garratt@pse.com](mailto:Roger.Garratt@pse.com)

*Address for U.S. Mail:*

Puget Sound Energy  
P.O. Box 97034, PSE-11  
Bellevue, WA 98009-9734

*Address for courier or hand delivery:*

Puget Sound Energy  
10608 NE 4th Street, Mail Room  
Bellevue, WA 98004

# Information Requested from Respondents

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## 9 List of Exhibits

Exhibit A	Monthly Energy and Capacity Need
Exhibit B	Evaluation Criteria
Exhibit C	Proposal Requirements (form of respondent's proposal)
Exhibit D	Project Summary Data Form
Exhibit E	Wind and Solar Energy Delivery (12x24)
Exhibit F	Template for Financial Pro Forma
Exhibit G	Mutual Confidentiality Agreement
Exhibit H	Schedule of Estimated Avoided Cost
Exhibit I	Prototype Ownership Term Sheet
Exhibit J	Prototype Power Purchase Agreement
Exhibit K	Modified WSPP Agreement
Exhibit L	Prototype Exchange Agreement



# Exhibit A. Monthly Energy and Capacity Need

## Monthly Energy Need and Peak Deficit

The following table depicts the Company's monthly energy and capacity needs for twenty years. These values are based on PSE's May 2007 Integrated Resource Plan.

PSE represents its "average energy (aMW)" need as its most energy deficit month, generally occurring during the coldest winter month. Average energy is monthly generation (MWh) divided by the hours in the month. PSE's need is the difference between the average load and average generation in the month. In 2008, PSE's most energy deficit month is expected to be January, with a shortfall of 412 average megawatts. This shortfall is expected to grow to more than 1,300 average megawatts by winter 2014/15.

PSE's electric peak capacity is the amount of power required to meet the Company's highest demand hour of the year at 13 degrees Fahrenheit. The Company's *peak deficit*, as shown below, is the difference between the forecasted load during the highest demand hour of the year less the peak capacity of existing resources – generation, transmission and contracts.

When considered together, PSE's energy and capacity need cannot necessarily be viewed as additive. As PSE acquires long-term resources, the characteristics of the resource will determine whether its contribution is to energy and/or to capacity. Therefore, PSE's energy and capacity need may be met in part by a resource that has both an energy and capacity component, which would reduce not only energy need, but also capacity need.

**Table A-1. 20-Year Monthly Projections of Energy and Capacity Need**

Year	Energy Need (aMW)												13°F Peak Deficit (MW)
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	
2008	412	327	233	24	158	-	-	-	98	206	242	266	0
2009	222	194	148	80	104	-	-	-	-	111	147	165	0
2010	288	175	187	-	-	-	-	-	86	131	304	219	27
2011	411	293	303	156	112	-	-	-	222	282	517	450	376
2012	946	770	851	718	432	521	464	603	803	856	1,014	1,034	967
2013	1,137	1,013	961	902	612	549	607	741	944	999	1,160	1,188	1,037
2014	1,302	1,172	1,123	939	642	579	639	764	981	1,036	1,203	1,221	1,117
2015	1,342	1,207	1,161	975	666	611	669	792	1,012	1,069	1,242	1,258	1,195
2016	1,378	1,187	1,197	1,004	690	638	688	825	1,041	1,095	1,277	1,289	1,279
2017	1,412	1,268	1,230	1,030	715	661	710	851	1,065	1,123	1,400	1,408	1,371
2018	1,561	1,413	1,327	1,122	757	701	754	895	1,102	1,173	1,458	1,467	1,551
2019	1,628	1,474	1,384	1,178	805	745	808	943	1,150	1,227	1,518	1,535	1,658
2020	1,693	1,486	1,441	1,232	846	793	857	979	1,202	1,277	1,579	1,599	1,767
2021	1,759	1,594	1,501	1,286	889	839	903	1,026	1,252	1,326	1,638	1,669	1,881
2022	1,831	1,662	1,567	1,344	941	893	950	1,088	1,308	1,385	1,709	1,742	2,003
2023	1,909	1,733	1,637	1,404	997	950	1,008	1,151	1,366	1,450	1,785	1,820	2,131
2024	1,983	1,754	1,703	1,467	1,054	1,004	1,064	1,209	1,430	1,519	1,869	1,895	2,260
2025	2,069	1,880	1,777	1,537	1,111	1,060	1,136	1,262	1,485	1,585	1,938	1,975	2,389
2026	2,152	1,957	1,852	1,608	1,167	1,123	1,199	1,323	1,549	1,652	2,016	2,060	2,532
2027	2,235	2,035	1,929	1,678	1,224	1,184	1,260	1,386	1,615	1,717	2,094	2,142	2,666

# Exhibit B. Evaluation Criteria

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## 1 Compatibility with Resource Need

Evaluation Criteria	Description
1. Timing	<p>Proposals that offer energy and/or capacity in a time frame consistent with PSE's needs.</p> <p>Proposals that provide substantial assurances of being commercially available in the time schedule proposed are preferred.</p> <p>Proposals that individually and in combination best meet PSE's need for energy and capacity are preferred.</p> <p>Proposals that provide flexibility in their development timeline to accommodate PSE's timing needs are preferred.</p>
2. Resource match to monthly need	<p>Proposals in which generation from the underlying asset closely matches PSE's monthly energy requirements or annual capacity requirements, or whose output can be controlled by PSE are preferred over those which rely on shaping through short- or long-term arrangements.</p>
3. Match to monthly need through contract	<p>Proposals that provide a fixed annual price and shape the underlying generation asset output to PSE monthly energy requirements are preferred.</p>
4. Operational Flexibility	<p>Proposals which provide PSE control of project output acceptable to PSE to respond to seasonal and real-time fluctuations in load/resource balance and system reliability events are preferred. This includes, for example, dispatch or displacement of the project in real-time and, for jointly-owned projects, the ability for PSE to elect to use for reliability purposes generation output that would otherwise have been displaced by the other owner.</p> <p>Additionally, PSE prefers proposals that provide the ability to carry spinning or non-spinning reserves.</p>
5. Performance Within Existing PSE Generation Portfolio	<p>Analyses will include such factors as:</p> <ul style="list-style-type: none"> <li>• impact on system reliability</li> <li>• system dispatch and displacement</li> <li>• termination rights</li> <li>• location with respect to the regional transmission system and PSE's electric system</li> <li>• impacts on system reserves, load following, integration costs and other factors</li> </ul>

## Exhibit B. Evaluation Criteria

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Evaluation Criteria	Description
6. Resource Mix / Diversity	<p>The diversity of resource technology and fuel types will be considered consistent with PSE's Integrated Resource Plan and the RFP. Specific considerations include:</p> <ul style="list-style-type: none"><li>• technology type</li><li>• fuel supply type</li><li>• fuel supply source</li><li>• fuel supply reliability including control and deliverability</li></ul>

## Exhibit B. Evaluation Criteria

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### 2 Cost Minimization

Evaluation Criteria	Description
1. Resource Cost	<p>PSE prefers proposals that satisfy its other evaluation criteria at the lowest cost throughout the project life, taking into account the price of the proposal and other factors that impact PSE's overall cost.</p> <p>Such factors include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• capital cost</li> <li>• financing cost</li> <li>• operation and maintenance cost</li> <li>• fuel and fuel transportation cost</li> <li>• fixed and variable power purchase agreement cost</li> <li>• transmission cost</li> <li>• ancillary services</li> <li>• integration costs</li> <li>• transmission system upgrades</li> <li>• cost to rebalance debt/equity ratio for imputed debt and consolidated debt</li> <li>• cost of credit facilities</li> <li>• transaction and other management costs, etc.</li> <li>• cost to meet environmental compliance, including capital improvements and/or capacity limitations and restrictions</li> </ul>
2. Transmission	<p>PSE prefers firm delivery of energy to its service area (particularly at points on its system at which the deliveries may be effected and used to serve load with limited or no transmission congestion).</p> <p>In the absence of assurance of firm delivery at the time of proposal, PSE prefers proposals that provide a high likelihood of acquiring adequate transmission rights to such points.</p> <p>Proposals that do not include firm transmission to such points, that would produce congestion or that would increase PSE's transmission costs will be compared unfavorably with other proposals and/or will be assessed the additional cost to PSE as part of the evaluation process.</p>
3. Portfolio Cost Impact (proposals that make the preliminary shortlist only)	<p>Proposals and combinations of proposals that result in the lowest impact on PSE's revenue requirements and rates when included in PSE's existing generation resource portfolio are preferred.</p>

## Exhibit B. Evaluation Criteria

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### 3 Risk Management

Evaluation Criteria	Description
1. Status & Schedule	<p>All other things being equal, PSE prefers operating projects first, projects under construction second, and development projects third.</p> <p>With respect to development projects, proposals that demonstrate that the respondent has the experience and financial resources to complete the project and has made significant progress in securing necessary permits, property rights, equipment, regulatory approvals, water rights, wastewater and disposal rights, project agreements and all other rights or arrangements necessary for a completely commercially operational project within the time proposed for commercial operation are preferred.</p>
2. Price Volatility	<p>Proposals that provide significant long-term control of fixed and variable costs are preferred.</p>
3. Resource Flexibility and Stability	<p>Proposals that provide flexibility to expand to meet PSE's growing needs as required are preferred.</p> <p>Proposals that include project agreements and all other rights and arrangements coterminous with power purchase delivery periods or project life are preferred.</p>
4. Resource Technology	<p>Proposals that are based on commercially-proven technology with demonstrated long-term reliability and performance history are preferred.</p> <p>Proposals that are based on technologies whose output may be controlled are preferred.</p>
5. Long-term Flexibility	<p>Proposals that provide PSE the flexibility to adjust its position in a resource long term up to and including termination are preferred.</p>
6. Project Risk	<p>Proposals that involve minimal risk for timely plant completion within cost projections are preferred.</p> <p>Proposals that minimize exposure to environmental risk or other potential liability, including expected or potential carbon control or mitigation costs, are preferred.</p>

## Exhibit B. Evaluation Criteria

Evaluation Criteria	Description
<p>7. Impact on PSE's Overall Risk Position</p> <p>(for proposals that make the preliminary shortlist only)</p>	<p>Proposals and combinations of proposals will be evaluated to determine the impact of the proposal(s) on PSE's overall risk position with respect to PSE's generation portfolio.</p> <p>Risk scenarios will include such factors as hydroelectric production variation, wind generation variability, fuel price volatility, carbon control costs, and power market price volatility.</p> <p>Additional risk scenarios will examine the correlation between fuel prices and power market prices, and alternative market price scenarios. Other considerations will include exposure to transmission congestion and costs.</p> <p>All other factors being equal, PSE prefers proposals that result in lower generation portfolio performance risk.</p>
<p>8. Environmental and Permitting Risk</p>	<p>Proposals will be evaluated considering their status in acquiring needed permits and the risk associated with future environmental regulation and taxes, including greenhouse gas emissions, compliance with regional RPS, and compliance with regional generator performance standards and import standards.</p>
<p>9. Respondent Risk</p>	<p>PSE will consider the information received in response to the <b>Information Requested from Respondents</b> section of the RFP and to <b>Exhibit C</b>, sections 6, 7 and 8 in determining risk associated with the financial condition of and performance by a respondent and any third parties depended upon by respondent. Lower-risk respondents are preferred.</p>
<p>10. Ability to Deliver as Proposed</p> <p>(Development Status &amp; Schedule)</p>	<p>Information submitted by respondents in response to <b>Exhibit C</b>, Section 9 will be used to evaluate the ability of the respondent to meet the commercial operation date proposed.</p>
<p>11. Ability to Deliver as Proposed</p> <p>(Experience &amp; Qualification of the Project Team)</p>	<p>An important consideration in judging the ability of a respondent to provide a commercially operable project in the time frame proposed is the experience and qualifications of the entire project team as further detailed in <b>Exhibit C</b>, Section 10. PSE will use the information that is provided in response to <b>Exhibit C</b>, Section 10 to evaluate the respondent team for this criterion. PSE prefers providers that have proven track records.</p>

## Exhibit B. Evaluation Criteria

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Evaluation Criteria	Description
12. Status of Transmission Rights	<p>The ability to transmit power from the project site to one or more points on PSE’s electric system is a requirement (particularly to points on its system at which the deliveries may be effected and used to serve load with no or limited transmission congestion).</p> <p>PSE will use information provided in <b>Exhibit C</b>, Section 5 of the RFP, and if necessary the PowerWorld software tools, to assess whether and to what extent the required transmission will be available and whether and to what extent the necessary transmission paths are subject to constraint.</p>
13. Managerial Control	<p>PSE prefers proposals that provide control of key elements of the value chain.</p>
14. Security & Control	<p>Proposals that supply firm, fixed price fuel supply are preferred.</p> <p>Proposals that provide for other methods of managing price volatility will be favorably considered.</p> <p>Proposals that supply firm energy and capacity are preferred.</p>
15. Federal Regulatory Approvals	<p>Proposals will be evaluated to determine the effect of any federal regulatory approvals that would result from accepting the proposal, including, but not limited to, requirements under Sections 203 and 205 of the Federal Power Act. Proposals that eliminate or minimize the effect of any such federal regulatory approval are preferred.</p>

## Exhibit B. Evaluation Criteria

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### 4 Public Benefits

Evaluation Criteria	Description
1. Environmental Impacts	<p>Proposals with lower environmental impacts are preferred. Environmental impacts refer to the full range of issues evaluated in an environmental impact statement (EIS) or environmental assessment (EA).</p> <p>PSE will further consider the environmental impacts of a proposed acquisition. PSE will consider information supplied in response to <b>Exhibit C</b>, sections 2, 4 and 11.</p>
2. Resource Location	<p>Proposals that are located such that they provide benefits to the regional and PSE transmission systems or require minimal or no transmission upgrades are preferred.</p> <p>Proposals that are not dependent upon constrained transmission or fuel transportation paths are preferred.</p> <p>Proposals that are located such that they are within PSE’s control area are preferred.</p>
3. Community Impacts	<p>Proposals that demonstrate support from public, local, state and federal government entities and Native American nations, if applicable, as well as other stakeholders, are preferred.</p>



## Exhibit B. Evaluation Criteria

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### 5 Strategic and Financial

Evaluation Criteria	Description
1. Capital Structure Impacts	<p>PSE's quantitative analysis will impute the anticipated equity cost needed to offset any adverse effects on its capital structure associated with accounting requirements (e.g., FIN 46R) that may require PSE to consolidate the respondent's balance sheet.</p> <p>All else being equal, PSE prefers proposals that avoid risks associated with the potential of PSE having to consolidate the respondent's financials with PSE's (e.g., pursuant to FIN 46R).</p> <p>All else being equal, proposals are preferred that would not increase PSE's exposure to adverse impact on its financial position (e.g., by requiring PSE to impute debt, to account for the transaction as a capital lease (e.g., under SFAS 13), to account for or report the transaction as a financial derivative transaction (e.g., pursuant to SFAS 133), by otherwise adversely affecting PSE's financial leverage, operating leverage, credit rating, cash flow, income statement or balance sheet, or by imposing credit requirements or increasing liquidity risk).</p>
2. Future Exposure to Environmental Regulations and/or Taxes.	<p>Proposals for resources with lower potential exposure to future environmental regulations and/or taxes are preferred.</p>
3. Guarantees & Security	<p>PSE will consider the information provided in response to Exhibit IV, Section 7 of their proposal in determining whether it will require any additional guarantees or credit support pursuant to Part II, Section 6 of this RFP.</p> <p>All else being equal, PSE prefers proposals that do not require PSE to post collateral. If posting of collateral is required, PSE's quantitative analysis will include an estimated cost of credit for those proposals.</p>

# Exhibit C. Proposal Requirements

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## *Mutual Confidentiality Agreement*

Two signed copies of the Mutual Confidentiality Agreement (**Exhibit G**) must be submitted two weeks in advance of the proposal due date.

## *Proposals*

PSE requests that respondents submit their proposals in the following format.

Table of Contents	
Section 1	Summary Data Sheet ( <b>Exhibit D</b> )
Section 2	Project Description
Section 3	Fuel Supply
Section 4	Emissions
Section 5	Interconnection and Transmission
Section 6	Price
Section 7	Legal and Financial
Section 8	Accounting Regulations
Section 9	Experience and Qualifications of the Project Team
Section 10	Environmental Inspections, Orders, Suits and Information Requests
Section 11	Development Status and Schedule
Section 12	Other Requirements ( <b>Section 5</b> of the RFP Document)
	List of Attachments

# Exhibit C. Proposal Requirements

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## 1 Summary Data Form

Complete all three tabs of the Summary Data Form (**Exhibit D**) and return it as part of the proposal submittal.

## 2 Project Description

The proposal should include a detailed description of the project, including the project's features and all development work completed to date. Include the following information, as applicable, or indicate if requested information is not known:

### *Project Location and Size*

- Identify the site where the project will be located. Provide a map showing the location of key facilities. Show anticipated placement of all project facilities. Include a map that indicates the location of the transmission line with which the project will be interconnected.
- Describe the project size (in acreage) and the land area controlled relative to the project facilities. If the project can be expanded, please describe the potential scope and conditions for additional development at the site.
- Provide a list of leases, easements, and/or other ownership documents that demonstrate that the respondent has control of the intended project properties and the legal rights to construct, interconnect, operate and maintain the project as described.

### *Site Description*

Provide a description of the site, including flora and fauna, proximity to inhabited structures, proximity to areas that may be sensitive from an environmental, cultural, commercial, security and any other perspective.

### *Project Capability, Availability and Heat Rate*

- Provide the nameplate capacity and net capacity (in MW), new and clean, at ISO conditions. If the project can be expanded, please describe the potential scope and conditions.
- Provide the net capability rating and net heat rates at full load, 90%, 80%, 75%, 50% and minimum sustainable load (if possible attach a curve). Heat rates shall be plant electric heat rate and not adjusted for cogeneration, if applicable. If output will vary with ambient temperature, respondents shall specify the net capacities and net heat rates at average annual site conditions and 95°F, 80°F, 40°F, and 20°F. Include any must run information as appropriate.
- Include the estimated annual unit availability and any guaranteed minimum annual availability and level of production. Specify planned outage duration.

## Exhibit C. Proposal Requirements

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- In an Excel spreadsheet and graph, show the distribution of the expected annual and monthly output of the project (MWh) including heavy load hour and light load hour production.
- As applicable, provide typical hourly energy production from the project for a one-year period in electronic format. This will be used to evaluate the hourly variability of the resource.

### *Operating Limits*

- Describe any limits imposed on the number of startups that may be performed per year or per unit of time, any limits on the number of hours that a unit may be operated per year or unit of time, and any minimum run times or ramp rates. Regulatory constraints must also be stated, including operating constraints that are either implicitly or explicitly embedded in the permit application or final permit conditions.
- Provide any existing or proposed procedures for, or limitations on, dispatching or displacing the project (or individual units, if applicable), on a prescheduled basis or in real time, throughout its full operating range, for economic reasons or for system reliability.
- Provide startup time for cold, warm, and hot starts including respondent's definition of those terms. Include, in tabular format, the ramp profile for each of these cases. Respondent shall also specify any specific costs and maintenance penalties associated with unit startups.
- Include a description of the AGC ramp rate (rate at which the unit responds to frequency changes while on control (MW/minute)), normal ramp rate (rate at which the unit can increase output while on manual control (MW/minute)), and emergency ramp rate (rate at which the unit can increase output only for emergency situations (MW/minute)). For combined cycle plants, provide the gas turbine ramp rate (MW/minute) and overall plant ramp rate (MW/minute).

### *Generation and Pollution Control Technology*

- Specify the type of generation equipment and provide a description, including the manufacturers of major equipment, date of manufacture or age of major equipment, hours of operation and major maintenance performed for any previously owned/operated equipment.
- Include type of heat rejection equipment (cooling towers, ponds, etc.) and manufacturer, age, hours of operation and major maintenance, as applicable.
- Specify the type of pollution control equipment, manufacturer, age, hours of operation and major maintenance, as applicable.
- State the terms of warranties and/or guarantees on major equipment.

# Exhibit C. Proposal Requirements

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## *Permitting*

- Identify any required environmental siting permits, wastewater disposal permits, air permits, or waste disposal permits.
- Describe source of process and/or cooling water, wastewater disposal plan, equipment and underlying contracts or permits for wastewater services.
- Outline waste disposal plan, if applicable, and indicate underlying contracts or permits for waste disposal.

## **3 Fuel Supply**

For proposals that are dependent upon a fuel source such as natural gas, coal, biomass, or others, respondents may propose a long-term stable price and firm supply of fuel. Any proposal for fuel supply must be made in conjunction with a specific proposal that satisfies the criteria of this RFP (i.e., stand-alone or independent fuel supply proposals do not meet such criteria). Also, any such fuel supply provisions should be optional, to be included at PSE's election during the proposal selection process. If the price is "indicative", then an explanation of how the price would move up or down during the process should be included in the proposal.

The proposal should specify the source and pricing of fuel to be supplied to the project including backup alternatives. Respondents should describe and document (including copies of applicable agreements) their fuel supply plan and the extent to which they propose to provide fuel and transportation and other fuel-related services, including physical and/or financial hedges. Alternatively, respondents may propose a variable cost payment or tolling fee in which PSE would be responsible for all fuel and fuel-related costs. With respect to fuel supply proposals, PSE's preference is for proposals that address its need for reliability, mitigation of fuel price risk, and flexibility for fully dispatchable plant operations.

### *For proposals dependent on Natural Gas supply to be acquired and managed by the Respondent, please:*

- Identify the maximum hourly and daily gas requirements of the plant at its rated capacity.
- Identify the location of the proposed pipeline interconnect and/or lateral.
- Provide a description of the pipeline interconnect, lateral facilities (size, length, etc.) and compression facilities.
- Provide an estimate of costs of the pipeline interconnect, lateral facilities, and compression facilities.
- Identify whether or not such costs are included in the proposal price.
- Describe the supply plan (source, terms, pipeline route, etc.).
- Identify all pipeline capacity contracts that support the provision of firm transportation to the plant.

## Exhibit C. Proposal Requirements

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- Identify all gas supply contracts that support the provision of firm gas to the plant.
- Identify the type and quantity of back-up fuel on site, if relevant.

*For proposals dependent on Natural Gas supply to be acquired and managed by PSE, please:*

- Identify the maximum hourly and daily gas requirements of the plant at its rated capacity.
- Identify the minimum and maximum gas pressure requirements at the plant inlet.
- Identify the location of the proposed pipeline interconnect and/or lateral.
- Provide a description of the interconnect and/or lateral facilities (size, length, etc.).
- Identify the minimum and maximum gas pressure commitments provided by the interconnecting pipeline at the interconnect facilities.
- Provide an estimate of capital costs and annual operating costs of the pipeline interconnect and/or lateral facilities.
- Identify whether or not the costs of the pipeline interconnect and/or lateral facilities are included in the proposal price.
- Identify whether compression will be required given the pipeline pressure commitments.
- Provide an estimate of compression capital and operating costs.
- Identify whether or not the costs of the compression are included in the proposal price.
- Identify and describe all pipeline capacity contracts included in the proposal price.
- Identify and describe all gas supply contracts included in the proposal price.
- Identify and describe any pipeline capacity contracts that are available through the respondent (but not included in the proposal price) and the pricing available for such contracts.
- Identify and describe any gas supply contracts that are available through the respondent (but not included in the proposal price) and the pricing available for such contracts.
- Identify and describe any gas supply pricing options available through the respondent or known by the respondent to be available through another party that, if exercised, would have the effect of reducing the volatility of the pricing of the gas supply.
- Identify the type and quantity of back-up fuel on site, if relevant.

## Exhibit C. Proposal Requirements

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### *For proposals that use Wind:*

- Provide the location of all anemometers used for wind resource assessment and the locations of all turbines or proposed turbines on a site topographic map.
- Provide a table illustrating the measurements made at each on-site anemometer. Include the parameters measured at each height, the date each mast was commissioned, the date each mast was decommissioned, the data recovery rate from each instrument, and the period of record used for the wind resource assessment.
- Describe the method of estimating the long-term energy resource characteristics of the site. If an off-site, long-term record or other technique, such as a long-term numerical modeling study, is used for the adjustment, provide details of the correlation or other study method and indicate the amount that such method raised or lowered an energy estimate based on on-site data alone.
- Provide a summary report of the energy estimate for the site, whether by independent meteorological consultant or in-house analysis. If in-house resources are used, provide a summary of qualifications of the organization and résumé of the analysts for performing such work.
- Provide a table which quantifies the adjustment factors used to adjust a gross energy estimate to the net energy estimate. Include estimates for the following:
  - adjustment of on-site data to reflect a projected long-term resource
  - topographic adjustments
  - array (wake) losses
  - electrical losses between the turbines and the point of project revenue metering, and specify clearly the point of metering (e.g., on the low side of the project transformer, or the point of interconnection with the transmission provider)
  - availability
  - icing and blade degradation
  - high wind hysteresis
  - substation and infrastructure maintenance
  - utility system downtime
  - power curve adjustment
  - wind sector management
- Wind turbine supply:
  - Indicate the preferred wind turbine vendor or vendors.
  - Describe the status of the turbine vendor review of the site plan.
  - Indicate the status of negotiations with the turbine vendor(s), including the date of the most recent pricing proposal and the date through which the vendor's proposal remains valid.
  - Describe the operations, maintenance, and warranty plans, and estimated costs.
- Provide the indicative site annual mean wind speed at hub height.

## Exhibit C. Proposal Requirements

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- Provide the projected average net output in MWh in an Excel 12x24 matrix (**Exhibit E**); that is, for each hour of each month, indicate the number of MWh expected to be generated in a typical hour.
- Provide in Excel a representative year of energy production for each of 8760 hours of the MWh expected to be produced in each hour. The 8760 hours should be representative of the expected long-term behavior and therefore be consistent with the 12x24 matrix.
- In a table, a graph, and in Excel, provide a typical annual hub-height wind speed distribution in 0.5 m/s intervals. Such distribution should be consistent with the energy data supplied pursuant to the above requests.

### *For proposals that use Solar Energy:*

- Indicate method of solar energy collection whether it be a concentrating solar power (trough, dish/engine, power tower, etc.), photovoltaic, etc.
- Provide a description of the method of solar energy collection and the technologies used in conversion into electricity.

#### For Concentrating Solar Power (CSP) Provide:

- Concentrating solar technology proposed (trough, dish/engine, power tower)
- Concentration ratio, including calculations supporting this
- A description of the Power conversion unit.
- Tracking system description.
- Thermal storage technology if appropriate including size and medium.
- Backup energy source in the case of a hybrid system.
- Array monitoring system

#### For Photovoltaic systems (PV):

- Provide specification sheets for panels, mounting structures and inverter devices.
  - Quantify string output, number of panels, panel efficiency, panel mounting structures, etc.
  - Describe array monitoring system.
  - Describe electrical losses between the solar panels and the point of project revenue metering, and specify clearly the point of metering (e.g., on the low side of the project transformer, or the point of interconnection with the transmission provider)
  - Quantify losses due to panel efficiency loss over expected panel life.
- Provide a general description of the project and the project area. Include environmental factors such as the known or expected presence of protected, endangered or economically important wildlife.
  - Provide the location of all solar data collection sites and the locations of all solar arrays on a site topographic map.



## Exhibit C. Proposal Requirements

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- Provide a table illustrating the irradiation measurements made at each on-site location. Include a description of the measurement technique and the technology used for the measurement.
- Describe the method of estimating the long-term energy resource characteristics of the site. If an off-site, long-term record or other technique, such as a long-term numerical modeling study, is used for the adjustment, provide details of the correlation or other study method and indicate the amount that such method raised or lowered an energy estimate based on on-site data alone.
- Provide a summary report of the energy estimate for the site, whether by independent meteorological consultant or in-house analysis. If in-house resources are used, provide a summary of qualifications of the organization and résumé of the analysts for performing such work.
- Provide a table which quantifies the adjustment factors used to adjust a gross energy estimate to the net energy estimate. Include estimates for the following:
  - adjustment of on-site data to reflect a projected long-term resource
  - topographic adjustments
  - array losses
  - availability/maintenance outages
- Solar generation equipment supply:
  - Indicate the preferred vendor or vendors.
  - Indicate whether equipment will qualify for the made in Washington requirements for solar projects sited in Washington State.
  - Indicate the status of negotiations with the equipment vendor(s), including the date of the most recent pricing proposal and the date through which the vendor's proposal remains valid.
  - Describe the operations, maintenance, and warranty plans, and estimated costs.
- Provide the projected average net output in MWh in an Excel a 12x24 matrix (**Exhibit E**); that is, for each hour of each month, indicate the number of MWh expected to be generated in a typical hour.

### *For proposals that use Solid Fuel:*

- Provide the following fuel specifications: fuel type, heat content, moisture content, sulfur content, ash content, ash fusion temperature and a description of any pre-use processing or conditioning required to make the fuel usable.
- Describe the type(s) and source(s) of the fuel. Is fuel source dependent on other contracts or purchasers?
- Describe the fuel procurement plan in terms of the percentage of total fuel that will be procured from the spot market versus total fuel that will be procured under a contract term of 5 years or longer.

## Exhibit C. Proposal Requirements

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- Describe the fuel transportation/supply plan, including all railroad(s), truck routes, quantities, and frequencies. Explain any highway or rail improvements that may be necessary to accommodate proposed transportation plan, such as paving, bridges, new rail spurs, etc., as well as plans for accomplishing such improvements.
- Identify all rail carriers and describe the status of any transport negotiations or agreements, including any known or anticipated freight rates.
- Describe any governmental approvals or permits required to complete fuel supply and transport.

### *For proposals that use Hydro:*

- Provide the water exceedence curve.
- Provide a general description of the project and the project area. Include environmental factors such as the known or expected presence of protected, endangered or economically important fish and wildlife.
- Include a statement as to the availability of water rights for the project and the nature of any potentially conflicting uses.
- Include the number, type and characteristics of proposed or existing turbines including efficiency curves, minimum, most efficient and maximum generation outputs and the corresponding turbine discharges.
- Provide an estimate of the average generation expected to be produced for at least a thirty- to fifty-year time period, including a spreadsheet showing the total expected generation by month, for each year of the time period used.
- Include a hydrological record, observed or synthesized, showing the total daily average flows available each day for the period of record cited above and including flow duration curves for daily flows by month, for the period of record used.
- Describe any known or likely flow constraints (such as minimum instream flows for fish, wildlife, aesthetics or other purposes) that would affect overall water availability or constrain facility operations (such as minimum turbine releases or ramping rates).
- For those projects where a synthesized hydrological record has been used, please provide a description of the methodology used to create and calibrate the record. For those projects where observed flow records are used, please provide the source of the information and a brief description of how the record was collected.
- For those projects employing a reservoir, please provide a physical description of the reservoir and its expected operation. Indicate any known or anticipated constraints on its water surface elevations and operation.

### *For proposals that use Tidal Energy:*

- Identify and provide the source of the tidal tables used as the basis for estimating the energy production at a given tidal energy location.

## Exhibit C. Proposal Requirements

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- Provide a general description of the project and the project area. Include environmental factors such as the known or expected presence of protected, endangered or economically important fish and wildlife. This should also include an evaluation of the bathymetry at the site.
- Include a statement as to the availability of a license from the Federal Energy Regulatory Commission (FERC) at this specific tidal energy location. Detail any of the license application steps that have already been completed towards either the preliminary permit and / or a formal license application.
- Include the number, type and characteristics of the proposed tidal energy turbines including their efficiency curves, the minimum, most efficient and the maximum generation outputs and the corresponding tidal velocities required to operate the tidal turbine in each of these modes.
- Provide an estimate of the average generation expected to be produced for at least a thirty to fifty year time period. This must include a spreadsheet showing the total expected generation by month, for each year of the time period used.
- Include the tidal record, observed or synthesized, showing the total daily average tidal flows available each day for the period of record cited above and including the flow duration curves for daily tidal flows by month, for the period of the record used.
- Describe any known or likely flow constraints (such as minimum tidal flows for fish, wildlife, aesthetics, environmental or other purposes) that would affect overall water availability or constrain facility operations.
- For those projects where a synthesized tidal flow record has been used, please provide a description of the methodology used to create and calibrate the record. For those projects where observed tidal flow records are used, please provide the source of the information and a brief description of how the record was collected.
- Identify the local electrical service provider and the location for the interconnection to the existing utility grid. Describe the equipment required for this interconnection and the steps by which an interconnection agreement with the existing electrical service provider shall be achieved.

### *For proposals that use Wave Energy:*

- Identify and provide the source of the information used to characterize the wave energy resource as the basis for estimating the energy production at a given wave energy location.
- Provide a general description of the project and the project area. Include environmental factors such as the known or expected presence of protected, endangered or economically important fish and wildlife.
- Include a statement as to the availability of a license from the Federal Energy Regulatory Commission (FERC) and / or the Materials Management Service (MMS) at this specific wave energy location. Detail any of the license application steps that have already been completed towards either the preliminary permit and / or a formal license application.

## Exhibit C. Proposal Requirements

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- Include the number, type and characteristics of the proposed wave energy devices including their efficiency curves, the minimum, most efficient and the maximum generation outputs and the corresponding wave spectrum required to operate the wave energy device in each of these modes.
- Describe how the wave energy device operates to convert wave energy to electrical energy, the characteristic resonant frequency of the device to maximize energy conversion from the given wave energy resource and if the device is able to change this resonant frequency to match the naturally occurring changes in the wave energy spectrum.
- Provide an estimate of the average generation expected to be produced for at least a thirty to fifty year time period. This must include a spreadsheet showing the total expected generation by month, for each year of the time period used.
- Include the record of wave data, observed or synthesized, showing the wave height and period measurements, the resulting “representative” wave (based upon this data) and the calculated wave spectrum for the given location.
- Describe any known or likely conditions that could impact the successful deployment of a commercial scale wave energy plant at this location. This may include the competing uses of the location, such as; shipping lanes, submarine cables and pipelines, ocean disposal sites, military exclusion areas, commercial and sport fishing grounds, environmentally sensitive areas and existing national parks or marine sanctuaries.
- For those projects where a synthesized wave records have been used, please provide a description of the methodology used to create and calibrate the record. For those projects where observed wave records are used, please provide the source of the information and a brief description of how the record was collected.
- Identify the local electrical service provider and the location for the interconnection to the existing utility grid. Describe the equipment required for this interconnection and the steps by which an interconnection agreement with the existing electrical service provider shall be achieved.

### *For Proposals that use Geothermal Energy:*

- Provide geothermal source description (natural steam, steam from water injection, etc.)
- Include steam flow measurements or calculations, including supporting documentation and/or software relied on
- Describe the project area including any nearby areas potentially impacted (national parks or monuments)
- Provide a well development plan, including any access issues to those well sites.
- Provide a re-injection well plan if appropriate
- Describe energy conversion technology, number and type of units, and specifications.

## Exhibit C. Proposal Requirements

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- Geothermal generation equipment supply:
  - Indicate the preferred vendor or vendors.
  - Indicate the status of negotiations with the equipment vendor(s), including the date of the most recent pricing proposal and the date through which the vendor's proposal remains valid.
  - Describe the operations, maintenance, and warranty plans, and estimated costs.
- Provide the projected average net output in MWh in an Excel a 12x24 matrix (**Exhibit E**); that is, for each hour of each month, indicate the number of MWh expected to be generated in a typical hour.
- Describe the method of estimating the long-term energy resource characteristics of the site. If an off-site, long-term record or other technique, such as a long-term numerical modeling study, is used for the adjustment, provide details of the correlation or other study method and indicate the amount that such method raised or lowered an energy estimate based on on-site data alone.
- Provide a summary report of the energy estimate for the site, whether by independent geotechnical consultant or in-house analysis. If in-house resources are used, provide a summary of qualifications of the organization and résumé of the analysts for performing such work.
- Provide the location of all geothermal data collection sites and the locations of all wells and generating equipment on a site topographic map.

### 4 Emissions

Include estimates of emissions (air, liquid and solid wastes) in pounds per hour per pollutant and/or waste product at 100% load and tons per year per pollutant and/or waste product at a specified capacity factor as selected by the respondent. Any limits on emissions must be stated.

For each unit boiler or combustor (combustion turbine or reciprocating engine):

- **In an Excel spreadsheet and graph**, show the CO<sub>2</sub> emissions rate distribution (lbs/MWh and lbs/MMBtu) at full load, 90%, 80%, 70%, 60%, 50%, 40%, 30%, 20% and 10% capacity.
- Describe raw materials used in process.
  - Describe primary and secondary fuel type and consumption (mass flow rate/hr/day/year). Specify natural gas, propane, waste gas (landfill gas, sewage digester gas, process gas), gasoline, coal, coke, biomass, waste-derived fuel, syngas, kerosene (#1 fuel oil), diesel (#2 fuel oil), or residual fuel (#6 fuel oil).
  - Estimate how many million cubic feet of gaseous fuel or thousands of gallons of liquid fuel will be burned annually. Alternatively, specify how many billion Btu/yr.
  - Specify upper heating value or heat content of any gas or syngas burned (Btu/million ft<sup>3</sup>).

## Exhibit C. Proposal Requirements

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- Include chemical composition of any waste gas or process gas burned (% ppmv). Specify the principle components in percent, and the trace constituents (H<sub>2</sub>S, ammonia, hydrogen chloride, vinyl chloride, etc.) in parts per million by volume.
- Describe unit technologies and specific manufacturer-provided data including:
  - List rated heat input (MMBtu/hr). The heat input is equal to the maximum fuel firing rate times the upper heating value of the fuel.
  - Specify heat rate (Btu/kWh) and include the output (MW) at base and peak loads.
  - List stack exhaust flow rate (scf/min), exhaust temperature (F), exhaust stack height and diameter.
  - List make and model of unit. Specify the date when the boiler or combustor turbine or reciprocating engine was built by the manufacturer.
  - Describe the type of internal combustion engine. For turbines, specify the operating cycle (simple, regenerative, cogeneration, or combined) and the type of combustor (annular, can-annular or silo). For reciprocating engines, specify the ignition system (compression or spark ignition), the air scavenging cycle (2-stroke or 4-stroke), the fuel delivery system (injection or carburetor), the air-to-fuel ratio (rich-burn or lean-burn), the total cubic inch displacement and the number of cylinders. For steam cycles, specify combustor type, operating temperature and pressure, steam flow rate, and any pre- or post-combustion emission control devices.
  - Describe preventive maintenance including, but not limited to, the periodic maintenance recommended by the manufacturer and its frequency.
  - Describe emission rates under different fuels and different run rates as appropriate. Estimate the emissions of each pollutant and include your calculations. Include all criteria pollutants (NO<sub>x</sub>, SO<sub>2</sub>, CO, PM, VOC, CO<sub>2</sub>) and any toxic air pollutants. Provide projected lbs/hr and ppm; potential to emit at 8760 hours per year in tons per year. Emissions should be based on the manufacturer's warranties or measurements. For other pollutants, use emission factors from <http://www.epa.gov/ttn/chief/ap42/index.html>.
- Include Flow Diagram of Unit:
  - Flow diagram may be schematic. All equipment should be shown with existing equipment so indicated.
  - Show flow diagram of process starting with all raw materials used.
  - If more than one process is involved to generate energy, show each process and where they merge.
  - Indicate all points in process where gaseous liquid or particulate pollutants are emitted.
  - Show pick up and discharge points for handling or conveying equipment.
- Describe emission controls, including:
  - For all submittals, include type, manufacturer, technology methods, degree of redundancy or spares, pollutant removal rates or efficiencies include pre- and post-emissions in ppm and lb/hr, emission rate guarantees by manufacturer, expected maintenance schedule and costs (including consumables).
  - For combustion turbines, specify if using water or steam injection, dry controls such as 2-stage lean/lean or 2-stage rich/lean (DLN, DLE, SoLoNO<sub>x</sub>) combustors, or add

## Exhibit C. Proposal Requirements

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on controls such as selective catalytic reduction or other catalytic reduction systems (SCONOX, XONON).

- For reciprocating engines, specify if using exhaust gas recirculation, ignition timing retard, pre-ignition combustion chambers, air-to-fuel ratio adjustments, engine derating, nonselective catalytic reduction (3-way catalyst), or selective catalytic reduction.

### 5 Interconnection and Transmission

#### *Planned Interconnection*

Proposals should include a clear statement of the proposed Interconnection Point, the name of the transmission provider, whether or not the proposal contemplates delivery to PSE, and the proposed entity to manage control area responsibilities. For purposes of this RFP, the term "Interconnection Point" shall refer to the point at which the project is connected to the high voltage transmission system. Proposals should also include all details of planned electrical interconnections including, but not limited to:

- Interconnection requests along with submittal date and/or queue number
- Feasibility studies
- System impact studies
- Facility studies
- Required upgrades
- Interconnection and related agreement(s)
- List of affected systems
- Potential alternatives to interconnection arrangements, if any
- Information to identify persons at the interconnecting utility who may be contacted by the review team
- One-line diagram of the interconnection

Based on the identified interconnection point to the Northwest transmission system, discuss all related construction plans, status and schedule for any required interconnection facilities, network upgrades, affected system upgrades and distribution upgrades including:

- New lines and facilities
- Line and facilities upgrades
- Switchyards and substation work required to complete the interconnection
- Metering and communications, both by the developer and the interconnecting utility

## Exhibit C. Proposal Requirements

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- Easements, rights of way, or property controlled for any new transmission facility or otherwise to interconnect the project

Include the status of control over required rights-of-way for any new interconnection facility/transmission upgrade required. Include information on ownership and maintenance responsibility, and the availability of long-lead electrical equipment, such as transformers, that will be required to support the project. Metering information should include a detailed description of how the metering of the actual output of the project shall be determined and how the metering configuration was included in the determination of project output.

### *Planned Transmission Services*

Please provide status of transmission service and ancillary services secured and/or requested by respondent including, but not limited to:

- Transmission service requests along with queue number and term
- System impact studies
- Facility studies
- Expected availability of the transmission
- Detailed cost estimates of transmission services with supporting detail
- Loss factor from each transmission provider
- Availability of credits against transmission costs from the transmission provider for the capital costs of upgrades
- Information to identify representatives of the transmission provider who may be contacted by the review team concerning transmission arrangements
- Also include copies of any completed studies performed by and agreements signed with the applicable transmission providers. Provide all other information/correspondence obtained from those transmission providers as a result of interconnection and transmission requests and discussions that have been held to date. In the absence of formal studies, any information available concerning transmission/interconnection availability, costs and reliability should be provided with as much supporting documentation as possible. In any event, all available information should be provided regarding whether and to what extent firm transmission will be available, whether and to what extent the necessary transmission is subject to constraint, and the projected cost of relieving any transmission constraints.
- For remote and long lead-time resources such as wind or coal, which may require a long-term transmission solution, creative options may be proposed and will be considered. The developer may provide its own capital and transmission solution, or may work with PSE to determine how best to develop the needed transmission. Options could include participant funding to build transmission or the issuance of a separate RFP for transmission.



# Exhibit C. Proposal Requirements

## Delivery Points

PSE's acceptance of the delivery of project energy and capacity at the respondent-proposed Interconnection Point or at PSE's system will depend in part on the project meeting all of the required interconnection standards. PSE prefers delivery to its system, particularly at points on its system at which the deliveries may be effected and used to serve load with no or limited transmission congestion, with the respondent assuming responsibility for firm transmission on third-party transmission systems to effect delivery.

Constrained	Less Constrained
Custer Substation 230 kV	Maple Valley Substation 230 kV*
Bellingham Substation 115 kV	Christopher Tap 230 kV*
Sedro Woolley Tap 230 kV	White River Substation 230 kV
Beverly Park Substation 115 kV	C.W. Paul Substation 500 kV
Monroe Substation 230 kV	Olympia Substation 230 kV*
Northwest Market Hub (Mid-Columbia)	Kitsap Substation 115 kV*
Covington Substation 230 kV*	Fairmont Substation 115 kV

\* Most favorable delivery points

In its evaluation of proposals that exclude delivery to PSE's system, PSE will assess the likelihood of acquiring adequate transmission rights and a quantification of the costs to deliver project output to its system.

## 6 Price

### Generally

- Price proposals must specify by month fixed and variable payments, escalation rates to be applied if any, and all other pricing information necessary for PSE to fully evaluate the proposal.
- PSE's overall weighted average cost of capital of 8.4% will be used in the quantitative evaluation of resource offers.
- Respondents should be aware that the term-sheet for PSE's purchase of an interest in a project, the prototype power purchase agreement, the WSPP agreement as modified by PSE (for short-term PPAs), and the prototype exchange agreement (**Exhibits I, J, K and L**, respectively), as applicable, will be the basis for any potential Definitive Agreement with PSE.
- As an option, respondents are requested to provide a proposal which requires respondent to fully assume the present and future costs of environmental mitigation

## Exhibit C. Proposal Requirements

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required under existing or future local, state, or federal law. If provided, such proposal should specify the environmental risks that the respondent is assuming and the cost for assuming each one. Failure to provide such an alternative will not disqualify the respondent; however, if the respondent elects not to provide a proposal for assuming such risks, PSE requests that an explanation as to the reason be provided. Also, any such environmental risk provisions should be optional, to be included at PSE's election.

### *Power Purchase Agreements*

For Power Purchase Agreements, respondents should provide the following information by month at a minimum, as applicable.

- A flat or escalating price per MWh for energy and environmental attributes produced.
- If applicable, a fixed or escalating demand price in \$/kW month, start charges in \$/start, and contract heat rate.
- Respondents should indicate whether the price offer includes environmental attributes, operating reserves, and whether respondent assumes all environmental risk. If available as separate options, specify the price of each option.
- Respondent's fixed annual or monthly payments associated with operation, maintenance and ownership costs.
- For project PPAs, respondent's underlying fixed and variable cost of production.
- A combination of the above or other suitable alternatives that may be proposed.
- All other things being equal, PSE prefers a pricing structure that closely mirrors the actual cost structure of the project. In this way, the developer's and PSE's interests with respect to scheduling and dispatch would be aligned.
- In addition to the project pricing, please provide a schedule of termination amounts, based on the year in which termination occurs for each contract year of such Power Purchase Agreement based on the assumption that upon a notice of termination provided by PSE and PSE's exercise of such election, Seller shall immediately transfer to PSE (i) all of Seller's rights, title and interests in and to the Project (including all project equipment), the Permits, all rights of Seller to real property included in or benefiting the Site and (ii) all of Seller's rights, title and interests in, to and under any agreements related to the Project to which Seller is a party.
- PPA price offers must be provided in an electronic Excel spreadsheet file with formulas intact. Respondents must provide a separate Excel spreadsheet file for each offer if multiple offers are proposed.

Respondents should be aware that the quantitative cost screening of proposals received in response to the RFP will include costs associated with delivering the energy to PSE's system as well as the costs associated with financial and accounting regulations. An imputed debt component will be calculated for all PPAs pursuant to the methodology of the Standard and Poor's rating agency, as described below:

## Exhibit C. Proposal Requirements

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### Calculating Imputed Debt for PPAs

The debt rating agencies consider long-term take-or-pay and take-and-pay contracts debt-like in nature and have historically capitalized these obligations on a sliding scale known as a "risk spectrum". Hence there is a cost associated with issuing equity to rebalance the Company's debt/equity ratio in response to imputed debt if PSE is to maintain a current credit rating. Imputed debt in the Least Cost Plan and in the evaluation of responses to the RFP is calculated using a similar methodology to that applied by the Standard and Poor's ("S&P") rating agency. The calculation begins with the determination of the fixed obligations that are equal to the actual demand payments, if so defined in the contract, or 50% of the expected total contract payments. This yearly fixed obligation is then multiplied by a risk factor. PSE's current contracts have a factor of 30% along the S&P risk spectrum. Imputed debt is the sum of the present value (using a 10% discount rate and a mid-year cash flow convention) of this risk-adjusted fixed obligation. The cost of imputed debt is the equity return on the amount of equity that would be required to offset the level of imputed debt to maintain the Company's capital and interest coverage ratios.

### Sensitivity of Imputed Debt Cost

The cost impact of imputed debt on power purchase agreements varies with the term of the contract, the proportion of the PPA associated with demand payment, and with the escalation of the PPA rate or demand payments. Assuming a flat, un-escalated PPA rate and PSE's allowed cost of capital, the imputed debt cost will increase the levelized cost of the PPA by approximately 3.5% on a 3-year PPA, 5% on a 5-year PPA, 8.4% on a 10-year PPA and 13.2% on a 20-year PPA.

### *PSE Ownership*

For PSE ownership arrangements, respondents should address the following, as applicable:

- Purchase by PSE of the development rights at the completion of the development stage with design, procurement and construction being the responsibility of PSE with the possibility of a limited continuing role for the respondent
- Outright purchase and operation of the project by PSE at the date of commercial operation (respondent to provide training to PSE operating personnel)
- Joint development and ownership by PSE and the respondent
- Purchase of the project by PSE with respondent having principle responsibility for continued development and operation
- Purchase of the project by PSE at commercial operation with operation by the respondent for a specified time period during which time respondent would provide training to PSE operating personnel
- A combination of the above or other alternatives that may be proposed by the respondent
- As an option, respondents are requested to provide a proposal which requires respondent to fully assume the present and future costs of environmental mitigation required under existing or future local, state, or federal law. If provided, such proposal should specify the environmental risks that the respondent is assuming and the cost for assuming each one. Failure to provide such an alternative will not disqualify the

## Exhibit C. Proposal Requirements

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respondent; however, if the respondent elects not to provide a proposal for assuming such risks, PSE requests that an explanation as to the reason be provided. Also, any such environmental risk provisions should be optional, to be included at PSE's election.

### 7 Legal and Financial

At a minimum, the proposal should contain the following information:

- A description of the structure and status of the project financing, the significant conditions on which the financing depends and the milestones that need to be achieved to secure both construction and term financing (as required) to support the project schedule
- Identification and contact information for all legal advisors, financial advisors and capital providers (debt and equity) for the project to the extent now known or anticipated
- A description of the project structure and capitalization during the development, construction and commercial operation phases. Describe all anticipated credit support arrangements and appropriate parental, subsidiary and venture relationships pertinent to the proposal.
- A description of any dependence of respondent on another entity, e.g., a fuel supplier or a steam host
- A deal diagram that shows all contractual parties, listed by their legal names, and their relationship with the project
- Commitment letters or letters of undertaking from corporations, investment bankers and/or commercial bankers indicating that the project has or is able to obtain the construction and permanent financing it will require. Describe any caveats and conditions to financing commitments that such parties may require.
- The qualifications of such parties to provide, arrange or assist in obtaining necessary financing and credit support arrangements
- Audited financial statements, if available, or if unavailable, unaudited financial statements for the most recent 12-month period for all entities, including affiliates involved in the proposed transaction and all entities that may provide credit support, credit enhancement, guarantees, or other security. This information is intended to provide an indication of the ability and willingness of the respondent to negotiate in good faith (and to cause its lenders and equity partners to do the same). The types of financial and control requirements PSE may require are listed in the Evaluation Criteria in **Exhibit B**.
- Clear identification of the respondent's investment advisor. The use of the term "financial advisor" or "investment advisor" in this RFP refers to third-party advisors, such as investment bankers or others assisting the project developer in the placement of debt and/or equity financing. If a proposal is selected by PSE for further discussion and possible negotiation towards a Letter of Intent and potentially a Definitive Agreement, PSE will require that the investment advisor be available to meet and discuss with PSE all aspects of project financing.

## Exhibit C. Proposal Requirements

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- A summary of the major project capital and operating expenses and documentation to support the reasonableness of the projections referred to below, including an itemized budget with a breakdown of projected capital costs, and operating and maintenance costs and a breakdown of all costs associated with site acquisition and improvement, permitting, project construction, testing and commissioning, compliance with environmental and other applicable federal, state, or local regulations, security, and routine operation and maintenance activities.
- Pro forma financial projections for both PSE ownership offers and PPAs showing the project cash flow, income statement, and balance sheet, sources and uses of funds, construction draw schedule, and including all financing assumptions. At a minimum the pro forma should include the following:
  - Annual energy production and assumed revenue
  - Annual operating expenses including turbine and balance-of-plant operations and maintenance costs, G&A expenses, asset management fees, land leases, property taxes, insurance and other expenses
  - Transmission and ancillary services costs (if any)
  - Debt service requirements
  - Debt coverage ratios (highest year, lowest year, average)
  - Depreciation (tax and book)
  - Income taxes and tax credits
  - Other taxes
  - Working capital requirements
  - Net income
  - Book rate of return to average equity
  - After tax unlevered internal rate of return to capital
  - After tax levered internal rate of return to capital

The pro forma must be provided in an electronic Excel spreadsheet file with formulas intact (generally in the form set forth in **Exhibit F**).

### 8 Accounting Regulations

To evaluate the accounting effects of FIN 46R, SFAS 133/149 and EITF 01-08 on a proposed *power purchase agreement (PPA)*, PSE may require additional information from the respondent. A description of each of the accounting regulations and the required information is provided below.

#### ***Financial Interpretation No. 46R, Consolidation of Variable Interest Entities***

FIN 46R provides guidance on the identification of, and consolidated financial reporting for, variable interest entities. Entities proposing power purchase agreements (PPAs) or power bridging agreements (PBAs) may be variable interest entities. Tolling arrangements may also fall under the consolidation requirements of FIN 46R, depending upon the power purchase term and the organizational structure of the responding entity. Pursuant to requirements regarding such consolidated financial reporting, respondents must provide their detailed financial information for determination of applicability of FIN 46R. PSE will make a preliminary assessment as to whether

## Exhibit C. Proposal Requirements

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or not the respondent's entity would need to be consolidated and the impact of consolidation on PSE's financial statements using the required information listed below.

### FIN 46R - Required Information to be Submitted with Offer

- Current ownership structure (by respondent entity along with respondent's ultimate parent)
- List of all generation resources owned by respondent entity, including location and ownership structure of each generation resource
- Megawatt capacity of each generation resource owned by respondent entity and proportion of ownership
- Megawatt capacity of the generation resources that would be sold to PSE
- Remaining design life of generation resource being proposed to PSE
- Information on all ownership and capitalization changes from respondent entity from inception to date
- If respondent entity is a Partnership, LLP or LLC , information regarding activities of the respondent entity which resulted in any of the following from inception to date:
  - Changes in entity's governing documents or contractual arrangement which result in change in partner investment at risk
  - Return of equity investment or some part thereof to the equity investors, and other interests becoming exposed to expected loss of the respondent entity
  - Respondent entity undertaking additional business activities or acquiring additional assets
- 2006 annual and quarterly financial statements and notes of respondent entity
- 2007 quarterly financial statements and notes of respondent entity
- List of derivatives instruments and treatment on the current financial statements and description of any intended derivative instruments as a result of the RFP by respondent entity

### Additional Compliance Information Required at Time of Contractual Agreement and Quarterly Thereafter until Termination:

- Descriptions of the following obligations for the latest quarter:
  - On-balance sheet obligations
  - Gas purchase obligations
  - Lease obligations and commitments
  - Off-balance sheet commitments
  - Contingent obligations
- All material contracts (or summaries, if the original contracts are not immediately available) in place since inception including side agreements, if any, but not limited to:

## Exhibit C. Proposal Requirements

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- Equity-related agreements
- Debt and other borrowing documents
- Material asset or stock acquisitions or dispositions
- Documents under which guarantees or indemnities have been provided:
  - Material supplier and customer contracts
  - Related party contracts
  - Documents related to material hedging activities
  - Contingent obligations and financial commitments
  - Leasing arrangements and off-balance sheet obligations
  - Management and outsourcing contracts

### ***Financial Accounting Standards Board (FASB) Emerging Issues Task Force 01-08***

EITF 01-08 found that arrangements or contracts that traditionally have not been viewed as leases may contain features that would require them to be accounted for as leases under Statement of Financial Accounting Standard No. 13 (SFAS 13), "Accounting for Leases." Power supply agreements in which (a) PSE has the right to control the use of the underlying property, plant or equipment may be considered to constitute a lease for accounting purposes and will require lease accounting. Such right to control is to be assessed with respect to, among other things, the amount of power PSE may purchase from the generating facility, PSE's right to operate or direct the operation of the underlying property, plant or equipment, PSE's right to control access to the underlying property, plant or equipment, and the relevant contract pricing structure. Each PPA and PBA offered in response to the RFP will be evaluated to determine the impact of EITF 01-08 and SFAS 13 reporting. A listing of information required from each respondent for purposes of such evaluation is contained below.

### ***EITF 01-08 Required Information to be Submitted with Offer***

- Does PSE have the right to operate the underlying property, plant and equipment (PP&E) or direct others to operate the PP&E while obtaining or controlling more than a minor amount of the output or other utility of the PP&E?
- Does PSE have the right to control physical access to the PP&E while obtaining or controlling more than a minor amount of the output or other utility of the PP&E?
- Proportion of generation output to PSE and proportion to others during the term of the arrangement.
- Clarify offer terms to specify whether the price paid by PSE for the output is fixed or equal to current market price per unit of output at the time of delivery.

### ***Financial Accounting Standards Board (FASB) Statement 133 (SFAS 133)***

Established accounting and reporting standards for derivative contracts and hedging activities, SFAS 133 defines derivative financial instruments very broadly and requires all derivative instruments not exempted from the statement to be recorded at "fair value" as either assets or liabilities in the company's financial statements. Each PPA offered in response to the RFP will be evaluated to determine the impact of SFAS 133 reporting based on the proposed contract.

## Exhibit C. Proposal Requirements

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### *Financial Accounting Standards Board (FASB) Statement 149 (SFAS No. 149)*

Amends SFAS 133 to require an energy marketing company to have the capacity to back a forward sales contract for normal purchase normal sale (NPNS) treatment and evidence must be obtained that demonstrates that the seller has the available capacity either through direct ownership of a generating plant or by contract. For example, if the seller is a power broker that does not have access to a pool, the buyer would have to obtain evidence supporting a conclusion that the seller has access to capacity at or near the delivery point (e.g., a long-term power purchase contract or tolling agreement) to back the contract. Similarly, such evidence would have to be obtained if the seller or a sister company is a known owner of generation but the delivery point in the contract is a location that cannot be served from their owned capacity. Each PPA offered in response to the RFP will be evaluated to determine the impact of SFAS 149 reporting based on the proposed contract.

PSE recommends that the respondents consult with their accounting professionals with respect to the above accounting guidelines. (Web address to the .pdf document of FIN 46R: <http://www.fasb.org/pdf/fin%2046R.pdf> and to FAS 133 and 149: <http://www.fasb.org>.)

## 9 Environmental

### *Inspections, Orders and Suits*

- Provide copies of any state/federal environmental inspection reports or audits from the last 3 years.
- Provide a list of all Notices of Violations, environmental fines or penalties paid by the company during the past 3 years.
- Provide a summary of any active enforcement orders, audits, notices of violations, consent decrees or other enforcement actions relating to environmental regulations, site cleanup or liability.

### *Air*

- Provide copies of active air permits or permit applications (Title V, Acid Rain, etc.).
- Provide emissions data for the last 3 years. Include emission rates under different fuels and different run rates as appropriate.
- Indicate consent decrees/orders/agreements still in effect. Provide copies of these orders and related correspondence.
- List any reportable and non-reportable air incidents that have occurred in the last 2 years?
- Has the facility been audited for compliance with NSR and/or PSD compliance? If so, please provide a copy of any relevant written audit results or electronic or written correspondence between the facility and the auditing agency.



## Exhibit C. Proposal Requirements

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- Does the facility meet required operation and maintenance requirements for installed continuous emission monitoring system (CEMS), and is it following a compliance assurance monitoring plan?
- Has the facility undertaken an analysis of the impact of the Clean Air Mercury Rule on its operations? If so, please provide a copy of this analysis.
- What are the facility's plans for implementation or adherence to the regional haze rule?
- What kind of operational changes are planned or contemplated at the facility that may increase production or emissions?
- Is the facility subject to limits on greenhouse emissions or other greenhouse gas performance standards? If so, describe.

### *Solid Waste*

- Provide a description of the solid wastes produced by the project and the disposal plan for these wastes. Include a copy of the permits for solid waste disposal. The plan should include estimated costs of the disposal, including transportation and tipping fees.

### *Wastewater and Stormwater*

- Indicate the type of wastewater treatment system used by the facility.
- Provide a description of the wastewater disposal plan and include a copy of the permits for wastewater disposal, including any applicable Clean Water Act permits (NPDES or POTW) and/or underground injection permits, Publicly Owned Treatment Works (POTW) permits or authorizations, discharge to groundwater permits, underground injection permits or land application authorization. The plan should include estimated costs of the wastewater disposal.
- Provide a copy of any stormwater permit and application.

### *Emergency Planning (CERCLA/EPCRA)*

- Provide the most recent Form R report (TRI report).
- Provide a copy of the most recent Tier I/II hazardous chemical inventory.
- Provide a copy of the facility's Risk Management Plan and indicate any changes to facility processes or operations that have changed conditions described in the RMP.

### *Spills and Spill Prevention Control and Countermeasures (SPCC)*

- Provide a copy of the facility's SPCC plan and any other oil spill plans required under state or federal regulations.
- Provide a list of reportable spills at the facility or associated facilities in the past 5 years. Indicate the status of any cleanup actions associated with those spills.

## Exhibit C. Proposal Requirements

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- Indicate the types of dikes and dike liners used for tank farm secondary containment areas.

### *Environmental Siting, Land-Use and Construction*

- Provide a copy of any final or draft environmental impact study, environmental assessment or environmental checklist related to the project.
- Provide a copy of any local (county or city) land-use permit (such as a conditional use permit or development agreement) and application.
- Provide a copy of any EFSEC site certification and application.
- Provide a copy of any federal permit and application related to project siting or construction (such as a Special Use permit or a Clean Water Act permit) and application.
- Provide copies of all wildlife and other environmental studies, assessments or reports related to the site or project.
- Provide copies of any other permits or other governmental approvals and applications or requests related to project siting or construction.

## 10 Experience and Qualifications of the Project Team

The proposal should contain the following minimum information indicating the qualifications of the proposed project team to implement and execute a proposal in response to this RFP:

- The organizations (including organization charts) and key personnel responsible for implementing the project including identification of the project manager, his/her tenure, and scope of responsibility
- A legal entity organization chart
- Existing projects owned, developed and/or operated by the respondent
- The personnel or organizations responsible for the following areas:
  - Project energy resource assessment and projections
  - Project financing
  - Project design, engineering, procurement and construction specifications
  - Interconnection and substation design
  - Project environmental assessments
  - Environmental management including a management organizational chart for the facility's environmental functions and the name of the environmental manager for the facility. If project uses consultants to supplement environmental staffing, please specify their responsibilities.
  - Project land use and zoning approval
  - Permits and related approvals

## Exhibit C. Proposal Requirements

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- Regulatory compliance
  - Project construction and commissioning
  - Risk management and insurance
  - Project asset management and operations
  - Project maintenance
- A brief description of the relevant experience of key personnel and organizations for their responsibility area listed above
    - Contacts and references (name, title, address, telephone, e-mail and fax numbers), who are knowledgeable about the previous project experience of the key project participants

### 11 Development Status and Schedule

The proposal should provide the following information concerning the status of project development activity:

#### *Schedule*

Provide, in a format such as a Gantt chart, the most accurate schedule estimates available on the various project activities covering the period from the initiation of development activities through the project's proposed commercial operation date. Include a schedule item for each significant activity including:

- Project development
- Permitting
- Interconnection
- Engineering
- Construction
- Startup
- Testing
- Commissioning

Provide any additional timelines applicable to the project that will demonstrate its status and plans.

Indicate what actions have been taken to ensure the schedule is met (such as placing orders for equipment with long lead times) and potential opportunities to improve the schedule.

## Exhibit C. Proposal Requirements

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### *Site Control*

Provide documentation demonstrating all necessary site control needed to construct, interconnect and operate the facility. Examples of required documentation include copies of deeds, leases, easements, options, water rights or other such documents as applicable which evidence ownership and control of the existing or proposed project site to include any easements necessary to transmit generated power to the point of interconnection. Provide a copy of a current title report as well as scaleable maps of the project site and any easement corridor(s).

### *Environmental Siting (for projects under development)*

Discuss known environmental issues relative to the development and operation of the project, including impacts to air, water, flora and fauna, energy and natural resources, environmental health, shoreline use, housing, aesthetics, recreation, historic and cultural preservation, transportation, public service and utilities. Describe measures that will be taken to mitigate all impacts of the project.

Provide copies of all wildlife or other environmental studies and assessments that have been performed related to the site and the project (including, but not limited to, wildlife monitoring reports, biological assessments, environmental assessments, environmental impact statements, environmental media sampling reports (air, soil or groundwater)). Describe methodologies for such studies and identify the person(s) or firm(s) who conducted and completed the work. If such studies are planned or in progress, describe the scope and schedule for completion, identify the person(s) or firm(s) performing the studies, and identify the methodologies to be employed. Describe measures that will be taken, or that have been taken, to mitigate all impacts of the project.

Discuss plans to engage community and environmental stakeholders to support the proposed project, or for existing projects. Discuss ongoing community relations and environmental stakeholders relations.

Identify and provide copies of all project permits and any other governmental approvals or authorizations required to build and operate the project, and all permit or other governmental approval applications and requests. Discuss the current status of applications and proceedings, the schedule and the approach to be used to obtain necessary permits and approvals. For existing projects, also discuss any permits that will be up for renewal in the next five years. Outline the process planned to involve local residents and other affected parties in the planning/permit process or the permit renewal process.

### *Permits*

Identify and provide copies of all project permits and applications with special emphasis on the key discretionary permits (such as a conditional use permit, site certificate and major air, wastewater and/or waste permits) required to build and operate the project. Discuss the current status of applications and proceedings, the schedule for obtaining or renewing key permits and approvals, and the approach to be used.

Outline the process planned to involve local residents and other affected parties in the planning/permit process.

If the project is located in an area that is ceded land, may have been historically used by a Native American tribe, or if the project may impact tribal interests, describe any contacts that have been

## Exhibit C. Proposal Requirements

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made with the tribe (include names and phone numbers) or plans to consult the tribe regarding the project.

### *Construction*

Describe arrangements and commitments (contracts, letters of intent, memoranda of understanding) that have been made, if any, for the construction of the project.

Describe the contractual structure (including any existing agreements or forms of agreement) proposed for project design, procurement, and construction; e.g., turnkey, EPC, multiple lump-sum purchase, etc. For any approach other than turnkey, provide information on the organization and responsible individual for project management during this phase. If construction is completed, identify all open warranty issues.

### *Testing*

Summarize the testing planned to be conducted prior to acceptance of equipment from the manufacturer and completion of the project, and the testing to be conducted prior to commercial operation of the project. Possible tests should include, without limitation, power performance, SCADA acceptance, distribution system acceptance, emission and others that demonstrate performance of the project and associated facilities in accordance with applicable laws, regulations, permits and any applicable power purchase agreements.

### *Operation and Maintenance*

The proposal should clearly describe the operations and maintenance plan for the project including the identity of the entities or persons responsible for key activities; a listing of initial spares and their value; the procedures to assure the availability of spares and other operations, maintenance and logistics issues, including whether a long-term service agreement is contemplated and, if so, the principal commercial terms associated with such an agreement.

# Exhibit D. Summary Data

One **Excel** copy of the following form (per offer) must be included as part of the electronic (CD) portion of the respondent's proposal submittal. Respondents should not delete or otherwise modify any portion of the electronic form. It is designed as an input to our proposal database and may not function properly if altered. A copy of the template is available for download at the following web address:

<http://www.pse.com/energyEnvironment/pse2008RFP.aspx>

General Information			
<b>Primary Contact</b>			
<b>Contact Name</b>			
<b>Contact Title</b>			
<b>Name of Company</b>			
<b>Mailing Address</b>			
	<b>City</b>	<b>State / Province</b>	<b>Zip Code</b>
<b>Business Phone</b>		<b>Cell Phone</b>	
<b>Email</b>			
<b>Alternate Contact</b>			
<b>Contact Name</b>			
<b>Contact Title</b>			
<b>Name of Company</b>			
<b>Mailing Address</b>			
	<b>City</b>	<b>State / Province</b>	<b>Zip Code</b>
<b>Business Phone</b>		<b>Cell Phone</b>	
<b>Email</b>			

# Exhibit D. Summary Data

Project Information		
Project Name		
Project Location	City	State / Province
Developer(s)		
Owners(s)		
Project Status		
Expected Date to Begin Construction		
Expected Commercial Operation Date		
<p><i>Note: If commercial structure is a PPA, term start and end dates will be entered on the PPA or Exchange Summary tab.</i></p>		

Proposed Commercial Arrangement	
Commercial Structure	
Description of Other	

Offer			
Asset Purchase	Total \$	\$/kW	\$ Year (USD\$)
Price			
PPA , Exchange or Tolling Agreement			
Briefly Describe Offer			
<p><i>Note: Include offer details as applicable, such as fixed price, reservation charge, variable price, delivery rate, contract heat rate, start charges, any escalation, etc.</i></p>			

# Exhibit D. Summary Data

Technical Information		
<b>Proposal Technology Type</b>		If System PPA (technology unspecified) or Exchange Agreement, click here to skip ahead to the transmission section.
<b>Description of Other</b>		

Nominal Prime Mover / Turbine Generator			
	<b>Make</b>	<b>Model</b>	<b># of Units</b>
<i>If a CCCT, enter gas turbine information on line a, steam turbine information on line b, and duct firing in incremental section below.</i>	a.		
	b.		
<b>Nominal Capacity of Generation Source, new and clean at ISO conditions or specify temperature and elevation below</b>			a. MW
			b. MW
ISO conditions? <input type="checkbox"/> Check box, or specify		°F	feet
<b>Nominal Heat Rate, new and clean at ISO conditions or specify temperature and elevation below [Attach Heat Rate Curve]</b>			Btu/kWh (HHV)
ISO conditions? <input type="checkbox"/> Check box, or specify		°F	feet
<b>If Hydro, Efficiency at Best Gate</b>			%

Incremental Prime Mover			
	<b>Make</b>	<b>Model</b>	<b># of Units</b>
<b>Incremental Capacity (e.g., duct fire), new and clean at ISO conditions or specify temperature and elevation below</b>			MW
ISO conditions? <input type="checkbox"/> Check box, or specify		°F	feet
<b>Incremental Heat Rate, new and clean at ISO conditions or specify temperature and elevation below [Attach Heat Rate Curve]</b>			Btu/kWh (HHV)
ISO conditions? <input type="checkbox"/> Check box, or specify		°F	feet

Facility Information			
<b>Estimated Annual Generation</b>	MWh	<b>Net Capacity Factor</b>	%
<b>Expected Annual Forced Outage Rate</b> <i>(forced outages &amp; planned maintenance)</i>			%
<b>Expected Average Annual Planned Maintenance Requirements</b>		days per year	



# Exhibit D. Summary Data

Generation Information	
<b>Monthly Generation After Scheduled Maintenance</b>	
January	MWh
February	MWh
March	MWh
April	MWh
May	MWh
June	MWh
July	MWh
August	MWh
September	MWh
October	MWh
November	MWh
December	MWh

Capacity Information			
<b>Start up time for hot, warm and cold starts (hours)</b>			
	Hot	Warm	Cold
<b>Minimum online time (hours)</b>		<b>Minimum down time (hours)</b>	
<b>If Hydro, synchronus condense operation (seconds)</b>		<b>If Hydro, turbine startup time from standstill to full load (minutes)</b>	
<b>If applicable, mininum operating load allowable by permits</b>		MW	
<b>Ten-minute start capability?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No		<b>If yes, complete the chart below.</b>

# Exhibit D. Summary Data

10-Minute Reserve Capability			
ISO conditions? <input type="checkbox"/> Check box, or specify		°F	feet
Time (Minutes)	Fuel Rate	Heat Rate	Power
0:00	MMBtu/s	Btu/kWh	MW
0:01	MMBtu/s	Btu/kWh	MW
0:02	MMBtu/s	Btu/kWh	MW
0:03	MMBtu/s	Btu/kWh	MW
0:04	MMBtu/s	Btu/kWh	MW
0:05	MMBtu/s	Btu/kWh	MW
0:06	MMBtu/s	Btu/kWh	MW
0:07	MMBtu/s	Btu/kWh	MW
0:08	MMBtu/s	Btu/kWh	MW
0:09	MMBtu/s	Btu/kWh	MW
0:10	MMBtu/s	Btu/kWh	MW
CO <sup>2</sup> Emission Rates			
	lbs/MMBtu		lbs/MMBtu
Full Load		90%	
80%		70%	
60%		50%	
40%		30%	
20%		10%	

# Exhibit D. Summary Data

Fuel Supply			
<b>Fuel Requirements at Nominal Capacity</b>		<b>Select unit of measurement</b>	
ISO conditions? <input type="checkbox"/> Check box, or specify		°F	feet
<b>Fuel Type</b>	<b>Primary</b>		<b>Backup, if any</b>
	<b>Specify Primary Other</b>		
	<b>Specify Backup Other</b>		
<b>Fuel Transportation</b>	<b>Primary</b>		<b>Backup, if any</b>
	<b>Describe Primary Other</b>		
	<b>Describe Backup Other</b>		
Transportation secured? <input type="checkbox"/> Yes <input type="checkbox"/> No		<b>Specify % secured</b>	%

Permitting	
<b>Permits and approvals, or other government authorizations that have been received</b>	
<b>Permits and approvals, or other government authorizations still outstanding</b>	

Interconnection and Transmission			
<b>Point of Interconnection</b>			
<b>Point of Receipt</b> <i>(if different from interconnection)</i>			
<b>Point of Delivery</b>		<b>If Other, specify</b>	
<b>Transmission Provider(s)</b>			
<b>Interconnecting Utility</b>			
Transmission secured? <input type="checkbox"/> Yes <input type="checkbox"/> No		If no, provide interconnection and transmission request queue numbers below.	
<b>Transmission and interconnection studies available?</b>			

Other	
<b>Other Matters of Note</b>	

# Exhibit D. Summary Data

Asset Purchase or Project PPA Capital Cost Summary		
<i>Capital Costs (Total \$)</i>		
<i>In USD\$; specify valuation year</i>		<input type="text"/>
Estimated EPC Capital Cost	<input type="text"/>	
Interest During Construction	<input type="text"/>	
Other Financing Costs	<input type="text"/>	
Taxes	<input type="text"/>	
Development Fee	<input type="text"/>	
Real Estate Costs	<input type="text"/>	
Development Costs	<input type="text"/>	
Permitting Costs	<input type="text"/>	
Transmission Interconnection Costs	<input type="text"/>	
Transmission System Upgrade Costs	<input type="text"/>	
Capital Cost Subtotal \$	\$ <input type="text"/> -	
Transmission Upgrade Credit back to PSE	<input type="text"/>	
Capital Cost Total \$	\$ <input type="text"/> -	Capital Cost \$/kW <input type="text"/>

# Exhibit D. Summary Data

PPA or Exchange Agreement Summary			
Start Date	<input style="width: 90%;" type="text"/>	End Date	<input style="width: 90%;" type="text"/>
Select Delivery Period	<input style="width: 95%;" type="text"/>		
Describe Other	<input style="width: 95%;" type="text"/>		
<i>PPA Price Includes</i>			
Capacity	<input style="width: 80%;" type="text"/>	MW	<input type="checkbox"/>
			Environmental Attributes
			<input type="checkbox"/>
			Operating Reserves
			<input type="checkbox"/>
			Emission Costs

Delivery Schedule			
Check Months of Delivery		Check Months of Delivery	
January	<input type="checkbox"/>	July	<input type="checkbox"/>
February	<input type="checkbox"/>	August	<input type="checkbox"/>
March	<input type="checkbox"/>	September	<input type="checkbox"/>
April	<input type="checkbox"/>	October	<input type="checkbox"/>
May	<input type="checkbox"/>	November	<input type="checkbox"/>
June	<input type="checkbox"/>	December	<input type="checkbox"/>

# Exhibit E. Wind and Solar Energy Delivery

<b>Project</b>	
<b>Net Project Capacity (MW)</b>	
<b>Annual Generation (MWh)</b>	

Project Megawatt Hours (MWh)													
Hour	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total
1													
2													
3													
4													
5													
6													
7													
8													
9													
10													
11													
12													
13													
14													
15													
16													
17													
18													
19													
20													
21													
22													
23													
24													
<b>Total</b>													

# Exhibit F. Financial Pro Forma Template

## Operating Expenses

		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21
		2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028
<b><u>Generation</u></b>																						
Nameplate Capacity	Mw	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Annual Availability Factor	%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Net Capacity Factor	%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Net Annual Generation	GWH	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b><u>Revenues</u></b>																						
Nameplate Capacity	Mw	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Net Annual Generation	GWH	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Proposed Capacity Rate	\$/kW-yr.	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Proposed Energy Rate	\$/MWh	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Gross Revenues	\$000's	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b><u>Operating Expense</u></b>																						
Fuel (Primary)	\$000's	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Fuel (Backup)	\$000's	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Fuel Transportation	\$000's	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Turbine/Generator O&M (Service Agreement)	\$000's	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Turbine/Generator O&M (Owner)	\$000's	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Balance of Plant O&M (Service Agreement)	\$000's	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Balance of Plant O&M (Owner)	\$000's	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
O&M Fee (Service Agreement)	\$000's	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Maintenance - Substation	\$000's	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Maintenance - Site	\$000's	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Parasitic Power	\$000's	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Spare Parts	\$000's	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Other	\$000's	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total O&M	\$000's	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b><u>General &amp; Administration Expense</u></b>																						
Asset Management Fee	\$000's	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Asset Management (Owner)	\$000's	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Other Outside Services	\$000's	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Insurance	\$000's	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Property Tax	\$000's	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Permit Maintenance	\$000's	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Project Administration	\$000's	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Landowner Royalties	\$000's	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Other	\$000's	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Total G&A	\$000's	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total Operating Expenses</b>	<b>\$000's</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>
<b>Incremental Capital Expenditures</b>	<b>\$000's</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>-</b>

# Exhibit F. Financial Pro Forma Template

## Project Capital Cost

<u>Capital Costs</u>	<u>\$000</u>
Land	-
Development Costs	-
Salaries	-
Travel Expenses	-
Preliminary Engineering	-
Permitting	-
Public Affairs	-
Legal	-
Market Assessment	-
Development Fees	-
Other	-
Overhead	-
Site Preparation	-
Facility Costs	-
Major equipment	-
Balance of plant equipment	-
Substations	-
Computer equipment	-
Transmission Interconnection	-
Cables	-
Building and structures	-
Other	-
Start-up Testing	-
Credit for sales of start-up test power	-
Construction G&A	-
O&M Mobilization	-
Initial Spare Parts	-
Title Insurance	-
Property Taxes during construction	-
Insurance during construction	-
Initial Debt Service Reserve Fund	-
Initial Working Capital	-
Contingency	-
<b>Total Capital Costs</b>	<hr style="border-top: 1px solid black;"/>
	-
<u>Financing Costs</u>	
Construction Loan Closing Costs/Fees	-
Non-Recourse Loan Interest	-
Equity Bridge Loan Interest	-
Lenders Closing Costs	-
Construction Loan Commitment Fees	-
Working Capital Facility Commitment Fee Construction	-
Debt Service Reserve Commitment Fee	-
Term Loan Fees	-
<b>Total Financing Costs</b>	<hr style="border-top: 1px solid black;"/>
	-
	<hr style="border-top: 3px double black;"/>
<b>Total Project Costs</b>	<hr style="border-top: 3px double black;"/>
	-



# Exhibit F. Financial Pro Forma Template

## Capital Structure

	<u>% of Total</u>	<u>\$ 000</u>	<u>Rate</u>	<u>Term</u>
<u>Construction Financing (\$ in thousands):</u>				
Senior Debt	-	-	-	-
Equity	-	-	-	-
<b>Total Project Cost</b>	-	-	-	-
<u>Permanent Financing (\$ in thousands):</u>				
Senior Debt	-	-	-	-
Equity	-	-	-	-
<b>Total Project Cost</b>	-	-	-	-

# Exhibit G. Mutual Confidentiality Agreement

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## MUTUAL CONFIDENTIALITY AGREEMENT

This Agreement, dated as of \_\_\_\_\_, 2008, is entered into between Puget Sound Energy, Inc., ("PSE") and \_\_\_\_\_ ("\_\_\_\_\_"). PSE and \_\_\_\_\_ are sometimes referred to in this Agreement as "Party," and collectively as "Parties."

1. The Parties intend to enter into discussions regarding one or more potential transactions between the Parties involving the acquisition of electrical generation output or an interest in power generation facilities in \_\_\_\_\_ (or both). In the course of these discussions, each Party may disclose Confidential Information to the other. For the purposes of this Agreement, "Confidential Information" means any information or data disclosed in connection with such discussions in any form or media whatsoever by either Party (the "Disclosing Party") to the other Party (the "Receiving Party") which (a) if in tangible form, or other media that can be converted to readable form, is clearly and conspicuously marked as proprietary, confidential or private on each page thereof when disclosed; or (b) if oral or visual, is identified in writing as proprietary, confidential or private at the same time it is disclosed. "Confidential Information" includes all originals, copies, notes, correspondence, conversations and other manifestations, derivations and analysis of the foregoing.

2. Confidential Information shall not include information that (a) is or becomes generally available to the public other than by reason of the Receiving Party's breach of this Agreement; (b) the Receiving Party can reasonably demonstrate (i) was known by the Receiving Party, prior to its disclosure by the Disclosing Party, without any obligation to hold it in confidence, (ii) is received from a third party free to disclose such information without restriction, (iii) is independently developed by the Receiving Party without the use of Confidential Information of the Disclosing Party; (c) is approved for release by written authorization of the Disclosing Party, but only to the extent of such authorization; or (d) is related to the transmission of power, including but not limited to, any information which must be disclosed to the transmission function of a Party as part of any transmission request or information exchange that is required to be made public pursuant to FERC rules and regulations. Notwithstanding anything to the contrary set forth in this Agreement, the Receiving Party shall not be obligated to keep confidential any Confidential Information that (A) is required by law or regulation to be disclosed (including, without limitation, any summary or ranking of any proposal by the Disclosing Party constituting Confidential Information that PSE is required by law to make available to the public), but only to the extent and for the purposes of such required disclosure or (B) is disclosed in response to a valid order or request of a court or other governmental authority having jurisdiction or in pursuance of any procedures for discovery or information gathering in any proceeding before any such court or governmental authority, but only to the extent of and for the purposes of such order, provided that the Receiving Party, who is subject to such order or discovery, give the Disclosing Party reasonable advance notice (e.g., so as to afford the Disclosing Party an opportunity to appear, object and obtain a protective order or other appropriate relief regarding such disclosure). The Receiving Party, who is subject to such order or discovery, shall, at the Disclosing Party's expense, use reasonable efforts to assist the Disclosing Party's efforts to obtain a protective order or other appropriate relief; provided, that the Disclosing Party acknowledges and agrees that the Receiving Party shall have no obligation or responsibility to appear before, or to make any showing to, any court or any other governmental authority in connection with protecting any Confidential Information from disclosure by such court or governmental authority, and such responsibility shall be solely that of the Disclosing Party.

3. The Parties acknowledge that PSE is a public utility regulated by the Washington Utilities and Transportation Commission ("Commission") and that its decisions regarding one or

## Exhibit G. Mutual Confidentiality Agreement

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more potential transactions between the Parties involving the acquisition of electrical generation output or an interest in power generation facilities, together with related Confidential Information, may be subject to review by the Commission. Notwithstanding the provisions of Section 2, in the event that such PSE decisions are at issue in a proceeding before the Commission, PSE will seek, at its own expense, a protective order from the Commission with “highly confidential provisions” to protect against the disclosure of Confidential Information to competitors and the public. Disclosure of Confidential Information by either of the Parties to the Commission, its staff, counsel for the Commission or for Public Counsel in the Attorney General's Office, or their internal advisors, in connection with any such proceeding will not violate this Agreement.

4. Each party acknowledges and agrees that it has no proprietary or exclusive right to any tax matter, tax idea, tax structure or tax treatment related to any potential transaction or transaction between the Parties and that no such tax matter, tax idea, tax structure or tax treatment shall be deemed to be the Confidential Information of either Party.

5. The Receiving Party shall, subject to the other provisions of this Agreement, (a) use the Confidential Information only for purposes of evaluating one or more potential transactions between the Parties involving power generation facilities; (b) restrict disclosure of the Confidential Information to employees, advisors and active or potential investors or lenders of the Receiving Party and affiliates with a “need to know” and not disclose it to any other person or entity without prior written consent of the Disclosing Party; (c) advise such employees, advisors, investors and lenders who access the Confidential Information of their obligations with respect thereto; and (d) copy the Confidential Information only as necessary for those employees or advisors who are entitled to receive it, and ensure that all confidential notices are reproduced in full on such copies. A “need to know” means that the employee or advisors require the Confidential Information to perform their responsibilities in evaluating or pursuing one or more potential transactions between the Parties involving power generation facilities.

6. Confidential Information shall be deemed to be the property of the Disclosing Party. This Agreement shall not be interpreted or construed as granting any license or other right under or with respect to any patent, copyright, trademark, trade secret or other proprietary right. The Receiving Party shall, within 30 days of a written request therefor by the Disclosing Party, either return all of the Disclosing Party's Confidential Information (or any designated portion thereof) to the Disclosing Party or destroy all such Confidential Information (or any designated portion thereof) and provide an officer's certificate as to the destruction of such Confidential Information; provided, that PSE, as a Receiving Party, shall not be obligated to return to the Disclosing Party any proposal by the Disclosing Party, or any information related thereto, constituting Confidential Information, and PSE may retain all such proposal and information for a period of at least 4 years or until PSE concludes its next general electric rate case, whichever is later.

7. Neither this Agreement nor any discussions or disclosure hereunder shall (a) be deemed a commitment to any business relationship or contract for future dealing with another Party or (b) prevent either Party from conducting similar discussions with any third party, so long as such discussions do not result in the use or disclosure by the Receiving Party of Confidential Information protected by this Agreement. If the Parties elect to proceed with any transaction, then all agreements, representations, warranties, covenants and conditions with respect thereto shall be only as set forth in a separate written agreement to be negotiated and executed by the Parties.

8. Each of the Parties acknowledges that the Confidential Information received from another Party constitutes valuable confidential, commercial, business and proprietary information of the Disclosing Party and serious commercial disadvantage or irreparable harm may result for the Disclosing Party if the Receiving Party breaches its nondisclosure obligations under this

## Exhibit G. Mutual Confidentiality Agreement

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Agreement. In such event or the threat of such event, the Disclosing Party shall be entitled to injunctive relief, specific performance and other equitable relief without proof of monetary damages. In any action to enforce this Agreement or on account of any breach of this Agreement, the prevailing Party shall be entitled to recover, in addition to all other relief, its reasonable attorneys' fees and court costs associated with such action.

9. This Agreement may not be assigned by either Party without the prior written consent of the other Party. No permitted assignment shall relieve the Receiving Party of its obligations hereunder with respect to Confidential Information disclosed to it prior to such assignment. Any assignment in violation of this Paragraph 8 shall be void. This Agreement shall be binding upon the Parties' respective successors and assigns.

10. This Agreement shall be deemed to be effective as of the date first above written, and shall continue thereafter for a period of four (4) years or, if later, upon the conclusion of PSE's next general electric rate case.

11. No Party shall be liable to another Party for any consequential, indirect, incidental, special, exemplary or punitive damages arising out of or related to this Agreement.

12. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the state of Washington, without regard to such state's choice of law principles to the contrary. Each of the Parties irrevocably consents to the exclusive jurisdiction and venue of any state or federal court located in King County, Washington, with regard to any legal or equitable action or proceeding related to this Agreement.

13. This Agreement represents the entire understanding between the Parties with respect to the confidentiality, use, control and proprietary nature of any information disclosed by the Disclosing Party to the Receiving Party and the subject matter hereof and supersedes all prior communications, agreements and understandings relating thereto. The provisions of this Agreement shall not be modified, amended or waived, except by a written instrument duly executed by both of the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of \_\_\_\_\_  
\_\_\_\_\_, 2008.

PUGET SOUND ENERGY, INC.

By \_\_\_\_\_

Its \_\_\_\_\_

[OTHER PARTY]

By \_\_\_\_\_

Its \_\_\_\_\_

## Exhibit H. Schedule of Estimated Avoided Cost

**Consistent with WAC 480-107-055, this schedule of estimated avoided costs is intended to provide only general information to potential bidders about the cost of new power supplies. It does not provide a guaranteed contract price for electricity.**

As provided for in WAC 480-107-055 (2) this schedule of estimated avoided costs is based upon the estimates included in PSE's current integrated resource plan which contains the projected market prices for power.

The schedule below provides the nominal price forecast on a monthly basis for flat load. These forecasts are based on assumptions about natural gas prices, regional demand, new resource cost and development, as used and discussed in PSE's May 2007 Integrated Resource Plan (IRP). The prices are part of PSE's "Current Trends" scenario from the 2007 IRP. Estimated prices are derived using the AURORA model and do not include system integration, shaping, or transmission costs. This information can be found in Appendix I, page I-25 of PSE's 2007 Integrated Resource Plan.

**Table H.1 Monthly Prices for Mid-C Market (Nominal \$/MWh)**

2007 IRP Current Trends													
\$/MWh	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Ave
2008	68.69	73.27	63.13	47.96	44.90	46.06	57.75	60.62	59.84	57.44	67.51	64.31	59.29
2009	65.35	70.62	60.67	46.52	42.55	43.51	54.19	56.98	57.22	54.37	66.34	61.55	56.65
2010	62.48	68.23	58.03	43.27	40.75	43.04	52.21	55.13	54.41	53.01	66.05	59.82	54.70
2011	61.34	67.06	56.98	41.67	38.99	41.16	49.12	53.14	52.69	51.58	64.91	57.83	53.04
2012	63.68	67.38	55.84	51.71	49.82	50.47	59.16	61.36	61.74	62.79	77.81	62.17	60.33
2013	64.89	68.59	56.87	53.55	51.15	50.51	60.61	63.78	64.69	63.40	74.77	64.56	61.45
2014	65.56	68.21	56.94	55.00	52.21	52.73	62.31	64.52	67.06	65.99	77.35	66.55	62.87
2015	64.77	66.79	56.61	54.91	52.41	53.77	62.32	64.59	67.25	66.23	77.54	65.99	62.77
2016	63.86	66.14	56.24	54.20	52.84	53.82	61.69	64.63	66.87	66.90	81.18	66.18	62.88
2017	67.44	67.79	58.63	57.29	55.97	57.08	66.00	68.34	69.72	71.71	86.03	69.00	66.25
2018	68.46	69.80	60.86	59.75	57.40	56.86	66.72	70.48	71.70	71.64	85.78	71.09	67.54
2019	71.50	71.38	62.15	62.66	59.77	58.96	70.10	73.39	74.76	75.53	89.82	75.22	70.44
2020	71.83	70.86	62.23	62.15	59.16	60.13	68.98	71.40	74.79	74.55	90.76	75.54	70.20
2021	76.30	75.98	67.04	63.78	58.56	58.83	67.57	70.40	73.59	73.89	96.33	82.08	72.03
2022	78.97	78.68	69.32	65.79	60.57	61.61	69.77	73.26	75.59	77.08	99.46	84.02	74.51
2023	81.78	80.50	71.15	67.43	62.97	63.11	72.29	75.82	77.17	80.33	102.85	85.50	76.74
2024	84.93	84.71	74.25	71.83	65.34	64.37	74.70	79.40	81.17	82.16	103.38	90.52	79.73
2025	86.92	87.47	76.67	73.41	66.83	66.87	77.67	80.66	83.94	84.76	106.81	93.33	82.11
2026	89.68	89.99	78.97	75.48	68.11	69.65	79.33	82.70	86.32	87.35	110.67	95.61	84.49
2027	92.28	92.60	82.29	77.96	69.99	72.71	82.33	85.87	88.74	90.17	115.79	98.53	87.44

# Exhibit I. Prototype Ownership Term Sheet

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## Background

This Prototype Ownership 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 the ultimate ownership of Respondent's project by PSE. It is intended to identify certain elements of a potential transaction that would be embodied in Definitive Agreements (defined below).

PSE has endeavored to identify in this Term Sheet those provisions that would be applicable generally to all Respondents and relevant to any potential transaction arising out of a proposed PSE ownership arrangement involving the sale of a project to PSE. PSE recognizes, however, that the particular facts and circumstances relevant to Respondent's project may vary from the transaction structure described in this Term Sheet, so certain proposals may not incorporate all elements of a PSE ownership arrangement outlined in this Term Sheet.

PSE also recognize that Respondent may have other reasons (whether legal, regulatory or relating to financing) that may cause Respondent to propose that PSE purchase equity interests (such as limited liability company interests or limited partnership interests) in a project company that owns a generation project, rather than sell the project outright to PSE.

PSE prefers proposals consistent with the sort of ownership arrangement described in this Term Sheet. Nevertheless, PSE is willing to review and evaluate alternative ownership structures on the basis set forth in the RFP, taking into consideration the different or additional economic, legal, regulatory, tax, risk management, financing, credit support, contractual and other implications presented by such alternative proposals.

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 generation resources. 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 generation resource. 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 generation resources.

PSE reserves the right to reject any and all proposals received in response to the RFP, request the submission of different proposals for other generation resources and/or seek to acquire generation resources from one or more parties other than any Respondent. PSE may also modify, change, supplement or delete any and all provisions of this Term Sheet, or withdraw and cancel the RFP.

## General Ownership Structure

"PSE ownership arrangement" means a proposal pursuant to which PSE would ultimately own the resource. Ownership could be transferred to PSE at various stages of development and using a variety of approaches. Possibilities include, for example, joint development by Respondent and PSE, development by Respondent followed by the transfer to PSE, an initial

# Exhibit I. Prototype Ownership Term Sheet

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purchase of power by PSE with transfer of ownership later, or other mutually beneficial approaches. Although PSE is willing to consider a variety of arrangements, this Term Sheet presumes that PSE would acquire an ownership interest in a Project (as defined below under "*Respondent and the Project*") either (i) prior to the commencement of its construction or (ii) after it has already commenced commercial operations. Please note that if Respondent includes a proposal to shape a resource to PSE's seasonal resource requirements, Respondent's proposal should provide a fixed price (e.g., not tied to a market price index) and should be for a longer-term arrangement (3, 5 or 7 years).

This Term Sheet sets forth certain terms and conditions which would be embodied in a purchase and sale agreement (the "PSA") pursuant to which PSE would acquire 100% of all assets, properties and rights of the Project from Respondent.<sup>1</sup>

If Respondent's proposal contemplates a PSE ownership arrangement, in addition to containing the other submissions required by the RFP, Respondent will need to set forth in its proposal substantial additional details. PSE will need to review supporting documents, information and data regarding the timing, price, terms and conditions of a proposed sale of the Project to PSE and a budget, schedule and other information regarding the funding of construction, operation and maintenance of the Project.

## **Respondent and the Project**

This Term Sheet assumes that Respondent is the owner of a generation project currently operating or under development and having a nameplate capacity of not less than 25 MW (the "Project").

In its response to the RFP, in addition to the other submissions that should accompany a proposal that contemplates the sale of all of the Project to PSE, Respondent needs to comprehensively demonstrate to PSE that the Project, as proposed to be owned, financed, permitted, constructed, operated and maintained, is capable of being "placed in service" on or before [December 31, 2008],<sup>2</sup> in full compliance with all technical, performance and operating criteria and standards and the requirements of the RFP, applicable laws, regulations, permits and governmental authorities having jurisdiction over the parties or the Project.

## **Certain Definitive Agreements**

PSE expects that the agreements necessary to complete the potential transaction described in this Term Sheet (the "Definitive Agreements") would include, at least: (1) a PSA for the sale by Respondent to PSE of all of the Project, and (2) if PSE deems it necessary, a guaranty by an affiliate of Respondent acceptable to PSE (the "Guarantor"), who would guaranty Respondent's obligations or those of Respondent's affiliates under the

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<sup>1</sup> These assets, properties and rights of the Project would include all of the associated real and personal property, tangible and intangible property, assets, equipment, components, facilities, interconnections, systems, spare and replacement parts, permits, intellectual property, and contractual, expansion and other rights currently held or acquired in the future that are necessary, useful, held for use or appropriate for the ownership, planning, development, permitting, design, engineering, construction, interconnection, transmission, use, operation, maintenance, repair and expansion of the Project.

<sup>2</sup> PSE's preference is that the Project would be placed in service on or before [December 31, 2008]; however, PSE will evaluate proposals that contemplate a later placed in service date.

# Exhibit I. Prototype Ownership Term Sheet

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Definitive Agreements (the "Respondent Guaranty").

The execution and delivery of the Definitive Agreements would be subject, among other things, to PSE's completion of due diligence to its satisfaction and the approval of the transaction by each party's board of directors (or other appropriate management body).

## **Closing**

The Closing would occur after receipt by the parties of all consents, authorizations and approvals and the satisfaction or waiver of conditions precedent specified in the Definitive Agreements. At the Closing, PSE would purchase the Project from Respondent, free and clear of all liens, charges, encumbrances, and conflicting or competing claims.

## **Transaction Taxes**

Respondent would be responsible for the payment of all sales, conveyance, transfer, real estate excise, business and occupation or similar transaction taxes assessed with respect to or imposed on either party relating to PSE's purchase of the Project or otherwise in connection with a potential transaction. PSE would agree to cooperate with Respondent to minimize the parties' respective transaction taxes.

## **Regulatory Approvals**

PSE expects that the following regulatory approvals, among others, might be required prior to Closing to implement a proposed transaction:

(1) Receipt of FERC approval under Section 203 of the Federal Power Act required for the transfer of an interest in FERC-jurisdictional facilities included as part of the Project;

(2) Expiration of any waiting period (or obtaining of any approval required) under Hart-Scott-Rodino; and

(3) Receipt by PSE from the Washington Utilities and Transportation Commission (the "WUTC") of approvals and orders, as applicable, pertaining to PSE's acquisition of the Project and the other aspects of the potential transaction, and confirming the inclusion of the full amount of the purchase price plus all or substantially all of PSE's transaction costs and other amounts allocable to the construction, start-up, testing and commissioning of the Project in PSE's rate base.

## **Transaction Representations & Warranties**

PSE expects that the Definitive Agreements would contain representations and warranties by both parties customary for similar transactions relating to, among other things:

(1) Receipt by the parties of regulatory and other approvals necessary to consummate the potential transaction;

(2) The financial condition of each of Respondent, the Guarantor and any affiliate of Respondent that is a party to a Definitive Agreement, and PSE;

(3) The nature and extent of Respondent's rights, title and interests in and to the Project and the condition of the Project (including with respect to environmental matters);



## Exhibit I. Prototype Ownership Term Sheet

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(4) The sufficiency of the assets, properties, equipment and rights constituting the Project, including permits and governmental authorizations, for the construction, operation, maintenance and repair of the Project and for the full operation, use and maintenance of the Project in accordance with the requirements of the RFP;

(5) The Project's compliance with the requirements of applicable law;

(6) Labor and employment matters; and

(7) Other appropriate representations and warranties as may reasonably be required by PSE or Respondent.

### Transaction Covenants

The Definitive Agreements would contain covenants of Respondent and PSE customary for similar transactions.

Depending upon the circumstances of Respondent's proposal (such as the financial condition and experience of Respondent and Guarantor, the status of development and completion of the Project, the nature of existing contractual arrangements, the capacity, equipment and other technical characteristics of the Project, and other details of Respondent's proposal), the Definitive Agreements may set forth covenants from Respondent in which Respondent promises not to take certain actions, possibly including:

- making any loans, advances or contributions to any person or furnishing a guaranty of the obligations of any person;
- failing to continue to develop the Project prior to Closing;
- agreeing to unreasonably costly mitigation efforts;
- changing Respondent's organizational and governing documents or reorganizing into any other legal form, entering into any joint venture or partnership, or consolidating, converting or merging with or acquiring any other entity;
- engaging in any business other than the management, administration, operation and maintenance of the Project;
- incurring any indebtedness (other than, if necessary, project financing);
- settling any third party claim relating to the Project without PSE's prior written consent, which consent would not be unreasonably withheld; or,
- soliciting, offering, or negotiating with any third party for the sale or transfer of the Project prior to Closing.

# Exhibit I. Prototype Ownership Term Sheet

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## Terms and Conditions For Projects Under Development

If Respondent's proposal involves an unbuilt Project, PSE is willing to consider contracting to either (i) transfer to PSE the responsibility for its completion, start-up and commissioning, or (ii) having Respondent keep responsibility for its completion, start-up and commissioning.

In either case, the Definitive Agreements would include detailed schedules showing the Project's design, engineering and construction status. These schedules will need to include:

- performance and technical specifications of the Project;
- performance guarantees;
- major equipment and systems and vendors;
- major subcontractors;
- the status of permit applications;
- the status of contractors' and vendors' obligations and warranties; and,
- the schedule for completion of the Project and other related information and data.

The Definitive Agreements would also require Respondent to provide access to the Project to certain designated PSE employees, representatives and agents so that they can observe and monitor the manufacture, fabrication, assembly, installation, construction, start-up, testing and commissioning of the Project and any parts or components of it. PSE's employees, representatives and agents would also be permitted access to the premises of contractors, vendors and consultants and attend meetings and review and copy information, data and documents in connection with PSE's due diligence review. PSE's employees, representatives and agents would be required to observe Respondent's (and Respondent's contractors') rules regarding safety, security and confidentiality and would not interfere with or hinder the construction of the Project.

In the event that Respondent plans to retain responsibility for the completion, start-up and commissioning of the Project, PSE expects that the following additional terms and conditions would apply to the proposed transaction:

### Purchase Price

The portion of the purchase price allocable to the cost of completion of the Facility would be payable in predetermined installment amounts through Final Completion (as defined below) as set forth in a funding schedule to be incorporated in the Definitive Agreements, with the first payment due at Closing. The Definitive Agreements would also set forth the procedure for invoicing and payment of all remaining amounts due.

# Exhibit I. Prototype Ownership Term Sheet

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## Respondent's Completion of the Project

Subject to certain approval rights of PSE, Respondent would be responsible for the direction of, and the cost and expense necessary, incidental to or appropriate for, the construction, completion, start-up and commissioning of the Project, including mobilization, design, engineering, procurement, supply, supervision, and testing expenses (with the exception of such expenses related to fuel for certain tests as set forth below). Guarantor would unconditionally guarantee Respondent's payment, performance, warranty and other obligations with respect to the design, engineering, construction and completion of the Project in accordance with the criteria set forth in the Definitive Agreements. Respondent would cause construction of the Project to be performed or supervised by an EPC contractor experienced in the design, engineering and construction of electric generating facilities similar to the Project and in accordance with applicable laws, regulations, permits, the standards and criteria of original equipment manufacturers, good industry practices and insurance requirements.

Change Orders: In completing the construction of the Project, Respondent would notify PSE, in writing, prior to making any proposed change order or any other modification to the design, component parts or equipment or operational characteristics of the Project that (A) (i) involves individually an amount in excess of \$[ ]<sup>3</sup> or (ii) is proposed after the aggregate value of prior change orders or modifications is \$[ ]<sup>4</sup>, or (B) which would reasonably be expected to adversely affect the operational characteristics, reliability or costs of operation and maintenance of the Project. PSE would have ten (10) days to notify Respondent in writing that PSE does not consent to the proposed change order or modification described by Respondent in such notice; otherwise PSE would be deemed to concur with the proposed change order or modification.

Otherwise, Respondent shall have the right, without PSE's consent, to make such substitutions of parts, materials and/or equipment in completing the construction of the Project as would not be reasonably expected to adversely affect the operational characteristics, reliability or costs of operation or maintenance of the Project. Respondent agrees to provide PSE with a list of such substitutions on a monthly basis and at Substantial Completion and Final Completion (each as defined below). In the event Respondent fails to provide timely notice to PSE of any proposed change order or modification of the nature or effect described above, and such change order or modification results in a material adverse change to the operational characteristics, reliability or costs of operation and maintenance of the Project, the Definitive Agreements would set forth mutually agreed upon rights and remedies.

For purposes of this Term Sheet, "Substantial Completion" means the completion of the Project, the completion of the facilities necessary to interconnect the Project to the electric grid and to receive water, fuel supplies and other supplies and services, and the delivery of all permits, interim manuals sufficient for interim operations during the period between Substantial

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<sup>3</sup> Amount to depend on facts pertaining to the particular Project, including but not limited to the Project's size and cost.

<sup>4</sup> Amount to depend on facts pertaining to the particular Project, including but not limited to the Project's size and cost.

## Exhibit I. Prototype Ownership Term Sheet

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Completion and Final Completion, and other deliverables necessary for PSE to operate the Project on a commercial basis in accordance with the requirements of the Definitive Agreements at an electrical output not less than and heat rate not greater than certain "Minimum Performance Guarantees" to be agreed to in the Definitive Agreements. "Final Completion" shall mean the final completion by Respondent of all items of work remaining at Substantial Completion, delivery of all outstanding deliverables, including manuals and lien releases from contractors and vendors, clean-up of the site and removal of all equipment.

No later than at Final Completion, Respondent would provide PSE with statutory lien releases from the EPC contractor and its subcontractors furnishing services, equipment or goods used in the design, engineering, equipping, construction and completion of the Project, evidencing that all amounts due to such parties have been paid or bonded around, such that PSE and the Project would not be liable for payment of any such amounts owed.

Subsequent to Closing, PSE would be the owner of and receive one hundred percent (100%) of all energy products produced in connection with the start-up, testing and commissioning of the Project. PSE would be responsible for (i) the procurement, cost and delivery to the Project of all fuel and station power necessary for the start-up, testing, and commissioning of the Project, and (ii) the receipt of such energy products from the Project and the cost of any associated electric transmission service for such energy products. PSE would schedule all fuel deliveries and electric transmission for the start-up, testing and commissioning of the Project according to an agreed upon schedule, no later than one (1) month prior to the commencement of the testing and consistent with the schedule for achievement of Substantial Completion. Respondent will not be liable under the Definitive Agreements for any schedule delays attributable to PSE's failure to have such fuel, station power and electric transmission available in accordance with the schedule.

PSE would provide Respondent and Respondent's designees access to the Project as Respondent requires after Substantial Completion, consistent with all safety and similar practices as reasonably requested by PSE, for the purpose of achieving Final Completion and performing warranty work. PSE will ensure that a sufficient number of qualified operators are available to support the start-up, testing and commissioning activities, all as Respondent reasonably recommends.

### Title and Risk of Loss

PSE would take title to the Project upon the closing of the transaction. However, risk of loss would transfer to PSE only upon the achievement of Substantial Completion of the Project.

### Liquidated Damages and Performance Bonuses

Respondent would be liable for schedule liquidated damages if Respondent fails to achieve Substantial Completion of the Project by an agreed upon date, as well as performance liquidated damages for failure to meet the Minimum

# Exhibit I. Prototype Ownership Term Sheet

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Performance Guarantees agreed to in the Definitive Agreements.

Respondent also would have the right to earn a performance bonus in the event that the Project achieves Substantial Completion earlier than the agreed upon scheduled date and if the Project exceeds performance standards for capacity and heat rate specified in the Definitive Agreements.

### Additional Representations, Warranties and Covenants of Respondent

PSE expects that the Definitive Agreements would include the following additional representations, warranties and covenants in the event that Respondent retains responsibility for the completion, start-up and commissioning of the Project:

- (1) Respondent would cause the Project to be designed, engineered, equipped and constructed in accordance with the provisions of the Definitive Agreements so as to meet the Minimum Performance Guarantees and other criteria set forth in the Definitive Agreements and be Substantially Complete and commercially operable on or before a guaranteed Substantial Completion date;
- (2) Respondent will provide a full “wrap” of obligations with respect to the Project and all equipment warranties and cause Guarantor to guarantee Respondent's obligations;
- (3) Respondent would at all times maintain sufficient rights and entitlements to such services and facilities as may be necessary to develop, construct and complete the Project so that upon Substantial Completion the Project may be operated on a commercial basis;
- (4) Respondent would obtain and maintain during the construction of the Project, at Respondent's cost and expense, builder's risk insurance, the terms, conditions, limits of coverage and other provisions of which are normal and customary;
- (5) Respondent, with PSE's commercially reasonable cooperation and assistance, would at Respondent's cost be responsible for applying for, obtaining and maintaining and complying with all permits and other governmental authorizations necessary or appropriate for the construction, start-up, testing, ownership, occupancy, use, operation and maintenance of the Project; and
- (6) Respondent would cause all equipment warranties (the terms and conditions of which PSE will have the right to approve) to be in full force with the respective contractors and vendors and fully assignable to PSE, and Respondent will assign such warranties to PSE as of Substantial Completion of the Project.

### Project Managers and Independent Engineer

Each of the parties would designate a construction project manager no later than the date of Closing. Notices, correspondence and other communication

# Exhibit I. Prototype Ownership Term Sheet

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required or contemplated by the Definitive Agreements relating to the construction of the Project would be made through the parties' respective construction project managers, except as otherwise agreed.

An independent engineer would be retained to verify Respondent has achieved the performance levels and other criteria required to meet Substantial Completion and Final Completion under the Definitive Agreements. PSE would share with Respondent the independent engineer's fees and expenses. PSE and Respondent would select the independent engineer from a mutually agreed list of qualified engineers included in the Definitive Agreements.

## **Respondent Guaranty Requirements**

If PSE determines that Respondent alone is not sufficiently creditworthy, PSE will require Respondent to have Guarantor provide PSE with the Respondent Guaranty, pursuant to which Guarantor would guarantee the performance by Respondent and Respondent's affiliates of Respondent's obligations to or for the benefit of PSE under the Definitive Agreements. The Guarantor would also guaranty the payment of any damages, losses, liabilities, costs and expenses incurred by PSE and payable by Respondent or Respondent's affiliates) under the Definitive Agreements. The parties would address in the Definitive Agreements the circumstances, if any, in which PSE might require adequate assurance by Respondent or Guarantor of Respondent's performance under the Definitive Agreements, and the nature of such assurance.

## **Conditions Precedent**

The Definitive Agreements shall contain customary conditions precedent for transactions of this type, including:

- (1) Delivery of all instruments, consents, assignments, certificates and opinions required by the Definitive Agreements, including, but not limited to, customary opinions regarding (a) the satisfaction of requisite regulatory approvals and requirements and (b) if applicable, the absence of any conflict with any legal, regulatory, contractual or other limitation applicable to any of the parties resulting from granting of a security interest in respect of the undivided interest of a party in the Project to any designated third party lender;
- (2) No material adverse change in the financial condition or business and operations of Respondent, Guarantor, or any affiliate of Respondent that is a party to a Definitive Agreement, or PSE;
- (3) No material adverse change in the budget, schedule, permit and legal requirements, technical requirements and plans relating to construction, operation, maintenance and repair of the Project, or in the performance levels, operability, output and condition of the Project;
- (4) Receipt by PSE of the approvals or orders discussed above under "*Regulatory Approvals*"; and
- (5) Such other customary conditions precedent as the parties in good faith determine are reasonably necessary taking into account the parties' obligations, including appropriate provisions to address the consequences of material adverse changes in the physical condition and performance of the

# Exhibit I. Prototype Ownership Term Sheet

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	Project prior to the Closing.
<b>Limitations on Liability</b>	The Definitive Agreements shall provide that notwithstanding anything to the contrary, in the event of a breach of the obligations of one of the parties or otherwise, such party would be liable for direct damages only, and under no circumstances shall such party be liable to the other party for consequential (including, without limitation, lost profits, business interruption and the like), incidental, punitive, exemplary or similar damages.
<b>Indemnification</b>	Respondent would indemnify, hold harmless and defend PSE and PSE's affiliates, directors, officers, employees, representatives, and agents from and against any claims, damages, loss, liability, judgment, award, fine, penalty, cost or expense, including reasonable fees of attorneys, arising out of, relating to or in connection with any event, occurrence, circumstance, condition, action or omission prior to Closing. The Definitive Agreements would also set forth provisions by which each party would indemnify, hold harmless and defend the other party and its affiliates, directors, officers, employees, representatives and agents from and against certain losses with respect to false or inaccurate representations and warranties or breaches of covenants and obligations under the Definitive Agreements.
<b>Due Diligence</b>	<p>For a specified period commencing on the date PSE notifies Respondent that Respondent's proposal has been selected as a potential transaction (this period, and any extensions to it that the parties may agree upon, the "<u>Due Diligence Period</u>"), PSE would be entitled to conduct an in-depth due diligence review of the Project, Respondent, Guarantor and any affiliate of Respondent that would be a party to a Definitive Agreement. Respondent agrees to fully cooperate (and cause Respondent's affiliates to fully cooperate) with PSE and to facilitate this process.</p> <p>PSE expects that PSE's due diligence would include a review of the following, among other things:</p> <ul style="list-style-type: none"><li>• all technical matters relating to the Project;</li><li>• construction, engineering and transmission agreements, and any other commercial arrangements relating to the Project;</li><li>• legal and regulatory matters (including the availability and terms of all required permits and licenses);</li><li>• information systems, human resources (subject to applicable legal confidentiality and other restrictions), insurance matters; and</li><li>• any other matters associated with the development, permitting, design, engineering, construction, interconnection, start-up, commissioning, operation and maintenance of the Project.</li></ul> <p>PSE agrees that its due diligence review shall not unreasonably disrupt Respondent's (or Respondent's affiliates') business or the business of Respondent's directors, officers, employees and agents. The Due Diligence Period would terminate automatically in the event of the termination of the</p>

# Exhibit I. Prototype Ownership Term Sheet

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Term Sheet by either party.

During the Due Diligence Period, Respondent and Respondent's affiliates would provide access to the Project to certain designated PSE employees, representatives and agents so that they could observe and monitor the manufacture, fabrication, assembly, installation, construction, start-up, testing and commissioning of the Project and any of its parts or components. PSE's employees, representatives and agents would also be permitted access to the premises of contractors, vendors and consultants, attend meetings and review and copy information, data and documents in connection with PSE's due diligence review. PSE would be subject to and would be required to observe Respondent's (and Respondent's contractors') rules regarding safety, security and confidentiality and PSE would not interfere with or hinder the construction of the Project.

**Dispute  
Resolution**

The Definitive Agreements would contain provisions for the resolution of disputes, and the exclusive forum for the resolution of any dispute arising under or in connection with this Term Sheet or the Definitive Agreements would be King County, Washington.

**Expenses**

Each party would bear its own legal, accounting, regulatory and other professional fees and expenses and other costs associated with the RFP and a potential transaction, regardless of whether a transaction is consummated.

**Assignability**

The parties would not be permitted to assign the Definitive Agreements or their respective rights and obligations under them without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed.

***This Term Sheet is for discussion purposes only to facilitate PSE's evaluation and assessment of proposals submitted in response to the RFP relating to a potential transaction for the acquisition of rights and interest in a generation project. It is not intended to create a binding or enforceable agreement, contract or commitment or to be complete and all inclusive of the terms and conditions of a potential transaction. This is not an offer, agreement or a commitment of PSE, Respondent or Guarantor or any parent company or affiliate of any of them. The potential transaction described above would be subject to further review and approval of the board of directors of each of PSE, Respondent and Guarantor, the conduct and completion of due diligence by PSE to its satisfaction and the execution of the Definitive Agreements containing all appropriate provisions, including, but not limited to, those relating to credit, limitation of damages, indemnification, remedies and force majeure.***



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

## **[INSERT NAME OF PROJECT] PROJECT**

### **POWER PURCHASE AGREEMENT**

MADE

BETWEEN

**[SELLER's NAME],**

AS SELLER

AND

**PUGET SOUND ENERGY, INC.**

AS PURCHASER

DATED AS OF \_\_\_\_\_, \_\_\_\_\_

# Exhibit J. Prototype PPA

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## TABLE OF CONTENTS

ARTICLE 1	Definitions.....	2
ARTICLE 2	Term And Termination .....	14
ARTICLE 3	Purchase And Sale Of Energy [And Environmental Attributes]; Delivery; Curtailment .....	16
ARTICLE 4	Construction And Purchaser's Right To Monitor Construction .....	19
ARTICLE 5	Billing And Payments.....	21
ARTICLE 6	Interconnection, Construction, Operation And Performance Guarantees.....	23
ARTICLE 7	Project Guarantees .....	26
ARTICLE 8	Measurement And Metering; Project Data.....	28
ARTICLE 9	Records; Reports And Reviews.....	30
ARTICLE 10	Release And Indemnity; Insurance .....	32
ARTICLE 11	Notices .....	34
ARTICLE 12	Defaults And Remedies .....	35
ARTICLE 13	Limitation Of Liability.....	37
ARTICLE 14	Consent To Jurisdiction.....	37
ARTICLE 15	Assignment .....	38
ARTICLE 16	Financing Liens .....	40
ARTICLE 17	Representations, Covenants, And Warranties.....	41
ARTICLE 18	Miscellaneous .....	43
EXHIBIT A-1	Project Description	
EXHIBIT A-2	Site Description	
EXHIBIT B	Description of Generators	
EXHIBIT C	Location of Delivery Point and Project Substation	
EXHIBIT D	Description of the Permits	
EXHIBIT E	Contract Rate and Renewal Rate	
EXHIBIT F	Example of Calculation of Excess Output Credit	
EXHIBIT G	Form of Guaranty of Seller Guarantor	
EXHIBIT H	Form of Generator Final Completion Certificate	
EXHIBIT I	Operating Procedures and Coordination	
EXHIBIT J	Termination Amounts	

# Exhibit J. Prototype PPA

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## POWER PURCHASE AGREEMENT

This Power Purchase Agreement ("**Agreement**"), dated as of this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, is between [SELLER's NAME] a Washington [corporation][limited liability company] ("**Seller**"), and Puget Sound Energy, Inc., a Washington corporation ("**Purchaser**"). Both of Seller and Purchaser are sometimes referred to in this Agreement together as the "**Parties**"; each of Seller and Purchaser is sometimes referred to in this Agreement as "**Party**."

## RECITALS

**WHEREAS**, Seller intends to site, develop, finance, construct, own and operate a [type of generation] electrical generation facility (as defined herein and more particularly described in **Exhibit A-1** to this Agreement, the "**Project**") on sites located in [\_\_\_\_\_] (as more particularly described in **Exhibit A-2** to this Agreement, the "**Site**"); and

**WHEREAS**, Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, the entire output of Energy from the Project [and all of the Environmental Attributes related to the generation of Energy from the Project].

**NOW THEREFORE**, in consideration of the mutual covenants contained herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## ARTICLE 1

### DEFINITIONS

Unless otherwise required by the context in which any term appears, (a) capitalized terms used in this Agreement have the meanings specified in this Article 1; (b) the singular shall include the plural and vice-versa; (c) references to "Articles," "Sections," "Schedules," "Annexes," "Appendices," or "Exhibits" (if any) shall be to articles, sections, schedules, annexes, appendices, or exhibits hereof; (d) all references to a particular entity shall include a reference to such entity's successors and permitted assigns; (e) the words "herein," "hereof," and "hereunder" shall refer to this Agreement as a whole and not to any particular article or section hereof; (f) the word "including" shall mean "including, without limitation," and the word "include" shall mean "include, without limitation," (g) all accounting terms not specifically defined herein shall be construed in accordance with GAAP; and (h) references to this Agreement shall be a reference to this Agreement and all appendices, annexes, schedules, and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time.

"**Actual Operational Hours**" means, for each Generator during any Contract Year, the period (expressed in hours or portions of an hour) in such Contract Year in which such Generator actually produces power, less the sum of:

## Exhibit J. Prototype PPA

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(a) any period (expressed in hours or portions of an hour) during such Contract Year in which, by reason of a System Emergency, Purchaser is unable to accept delivery of any Energy that such Generator is otherwise capable of generating; and

(b) any period (expressed in hours or portions of an hour) during such Contract Year in which such Generator is not operational as a result of a Force Majeure Event;

it being understood and agreed that for any given Contract Year for which Actual Operational Hours are calculated, the deductions from Actual Operational Hours for such period pursuant to clauses (a) and (b) above shall be the same as the deductions from Base Hours for such period pursuant to clauses (a) and (c) of the definition of "Base Hours."

"**Additional Security**" means any of the following, to be provided by Seller pursuant to Section 7.4.2:

- (a) a Letter of Credit in the required amount; or
- (b) cash (immediately available funds) in the required amount, which cash must be delivered to a Custodian to be held thereby as security for the Party entitled to the benefits thereof pursuant to an escrow agreement satisfactory in form and substance to the Party for whose benefit such cash is being provided, which escrow agreement shall include the provisions of Section 7.4.3; or
- (c) a guaranty in the required amount, for the required term, and from a Guarantor having an Investment-Grade Long-Term Debt Rating, of:
  - (i) Seller's obligations under this Agreement; or
  - (ii) Seller Guarantor's obligations under the guaranty agreement executed and delivered by Seller Guarantor hereunder;

in either case on substantially the same terms and conditions set forth in the form of Seller Guaranty Agreement attached hereto as **Exhibit G**.

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

"**Applicable Law**" means, with respect to any Person, all laws, statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decrees, injunctions, rules, regulations, governmental approvals, licenses and permits, directives, and requirements of all regulatory and other governmental authorities, in each case applicable to or binding upon such Person and, in the case of Seller, the Project.

"**Average Annual Output**" means the average Energy output of the Project per year as measured for any Contract Year.

## Exhibit J. Prototype PPA

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**"Balance of Plant"** means all equipment and materials and other items incorporated (or to be incorporated) in the Project, except for the Generator. Balance of Plant includes, but is not limited to, the civil, electrical and mechanical construction works (principally site preparation, foundations for transformers and Generator and cable and pipe ducting, the control works) and the Interconnection Facilities, the Seller's Meters and associated foundation, including the pad-mount transformers and the pad-mount switchgear, the communications system and the communication system cables and the electrical works (principally cables and equipment).

**"Base Hours"** means, for each Generator during any Contract Year, the period (expressed in hours or portions of an hour) in such Contract Year, less the sum of:

(a) any period (expressed in hours or portions of an hour) during such Contract Year in which, by reason of a System Emergency, Purchaser is unable to accept delivery of any Energy that such Generator is otherwise capable of generating;

(b) any period (expressed in hours or portions of an hour) during such Contract Year in which such Generator is not operational as a result of Scheduled Maintenance; provided, that the number of hours (or portions of an hour) that may be subtracted pursuant to this clause (b) for all Generators for a given one-year period shall not exceed a cumulative maximum equal to the product of twenty-four (24) multiplied by the number of Generators; and

(c) any hours during such Contract Year in which such Generator is not operational as a result of a Force Majeure Event.

**"Business Day"** means each Day that is not a weekend Day or a federal holiday Day.

**"CAMD"** means the Clean Air Markets Division of the Environmental Protection Agency or any successor agency that is given jurisdiction over a program involving transferability of Environmental Attributes.]

**"Commercial Operation Date"** means the date on which all of the Generators in the Project having one hundred percent (100%) of the Required Installed Capacity, and all other portions of the Project necessary to put the Project into operation with the Interconnection Facilities and the Transmission System, have been tested and commissioned and are both authorized under Applicable Law and able to operate and deliver Energy to the Transmission System in accordance with Prudent Utility Practices and all Permits therefor have been obtained.

**"Consolidated Net Tangible Assets"** means, as of the date of any determination thereof, the total amount of all assets of a Person determined on a consolidated basis in accordance with GAAP as of such date, less the sum of:

(a) the consolidated current liabilities of such Person determined in accordance with GAAP; and

(b) assets properly classified as intangible assets in accordance with GAAP.

For all purposes of this Agreement, the Consolidated Net Tangible Assets of a Person shall be as shown on such Person's most recent regularly prepared quarterly financial statements (if determination thereof is made during the second, third or fourth quarters of such Person's fiscal year) or audited annual financial statements (if determination thereof is made during the first quarter of such Person's fiscal year).

## Exhibit J. Prototype PPA

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"**Construction Permits**" means all those Permits that are required to be obtained by Seller as a condition to Seller's right to construct the Project, as described in **Exhibit D**.

"**Contract Capacity Rate**" means the rate, expressed in dollars per MW, payable by Purchaser for capacity of the Project during the Initial Term. The Contract Capacity Rate for each Contract Year during the Stub Period and the Initial Term is set forth in **Exhibit E** hereto under the column designated "Contract Capacity Rate (\$ per MW)."

"**Contract Energy Rate**" means the rate, expressed in dollars per MWh, payable by Purchaser for Energy (other than Test Power and Excess Output) [and Environmental Attributes] generated by the Project during the Initial Term. The Contract Energy Rate for the Stub Period and each Contract Year during the Initial Term is set forth in **Exhibit E** hereto under the column designated "Contract Energy Rate (\$ per MWh)."

"**Contract Rate**" means, collectively, the Contract Capacity Rate, as applicable, and the Contract Energy Rate for Energy, Test Power and Excess Output.

"**Contract Year**" means the Days from January 1 through December 31, inclusive, of any given year. The first Contract Year shall commence on the first January 1 occurring after the Commercial Operation Date.

"**Cost to Cover**" means, with respect to any Energy from the Project that Seller was obligated to deliver, but did not deliver, under this Agreement, an amount equal to all costs and losses incurred by Purchaser (or that would be incurred by Purchaser) to replace undelivered Energy (including costs of energy and associated capacity), as a result of such non-delivery, reduced by the amount of payments that Purchaser would have made to Seller if such Energy had been delivered; provided, that the Cost to Cover with respect to any period shall not be less than zero dollars.

"**Custodian**" means a commercial bank or trust Seller organized under the laws of the United States of America or a political subdivision thereof, whose long-term senior unsecured debt is rated at least "A" by S&P or "A2" by Moody's.

"**Day**" means a period of 24 consecutive hours beginning at 00:00 hours Pacific time on any calendar day and ending at 24:00 hours Pacific time on the same calendar day.

"**Default Notice Parties**" means, in the case of an Event of Default by Seller, Seller, Seller Guarantor and Seller Lender (if any), and in the case of an Event of Default by Purchaser, Purchaser only.

"**Defaulting Party**" has the meaning set forth in Section 12.1.1.

"**Delay Payment**" has the meaning set forth in Section 6.3.2.

"**Delivery Point**" means the location on Purchaser's electric system shown in **Exhibit C** at which all Energy (including Test Power) is to be delivered by Seller to Purchaser hereunder.

"**Due Date**" has the meaning set forth in Section 5.1.1.

"**Due Diligence Report**" means one or more reports from consultants or other independent experts chosen by Purchaser, and reasonably acceptable to Seller, that conclude, following an analysis of the Project and plans for the Project, that:

## Exhibit J. Prototype PPA

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- (a) the Project has been or will be designed and constructed consistent with Prudent Utility Practices and Applicable Law;
- (b) plans for Project maintenance have been established and such plans are consistent with Prudent Utility Practices;
- (c) the operation of the Project after the Commercial Operation Date will comply with all Applicable Law;
- (d) the Project is financially feasible and can reasonably be expected to afford Seller an adequate rate of return;
- (e) the Project can reasonably be expected to be available so as to comply with Seller's obligations hereunder; and
- (f) the Commercial Operation Date can reasonably be expected to occur on or before \_\_\_\_ Days following the execution of this Agreement.

**"Earnings-to-Interest Ratio"** means the ratio equal to Seller Guarantor's earnings before interest and taxes over Seller's interest expenses.

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

**"Energy"** means any and all electrical energy generated by the Project, minus station load and transmission losses up to the Delivery Point, as measured in MWh at the Delivery Point.

**"Environmental Attributes"** means (a) credits, benefits, reductions, offsets and other beneficial allowances, howsoever named or referred to, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the use of [type of generation] generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of Energy generated by the Project during the Term and in which Seller has property rights or will have property rights upon such attributes coming into existence (with Seller taking only such action as required by the last sentence of Section 3.2.1), and include any of the same arising out of legislation or regulation (i) concerned with (A) oxides of nitrogen, sulfur, or carbon, (B) particulate matter, soot, or mercury, or (C) implementing the United Nations Framework Convention on Climate Change (the "**UNFCCC**") or the Kyoto Protocol to the UNFCCC or crediting "early action" with a view thereto, or (ii) involving or administered by the Clean Air Markets Division of the Environmental Protection Agency or its successor (collectively with any state or federal entity given jurisdiction over a program involving transferability of Environmental Attributes, the "**CAMD**"), and (b) all Environmental Attribute Reporting Rights, but specifically excluding from "Environmental Attributes" only the PTCs.]

**"Environmental Attribute Reporting Rights"** means all rights to report ownership of the Environmental Attributes to any person or entity, under Section 1605(b) of the Energy Policy Act of 1992 or otherwise.]

**"Event of Default"** has the meaning set forth in Section 12.1.1.

**"Excess Output"** has the meaning set forth in Section 3.3.3.

**"Excess Output Credit Rate"** means, for each Contract Year, [\_\_\_\_]% of the Contract Rate or Renewal Rate, as applicable, for such Contract Year.

## Exhibit J. Prototype PPA

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"**Excess Output Credit**" has the meaning set forth in Section 5.1.2.

"**Federal Power Act**" means the Federal Power Act, as heretofore or hereafter amended, 16 U.S.C. § 791a, *et seq.*

"**FERC**" means the Federal Energy Regulatory Commission or its successor.

"**Force Majeure Event**" means any act or event that delays or prevents a Party from timely performing obligations under this Agreement or from complying with conditions required under this Agreement, to the extent such act or event is reasonably unforeseeable and beyond the reasonable control of such Party or its Affiliates and cannot have been avoided or overcome by such Party or its Affiliates through the exercise of reasonable diligence (such act or event may include any act of God or the elements, explosion, fire, epidemic, landslide, mudslide, sabotage, lightning, earthquake, flood or similar cataclysmic event, transmission curtailment or outage, an act of public enemy, terrorism, war, blockade, civil insurrection, riot, civil disturbance or strike or labor disruption); provided, that neither of the following shall be a Force Majeure Event: (a) Seller's failure to obtain any of the Permits; or (b) the inability of such Party or any third party to obtain needed funds.

"**GAAP**" means generally accepted accounting principles in the United States of America, consistently applied.

"**Generation Interconnection Agreement**" or "**GIA**" means the interconnection agreement, in a form and substance reasonably acceptable to Purchaser, between the applicable Transmission Provider and Seller pursuant to which the Interconnection Facilities will be constructed, operated, and maintained during the Term.

"**Generator**" means each of the generating systems described in **Exhibit B** hereto.

"**Generator Completion**" means, with respect to any Generator, the completion of the construction, installation, commissioning and testing of such Generator and all other equipment and facilities necessary to connect such Generator with the Interconnection Facilities and the Transmission System and otherwise put such Generator into commercial operation for the generation and delivery of Energy in accordance with Prudent Utility Practices and for the delivery to Purchaser of a Generator Final Completion Certificate related thereto.

"**Generator Final Completion**" means the achievement of Generator Completion for all Generators.

"**Generator Final Completion Certificate**" means a duly completed and executed certificate, substantially in the form of **Exhibit H** hereto.

"**Generator Final Completion Date**" means the date of Generator Final Completion.

"**Generator Manufacturer**" means the manufacturer of each Generator.

"**Guaranteed Commercial Operation Date**" has the meaning set forth in Section 6.3.1.

"**Guaranteed Annual Output**" means [anticipated annual capacity \* 0.90 \* Installed Capacity \* hours during the Contract Year as adjusted for any System Emergency and/or Operational Constrained Energy Period].



## Exhibit J. Prototype PPA

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**"Guaranteed Major Milestone Deadline"** means, for each of the Major Milestones, the date as set forth below:

- (a) delivery of all Wind Turbines to the Site – **[Date]**;
- (b) delivery and installation of all transformers at the Site – **[Date]**;
- (c) execution of the Generation Interconnection Agreement – **[Date]**;
- (d) physical and electrical interconnection the Project's Interconnection Facilities with the applicable Transmission Provider's Transmission System – **[Date]**;
- (e) acquisition of Transmission Services by Seller pursuant to Section 3.1 – **[Date]**; and
- (f) issuance of all Permits – **[Date]**.

**"Indemnitees"** means, with respect to either Party, such Party, its successors and assigns, and the respective directors, officers, shareholders, employees, agents and representatives of such Party and its successors and assigns.

**"Initial Term"** has the meaning set forth in Section 2.1.

**"Installed Capacity"** means the sum of all of the nominal or "nameplate" capacities (expressed in MW) of the Generators.

**"Interconnection Costs"** means all costs and expenses related to the Interconnection Facilities.

**"Interconnection Facilities"** means the facilities and control and other equipment between the Project and the Delivery Point, including, without limitation, control and protective devices, metering facilities, the Project Substation and the line connecting the Project Substation to the Transmission System, necessary to physically and electrically interconnect, and maintain the interconnection of, the Project with the applicable Transmission Provider's Transmission System in order to effectuate the purposes of this Agreement.

**"Investment-Grade"** means, with respect to any Person, a Long-Term Debt Rating for such Person of at least BBB- and Baa3 by S&P and Moody's, respectively, or, alternatively, a Long-Term Debt Rating for such Person from PSE's credit department equivalent to at least BBB+.

**"Letter of Credit"** means an irrevocable, transferable standby letter of credit that:

- (a) is issued by a U.S. commercial bank or a foreign bank with a U.S. branch, having a credit rating of:
  - (i) "A2" or higher from Moody's; or
  - (ii) "A" or higher from S&P;
- (b) names the Party (and any of its permitted transferees) in whose favor such letter of credit is issued (a **"Beneficiary Party"**) as the Person entitled to demand payment and present draw requests thereunder;

## Exhibit J. Prototype PPA

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- (c) is in the amount required pursuant to this Agreement;
- (d) entitles the Beneficiary Party to make drawings in the aggregate up to the stated face amount thereof for the purpose of paying any and all amounts owing by the other Party;
- (e) additionally entitles the Beneficiary Party to draw the entire amount then available for drawings thereunder if such letter of credit is not renewed or replaced at least thirty (30) Business Days prior to its stated expiration date; and
- (f) is otherwise in form and substance acceptable to the Beneficiary Party.

**"Long-Term Debt Rating"** means, with respect to any Person, the rating of such Person's long-term senior unsecured debt, as rated by S&P and Moody's.

**"Major Milestones"** means all of the following (each of which may be referred to in the singular as a "Major Milestone"):

- (a) delivery of all Generators to the Site;
  - (b) delivery and installation of all transformers at the Site;
  - (c) execution of the Generation Interconnection Agreement;
  - (d) physical and electrical interconnection the Project's Interconnection Facilities with the applicable Transmission Provider's Transmission System;
  - (e) acquisition of Transmission Services by Seller pursuant to Section 3.1;
- and
- (f) issuance of all Permits.

**"Major Milestone Deadline"** means, for each of the Major Milestones, the date as set forth below:

- (a) delivery of all Wind Turbines to the Site – **[Date]**;
- (b) delivery and installation of all transformers at the Site – **[Date]**;
- (c) execution of the Generation Interconnection Agreement – **[Date]**;
- (d) physical and electrical interconnection the Project's Interconnection Facilities with the applicable Transmission Provider's Transmission System – **[Date]**;
- (e) acquisition of Transmission Services by Seller pursuant to Section 3.1 – **[Date]**; and
- (f) issuance of all Permits – **[Date]**.

**"Market Price"** means for any hour an amount, stated in dollars per MWh, equal to the "Firm On-Peak," "Firm Off-Peak" or "Sunday and NERC Holidays" Dow Jones Mid-Columbia Electricity Index for the period in which such hour occurs. If such index becomes unavailable during the Term, it shall be replaced for purposes of the preceding sentence by a replacement

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index that replicates as near may be the information provided by the above-described Dow Jones Mid-Columbia Electricity Indices.

**"Mean Project Output"** means \_\_\_\_\_ MWh per Contract Year [**Calculated by multiplying a mutually agreed upon capacity factor for the Project \* the Installed Capacity \* 8760**].

**"Megawatt-hour"** or **"MWh"** means a unit of Energy equal to one thousand kilowatt-hours.

**"Meter"** means an instrument or instruments meeting applicable Technical Requirements and electric industry standards used to measure and record the volume and other required delivery characteristics of the Energy delivered hereunder at the Delivery Point, as further defined in Section 8.1.

**"Moody's"** means Moody's Investor Services, Inc. and any successor thereto.

**"MW"** means a unit of power equal to one megawatt.

**"National Broker"** means any nationally recognized firm engaged in the business of brokering Environmental Attributes. As of the date of this Agreement, such nationally recognized firms include Cantor Fitzgerald, New York, New York, NatSource, \_\_\_\_\_, \_\_\_\_\_ and Evolution Markets, \_\_\_\_\_, \_\_\_\_\_.]

**"Non-Completion Termination Date"** has the meaning set forth in Section 6.3.2(b).

**"Operation Permits"** means all of those Permits that are required to be obtained by Seller as a condition to Seller's right to operate the Project and sell Energy therefrom, as described in **Exhibit D**.

**"Operational Constrained Energy Period"** means any period in which Purchaser requires Seller to limit generation output or has determined that Energy may not be accepted by Purchaser due to (a) operational concerns with excess energy supply or other constraints, (b) insufficient load and energy sales or (c) effects from such acceptance that may result in operations inconsistent with Prudent Utility Practice.

**"Operational Hours"** means, for each Generator during any Contract Year, the period (expressed in hours or portions of an hour) in such Contract Year in which such Generator is physically and legally capable of producing power, less the sum of:

(a) any period (expressed in hours or portions of an hour) during such Contract Year in which, by reason of a System Emergency, Purchaser is unable to accept delivery of any Energy that such Generator is otherwise capable of generating; and

(b) any period (expressed in hours or portions of an hour) during such Contract Year in which such Generator is not operational as a result of a Force Majeure Event;

it being understood and agreed that for any given Contract Year for which Operational Hours are calculated, the deductions from Operational Hours for such period pursuant to clauses (a) and (b) above shall be the same as the deductions from Base Hours for such period pursuant to clauses (a) and (c) of the definition of "Base Hours."

## Exhibit J. Prototype PPA

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**"Operational Reliability Period"** means any period in which Purchaser requires Seller to produce generation output (a) due to operational or reliability concerns or circumstances involving insufficient generation supply or other Transmission System constraints, including (i) a significant change in load or (ii) operation of the project to provide voltage support or other system stability, or (b) to avoid effects that may result in operations inconsistent with Prudent Utility Practice.

**"Permits"** means all zoning approvals, permits, licenses, and other governmental approvals in final non-appealable form necessary to construct and operate the Project and sell Energy therefrom, all as contemplated by this Agreement, including the zoning approvals, permits, licenses, and other governmental approvals described in **Exhibit D**; provided, that any Permit from the Bureau of Land Management need be in final non-appealable form only to the extent that, under Applicable Law, it is possible to obtain such Permit in such form.

**"Permitted Investments"** means: (a) direct obligations of the United States of America, or of any agency thereof, or obligations guaranteed as to principal and interest by the United States of America or any agency thereof, in either case maturing not more than ninety (90) Days from the date of acquisition thereof; and (b) certificates of deposit issued by any bank or trust Seller organized under the laws of the United States of America (or any state thereof) and having capital, surplus and undivided profits of at least \$500,000,000, maturing not more than ninety (90) Days from the date of acquisition thereof.

**"Person"** means an individual, partnership, corporation, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority, limited liability company, or any other entity of whatever nature.

**"Power Purchase Option"** has the meaning set forth in Section 15.4.2.

**"Power Purchase Option Notice"** has the meaning set forth in Section 15.4.2.

**"Prime Rate"** means the rate published in *The Wall Street Journal* as the "Prime Rate" from time to time (or, if more than one rate is published, the arithmetic mean of such rates), in either case determined as of the date the obligation to pay interest arises, but in no event more than the maximum rate permitted by Applicable Law.

**"Project"** has the meaning set forth in the Recitals, as more particularly described in **Exhibit A-1** hereto and otherwise meeting the requirements of this Agreement, including having the Required Installed Capacity.

**"Project Mechanical Availability Percentage"** means, for any Contract Year and for each Generator agreed hereunder to be installed on the Site by Seller, a percentage calculated in accordance with the following formula:

Project Mechanical Availability Percentage	= 100 x	a fraction, the numerator of which equals the total actual output capability during such Contract Year for such Generator, and the denominator of which equals the Required Installed Capacity during such Contract Year for such Generator (adjusted for Scheduled Maintenance and any Force Majeure Event during such Contract Year)
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## Exhibit J. Prototype PPA

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"**Project Substation**" means the substation, if any, to be constructed as part of the Project as more specifically described in **Exhibit C** hereto.

"**Prudent Utility Practices**" means:

(a) those practices, methods and acts that, when engaged in, are commonly used in the Western Systems Interconnect in prudent electrical engineering and operations to operate [type of generation] generation electrical equipment and related electrical equipment lawfully and with safety, reliability, efficiency, economy and expedition; or

(b) in the absence of the practices, methods and acts described in the immediately preceding clause (a), those practices, methods and acts that, when engaged in, are, in the exercise of reasonable judgment considering the facts known when engaged in, could then be expected to achieve the desired result consistent with Applicable Law, safety, reliability, efficiency, economy and expedition.

Prudent Utility Practices are not limited to optimum practices, methods or acts, but rather are a range of acceptable practices, methods or acts.

"**PTCs**" means production tax credits, if any, under section 45 of the Internal Revenue Code as in effect on the date of this Agreement or any successor or other provision providing for a federal tax credit determined by reference to renewable electric energy produced from [type of generation] resources.]

"**Purchaser**" has the meaning set forth in the first paragraph of this Agreement.

"**Renewal Capacity Rate**" means the rate, expressed in dollars per MW, payable by Purchaser for capacity of the Project during the Renewal Term. The Renewal Capacity Rate for each Contract Year during the Renewal Term is set forth in **Exhibit E** hereto under the column designated "Renewal Capacity Rate (\$ per MW)."

"**Renewal Energy Rate**" means the rate, expressed in dollars per MWh, payable by Purchaser for Energy (other than Excess Output) [and Environmental Attributes] generated by the Project during the Renewal Term. The Renewal Energy Rate for each Contract Year during the Renewal Term is set forth in **Exhibit E** hereto under the column designated "Renewal Energy Rate (\$ per MWh)."

"**Renewal Notice**" has the meaning set forth in Section 2.2.

"**Renewal Rate**" means, collectively, the Renewal Capacity Rate, as applicable, and the Renewal Energy Rate for Energy and Excess Output.

"**Renewal Term**" has the meaning set forth in Section 2.2.

"**Required Installed Capacity**" means: [INSERT AMOUNT HERE] MW.

"**Scheduled Maintenance**" has the meaning set forth in Section 1.3 of **Exhibit I** hereto.

"**Security Documents**" means the Assignment and Security Agreement between Purchaser and Seller, and related documents executed as of the date hereof, whereby Purchaser is assigned and granted as security for Seller's obligations hereunder certain security interests in and to, and rights with respect to, the Project and contracts and other assets related thereto,

## Exhibit J. Prototype PPA

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including the rights contemplated by Section 16 hereof, subordinate only to **[specified senior debt incurred or to be incurred to develop and construct the Project]**.

"**Seller**" has the meaning set forth in the first paragraph of this Agreement.

"**Seller Guarantor**" has the meaning set forth in Section 7.4.1.

"**Seller Lender**" means any Persons (or successors in interest thereof) lending money or extending credit (including any financing lease) to Seller for (a) construction, term or permanent financing or refinancing of the Project, (b) working capital or other ordinary business requirements of the Project (including maintenance, repair, replacement, or improvement of the Project), (c) any development financing, bridge financing, credit support, credit enhancement, or interest rate protection in connection with the Project or (d) the purchase of more than a 50% interest (in aggregate) in the Project and the related rights from Seller.

"**Site**" has the meaning set forth in the Recitals, as more particularly described in **Exhibit A-2**.

"**S&P**" means Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) and any successor thereto.

"**Speculative-Grade**" means, with respect to any Person, a Long-Term Debt Rating for such Person of BB+ and Ba1 or lower by S&P and Moody's, respectively, or, alternatively, a Long-Term Debt Rating for such Person from PSE's credit department equivalent to BB+ or lower.

"**Stub Period**" means the period commencing on the Commercial Operation Date and ending on the immediately succeeding December 31; provided, however, that if the Commercial Operation Date occurs on December 31 or January 1, there shall be no Stub Period.

"**Support**" means the personnel and labor relating to, and supervision of, any of the following in connection with the procurement, construction, installation, start up and testing of the Project: subcontractors, materials, supplies, consumables, equipment, tools, construction equipment, transportation, data, drawings, plans, specifications and other goods, items, facilities and services (including technical and professional services).

"**System Emergency**" means a condition on the Transmission System (as determined by the applicable Transmission Provider), at the Project, or on transmission facilities used to deliver the Energy to or from the Delivery Point that is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.

"**Taxes**" means all *ad valorem*, property, income, occupation, utility, gross receipts, sales, use, excise, and other taxes, and all governmental charges, surcharges, licenses, permits, and assessments of every type and description.

"**Technical Requirements**" means those codes, standards, and specifications for the Meters mutually agreed upon by the Parties in writing as [\_\_\_\_\_], including bi-directional measurement capabilities.

"**Term**" means the Initial Term and, if Purchaser exercises its option with respect to the Renewal Term pursuant to Section 2.2 hereof, the Renewal Term.

## Exhibit J. Prototype PPA

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"**Termination Amount**" means, with respect to any Contract Year in which Purchaser exercises its right to terminate this Agreement pursuant to Section 2.6, the amount set forth in Exhibit J hereto for such Contract Year.

"**Test Power**" means the Energy produced by the Project during the testing thereof prior to the Commercial Operation Date.

"**Test Power Rate**" means the rate, expressed in dollars per MWh, payable by Purchaser for each MWh of Test Power delivered to Purchaser pursuant to this Agreement. The Test Power Rate is set forth in Section 3.3.1.

"**Transfer Option**" has the meaning set forth in Section 15.4.1.

"**Transfer Option Notice**" has the meaning set forth in Section 15.4.1.

"**Transmission Provider**" means (a) with respect to the Transmission System facilities from the Project to the Delivery Point, \_\_\_\_\_ or any replacement regional transmission organization or other Person that operates such Transmission System facilities and (b) with respect to the Transmission System facilities from the Delivery Point to Purchaser's electric system, \_\_\_\_\_ or any replacement regional transmission organization or other Person that operates such Transmission System facilities.

"**Transmission Services**" means transmission services (which shall be, at Purchaser's election, open access network integration transmission service or open access long-term firm point-to-point transmission service), ancillary services and control area services.

"**Transmission System**" means the transmission facilities now or hereafter operated by the applicable Transmission Provider.

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

## ARTICLE 2

### TERM AND TERMINATION

**2.1 Term.** This Agreement shall become effective on the latest of (a) the date of signature by both Parties, (b) [\_\_\_\_\_], and (c) the date by which Purchaser determines, which determination shall be in Purchaser's sole judgment, that any FERC action in response to any report by Purchaser of a change in status arising out of this Agreement pursuant to FERC Order No. 652 will not adversely affect Purchaser's retention of market-based rate authority as granted by FERC to Purchaser prior to such report, (the "**Effective Date**"). The term of this Agreement shall commence on the Effective Date and, unless earlier terminated pursuant to Section 2.4, 2.5, 2.6 or 6.3.2(b), shall continue for [\_\_\_\_\_] years from the first Day of the first Contract Year and expire at 00:00 hours on the [\_\_\_\_\_] anniversary of the first Day of the first Contract Year (the "**Initial Term**"), but subject to Purchaser's right to extend such expiration date by exercising one or more of its renewal options as provided in Section 2.2.

**2.2 Renewal Terms.** Seller hereby grants to Purchaser the sole option to extend the Term of this Agreement beyond the Initial Term for one \_\_\_-year period (the "**Renewal Term**").

## Exhibit J. Prototype PPA

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The Renewal Term shall commence immediately following the expiration of the Initial Term and shall expire on the \_\_\_\_ anniversary of the first Day of the first Contract Year.

In order to exercise its option to extend the Term of this Agreement through the Renewal Term, Purchaser, not less than one hundred eighty (180) Days prior to the expiration date of the Initial Term, shall notify Seller in writing of its exercise of such option ("**Renewal Notice**"). Upon the giving of the Renewal Notice, the Term of this Agreement shall thereupon be extended through the Renewal Term.

**2.3 Submission of Agreement to FERC.** If required under Applicable Law, not later than sixty (60) Days prior to the date on which Seller will commence deliveries of Energy hereunder to Purchaser, Seller shall submit this Agreement to FERC for acceptance pursuant to the Federal Power Act.

**2.4 Purchaser to Endeavor to Obtain Transmission Services.** Purchaser shall use commercially reasonable efforts to secure, on or before [\_\_\_\_\_], Transmission Services from the applicable Transmission Provider necessary to schedule the Energy and the Test Power from the Delivery Point to Purchaser's electric system. Purchaser shall not be required to secure such Transmission Services (a) absent generation integration or transmission availability reports from the applicable Transmission Provider satisfactory to Purchaser or (b) if Seller has not entered into a large Generation Interconnection Agreement with the applicable Transmission Provider. If on or before [\_\_\_\_\_], Purchaser, notwithstanding its commercially reasonable efforts, does not secure Transmission Services from the applicable Transmission Provider, then Purchaser may terminate this Agreement by giving written notice of such termination to Seller, which notice, to be effective, must be given by Purchaser to Seller and received by Seller on or before [\_\_\_\_\_]. Upon the giving of any such notice of termination, this Agreement shall automatically terminate and neither Party shall have any liability to the other under or in connection with this Agreement.

**2.5 Change in Circumstances.** Upon the occurrence of any material change, as determined by Purchaser in its sole discretion, in (a) Purchaser's economic requirements or resource portfolio requirements to serve its retail load or (b) the Project such that the Project no longer meets Purchaser's resource portfolio requirements to serve its retail load, Purchaser may terminate this Agreement by giving not less than thirty (30) days' prior written notice of such termination to Seller. Upon any such termination, neither Party shall have any liability to the other, except that Purchaser shall be obligated to pay to Seller the applicable Termination Amount set forth in the attached **Exhibit J**, and Seller shall, at Purchaser's election (and subject to such payment), immediately transfer to Purchaser (i) all of Seller's rights, title and interests in and to the Project (including the Turbines and the Balance of Plant), the Permits, all rights of Seller to real property included in or benefiting the Site and (ii) all of Seller's rights, title and interests in, to and under any agreements related to the Project to which Seller is a party.

**2.6 Failure to Receive Due Diligence Report.** If the Due Diligence Report has not been delivered to Purchaser within ninety (90) Days following the execution of this Agreement, notwithstanding the Parties' best reasonable efforts to obtain such report, then this Agreement shall automatically terminate as of such date; provided, however, if the Due Diligence Report is not delivered within such 90-Day period, Seller may provide written notice to Purchaser that it wishes to attempt to cure any deficiency in the Project that prevented the Due Diligence Report from issuing, in which event, the termination of this Agreement shall be delayed for an additional 120 Days pending remedial actions by Seller and the final review and issuance of the Due Diligence Report.



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## ARTICLE 3

### PURCHASE AND SALE OF ENERGY [AND ENVIRONMENTAL ATTRIBUTES]; DELIVERY; CURTAILMENT

**3.1 Purchase and Sale of Energy.** In accordance with and subject to the terms and conditions hereof, commencing on the Commercial Operation Date and continuing throughout the Term, Seller shall sell and deliver to Purchaser at the Delivery Point, and Purchaser shall purchase and accept from Seller at the Delivery Point, all rights, title and interests in and to the capacity of the Project[,] Energy [and the Environmental Attributes]. Prior to the Commercial Operation Date, Seller shall sell and deliver to Purchaser at the Delivery Point, and Purchaser shall purchase and accept from Seller at the Delivery Point, all Test Power. Seller shall deliver Energy (including Test Power) to the Delivery Point at a power factor and quality consistent with the requirements of the Generation Interconnection Agreement. Seller shall deliver the Energy (including Test Power) to Purchaser as generated at the Project. Seller shall obtain and maintain throughout the Term, at Seller's expense, all Transmission Services and related interconnection services and other services necessary to schedule the Energy (including Test Power) to the Delivery Point.

#### **[3.2 Environmental Attributes.**

**3.2.1 Seller's Covenants, Representations and Warranties Concerning Environmental Attributes.** Seller warrants and represents to Purchaser on a continuing basis that:

- (a) it owns or will own the Environmental Attributes as they come into existence;
- (b) it has not sold, pledged, assigned, transferred or otherwise disposed of, and will not sell, pledge, assign, transfer or otherwise dispose of, the Environmental Attributes to any Person other than Purchaser; and
- (c) all electricity generated by the Project meets one of the following standards for renewable resource generation: **[set forth mutually agreed-upon standard, e.g.,** (i) the standards promulgated under the Green-e Program developed by the Center for Resource Solutions and in effect on the date of this Agreement ([http://www.greene.org/ipp/certified\\_products.html](http://www.greene.org/ipp/certified_products.html)); or (ii) the standards promulgated under the Renew 2000 Project developed by the Northwest Environmental Advocates and in effect on the date of this Agreement (<http://www.cleanenergyguide.org/Certification/certification.htm>)].

Notwithstanding any provision of this Agreement to the contrary, Seller shall not use all or any portion of the Environmental Attributes and shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of the Environmental Attributes to any Person other than Purchaser. Seller further agrees that Seller shall make such filings and take such other actions as Purchaser may from time to time reasonably request in order to preserve and maintain the Environmental Attributes in accordance with the standards described in clause (c) of this Section 3.2.1 and to otherwise enable Purchaser to use, sell and transfer such Environmental Attributes in accordance with market standards.

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**3.2.2 Purchase and Sale of Environmental Attributes.** For and in consideration of Purchaser's agreement herein to purchase from Seller the Energy on the terms and conditions set forth herein, Seller shall sell to Purchaser, and Purchaser shall purchase from Seller, all rights, title, and interests in and to all Environmental Attributes related to the Energy, if any, whether now existing or acquired by Seller or that hereafter come into existence or are acquired by Seller during the Term. Seller shall, to the fullest extent permitted by Applicable Law, make the Environmental Attributes available to Purchaser immediately upon Seller's obtaining the Environmental Attributes.

**3.2.3 Reporting of Ownership of Environmental Attributes.** During the Term, Seller shall not report to any Person that the Environmental Attributes belong to any Person other than Purchaser, and Purchaser may report under any such program that the Environmental Attributes purchased hereunder belong to Purchaser.

**3.2.4 Further Assurances.** At Purchaser's request and expense, the Parties shall execute all such documents and instruments necessary or desirable to evidence the Environmental Attributes or to effect or evidence transfer of the Environmental Attributes to Purchaser or its designees. In the event of the promulgation of a scheme involving Environmental Attributes administered by CAMD, upon notification by CAMD that any transfers contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfer can be recorded. Each Party shall promptly give to the other Party copies of all documents it submits to the CAMD to effectuate or record any transfers.]

**3.3 Purchase Price.** The purchase price for the capacity of the Project[,] Energy [and Environmental Attributes] and the total compensation to Seller under this Agreement shall be as follows:

**3.3.1 Test Power Rate.** The purchase price for Test Power [and all Environmental Attributes related thereto] shall be \$\_\_\_\_\_ per MWh of Test Power.

**3.3.2 After Commercial Operation Date.** During the period from and including the Commercial Operation Date through the remainder of the Initial Term, the purchase price for all capacity of the Project shall be the Contract Capacity Rate for each MW of such capacity, and the purchase price for all Energy [and Environmental Attributes related thereto] shall be the Contract Energy Rate for each MWh of such Energy.

**3.3.3 Credit for Excess Output.** During the period from and including the first Contract Year through the remainder of the Term, Purchaser shall be entitled to a credit against (reduction of) the Contract Energy Rate or the Renewal Energy Rate, as applicable, paid for all Energy [and related Environmental Attributes] delivered or deemed delivered hereunder during each Contract Year for each MWh of such Energy that is in excess of 110% of the Mean Project Output ("**Excess Output**"). The amount of such credit for each Contract Year shall be equal to the Excess Output Credit calculated in accordance with Section 5.1.2 and **Exhibit F** hereto. Excess Output Credits from Seller to Purchaser shall be made available pursuant to Section 5.1.2 at the end of each Contact Year.

**3.3.4 Prior Notice of Test Power Deliveries and Commercial Operation Dates.** Seller shall give Purchaser prior written notice of the date on which deliveries of Test Power are expected to commence, which notice shall be given at the earliest practicable time but in no event less than ten (10) Days before such date.

## Exhibit J. Prototype PPA

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Seller shall give Purchaser notice of the date upon which Commercial Operation Date is expected to occur, which notice shall be given at the earliest practicable time but in no event less than ninety (90) Days before such date. Seller shall also give Purchaser notices of the date upon which Commercial Operation Date is expected to occur, the first such notice not less than sixty (60) Days before such date and the second such notice not less than thirty (30) Days before such date.

**3.3.5 Purchase Price During Renewal Term.** In the event Purchaser exercises its option to extend the term of this Agreement for the Renewal Term, then during the Renewal Term the purchase price for all capacity of the Project shall be the Renewal Capacity Rate for each MW of such capacity, and the purchase price for all Energy [and all Environmental Attributes related thereto] shall be the Renewal Energy Rate for each MWh of such Energy.

**3.3.6 Standard of Review.** Absent the agreement of both of the Parties to any proposed change, the standard of review for changes to this Section 3.3 proposed by any Party, a non-Party or FERC acting *sua sponte* shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (*Mobile-Sierra doctrine*).

**3.4 Allocation of Taxes.** Seller shall pay or cause to be paid all Taxes on or with respect to the Project and on or with respect to the delivery and sale of Energy [and/or Environmental Attributes] to Purchaser that are imposed before or upon the delivery of Energy at the Delivery Point. Purchaser shall pay or cause to be paid all Taxes (other than any Taxes for which Seller is liable under this Section 3.4) on or with respect to the delivery and sale of Energy [and/or Environmental Attributes] to Purchaser that are imposed after the delivery of the Energy to Purchaser after the Delivery Point. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such responsible Party shall reimburse the other for such Taxes upon request therefor. Both Parties shall use reasonable efforts to administer this Agreement and implement its provisions so as to minimize Taxes. In the event any of the sales of Energy [or Environmental Attributes] hereunder are to be exempted from or not subject to any particular Tax(es), Purchaser shall, promptly upon Seller's request therefor, provide Seller with all necessary documentation to evidence such exemption.

### **3.5 Curtailment.**

**3.5.1 Curtailment Due to Transmission System Emergency.** Seller and Purchaser each acknowledge that System Emergencies may only be declared by a Transmission Provider, and not by Seller or the merchant function of Purchaser. Purchaser and Seller shall curtail or acquiesce in the curtailment of deliveries of Energy if notified by the applicable Transmission Provider that a System Emergency exists, but such curtailment shall only continue for the duration of such System Emergency and then only to the extent required by such Transmission Provider. Seller shall take such actions as may be required by remedial action schemes (if any) specified in the Generation Interconnection Agreement to cause such curtailment and resume deliveries of Energy as soon after curtailment as is reasonably possible, safe and in accordance with Prudent Utility Practices.

**3.5.2 Curtailment Due to Operational Concerns.** Seller shall reduce the generation of the project when Purchaser has declared an Operational Constrained Energy Period. Purchaser shall notify Seller of the maximum amount of Energy that shall be generated by the Project, if any, during the Operational Constrained Energy Period and Seller shall ensure that the generation does not exceed such amount. Purchaser may provide such notices to Seller via telephone. Purchaser may not declare Operational Constrained Energy Periods during more than [\_\_\_\_\_] hours in any calendar year.

## Exhibit J. Prototype PPA

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**3.5.3 Dispatch During Operational Reliability Period.** Seller shall dispatch the project "on" to the extent requested by Purchaser when Purchaser has declared an Operational Reliability Period. Purchaser shall notify Seller of the amount of Energy generation, if any, during the Operational Reliability Period, and Seller shall ensure that Energy generation meets such amount. Purchaser shall provide such fuel as may be necessary to dispatch the project "on" pursuant to such request by Purchaser during the Operational Reliability Period, and Purchaser shall pay Seller its reasonable operation and maintenance costs incurred on account of such dispatch. Any Energy produced by the project during an Operational Reliability Period shall be delivered to Purchaser at no charge (except as otherwise provided in this Section 3.5.3) at the Delivery Point pursuant to Section 3.1.

**3.5.4 Economic Dispatch.** [Provisions are to be included in this section as the Parties may mutually agree.]

### ARTICLE 4

## CONSTRUCTION AND PURCHASER'S RIGHT TO MONITOR

### CONSTRUCTION

**4.1 Design, Permitting, Construction, Financing, Operation and Maintenance of the Project.** Seller shall site, develop, finance, permit and construct the Project. Seller agrees to provide to Purchaser monthly reports as to the status of the siting, development, financing, permitting and construction of the Project and other matters reasonably related to Purchaser's interest in the Project, Installed Capacity, Energy and this Agreement.

Seller represents, warrants and covenants throughout the Term that:

(a) the Project will be designed, engineered, constructed, installed, operated and maintained in such a manner as to have a reasonably expected useful life of not less than twenty-five (25) years; and

(b) the Project will be designed, engineered, constructed and installed, and Energy will be sold by Seller to Purchaser, in compliance with all Permits and Applicable Law and in accordance with Prudent Electrical Practices.

It is understood and agreed by the Parties that the warranty and covenant set forth in clause (a) of this Section 4.1 is not a warranty and covenant that the Project will, in fact, have a useful life of not less than twenty-five (25) years, but only a warranty and covenant that Project will be designed, engineered, operated and maintained in accordance with Prudent Utility Practice to have an expected useful life of not less than twenty-five (25) years if maintained in accordance with the manufacturer's specifications.

**4.2 Right to Monitor.** During the design, procurement, construction, installation, start-up, testing, operation and maintenance of the Project, Seller shall permit Purchaser and its advisors and consultants to:

(a) monitor the construction of the Project, including, without limitation, the design and engineering, the procurement and installation of the Generators, start-up and

## Exhibit J. Prototype PPA

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testing, operation and maintenance of the Project, and Support necessary or desirable for the accomplishment of these tasks;

(b) monitor the design, engineering, construction and installation of the Project to determine whether it meets the specification of having a reasonably expected useful life of not less than twenty-five (25) years;

(c) prior to the Commercial Operation Date and as a condition precedent to the occurrence of the Commercial Operation Date:

(i) review and monitor the contractors' performance and achievement of all initial performance tests and all other tests required under the Project construction contracts that must be performed in order to achieve completion, with respect to which the construction contracts shall provide that at least ten (10) Days before such tests begin the contractors shall deliver to Purchaser a schedule for the performance of such tests;

(ii) be present to witness the such initial performance tests and review the results thereof;

(d) perform such detailed examinations, inspections, quality surveillance and tests as, in the judgment of Purchaser, are appropriate and advisable to determine that:

(i) the Generators have been designed, engineered and installed in accordance with this Agreement;

(ii) the Balance of Plant has been designed, engineered, constructed and installed in accordance with this Agreement; and

(iii) that all performance guarantees pursuant to this Agreement have been met;

(e) verify that the following are paid when due:

(i) all real property Taxes imposed before the Commercial Operation Date on real property included in or benefiting the Site;

(ii) Taxes imposed with respect to any Generator before its transfer to Seller;

(iii) Taxes based on or measured by Seller's net or gross income;  
and

(iv) any retail sales, use or similar Tax on the transfer, sale or use of the Project or any part thereof to or by Seller or any contractor of Seller ;

(f) review and discuss periodic status reports on the progress of the design, construction and installation of the Project, which reports shall be provided by Seller to Purchaser not less frequently than once a month; and

(g) be provided with a list of recommended operating spare parts lists for all equipment supplied.

# Exhibit J. Prototype PPA

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**4.3 No Warranty, Representation or Endorsement.** No monitoring, review, consent, verification, advice, recommendation, authorization, notice, witness, inspection, test or any other act by Purchaser (and no delay or failure by Purchaser to monitor, review, approve, consent, verify, advise, recommend, authorize, notify, witness, inspect, test or otherwise act) regarding the procurement, construction, installation, start-up, testing, operation or maintenance of the Project shall constitute or be interpreted or construed as, or be relied upon or held out by Seller or any other Person as, any waiver, warranty, representation, covenant or endorsement by Purchaser.

## ARTICLE 5

### BILLING AND PAYMENTS

**5.1 Billing and Payment.** Billing and payment for the capacity of the Project[,] Energy (including Test Power) [and all associated Environmental Attributes] sold and purchased under this Agreement and any other amounts due and payable hereunder shall be as set forth in this Section 5.1.

**5.1.1 Calculation of Available Capacity, Energy Delivered or Deemed Delivered; Invoices and Payment.** For each calendar month during the Term, commencing with the first calendar month in which Energy is delivered by Seller to Purchaser in accordance with the terms of this Agreement, Seller shall calculate:

- (a) the amount of the available capacity of the Project and of Energy delivered to Purchaser during such calendar month as determined from recordings produced by Meters at or near 2400 hours on the last Day of the calendar month in question; and
- (b) any credits owed to Purchaser as a result of hourly forecasts errors pursuant to Section 7.2.

Not later than the tenth Day of each calendar month (commencing with the calendar month next following the calendar month in which Energy is first delivered by Seller to Purchaser in accordance with the terms of this Agreement), Seller shall deliver to Purchaser an invoice showing the available capacity of the Project and the amount of such Energy delivered to Purchaser by Seller [and PTC's related thereto] during the immediately preceding calendar month and Seller's computation of the amount due Seller in respect thereof.

Not later than the later to occur of the following (herein called the "**Due Date**"):

- (i) the twentieth (20<sup>th</sup>) Day of the calendar month immediately following the calendar month to which Seller's invoice relates (or the next succeeding Business Day, if such twentieth Day is not a Business Day); or
- (ii) the tenth (10<sup>th</sup>) Day after receipt by Purchaser of Seller's monthly invoice (or the next succeeding Business Day, if such tenth Day is not a Business Day);

Purchaser shall pay to Seller, by wire transfer of immediately available funds to an account specified in writing by Seller for such purpose or by any other means agreed to by the Parties in writing from time to time, the amount set forth in such monthly invoice that is due and owing to

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Seller. In no event shall Purchaser be obligated to pay Seller for any capacity of the Project that is in excess of the Installed Capacity.

**5.1.2 Excess Output.** At the end of each Contract Year, Seller shall calculate the amount of Excess Output, if any, delivered or deemed delivered to Purchaser hereunder during such Contract Year, which determination shall be made from recordings produced by the Meters through 2400 hours on the last Day of each Contract Year.

Not later than 10 Days after the end of such Contract Year, Seller shall deliver to Purchaser an invoice showing the amount, if any, of Excess Output delivered to Purchaser by Seller pursuant hereto during such Contract Year and Seller's computation of the Excess Output Credit, which Excess Output Credit shall be calculated in accordance with the formula set forth in **Exhibit F** hereto ("**Excess Output Credit**").

If an Excess Output Credit is owing, Purchaser shall have the right under Section 5.1.4 to set off such credit from one or more subsequent invoices payable to Seller.

**5.1.3 Disputed Invoices.** Within one hundred twenty (120) Days after receipt of any invoice, Purchaser may provide written notice to Seller of any alleged error therein. If Seller notifies Purchaser in writing within thirty (30) Days of receipt of such notice that Seller disagrees with the allegation of error in the invoice, the Parties shall meet, by telephone conference call or otherwise, within five (5) Business Days following Seller's response, for the purpose of attempting to resolve the dispute. If the Parties do not resolve the dispute within thirty (30) Days after such initial meeting, either Party may proceed to seek whatever remedy may be available to such Party at law or in equity. If Seller is found to be in error, Seller shall refund to Purchaser the amount that Purchaser paid in excess of the amount that Purchaser actually owed plus interest on such excess payment from the date the same was paid by Purchaser to (but not including) the date of refund thereof is actually received by Purchaser from Seller, such interest to be at an annual rate equal to the Prime Rate in effect as of the date such payment was made by Purchaser plus two percent (2%), but in no event shall such interest exceed the maximum interest rate permitted by Applicable Law.

The rights of the Parties set forth in this Section 5.1.3 are in addition to, and not in lieu of, the rights set forth in Section 7.4.

**5.1.4 Setoffs and Deductions.** Purchaser shall have the right to set off any amount due Seller under this Agreement against any amount due Purchaser from Seller hereunder.

**5.1.5 Interest on Past Due Amounts.** Any payment not made within the time limits specified in this Section 5.1 shall bear interest from the Due Date of such payment through (but not including) the date such payment is actually received by Seller or Purchaser, as the case may be. Such interest shall accrue at an annual rate equal to the Prime Rate then in effect plus two percent (2%), but in no event shall such interest exceed the maximum interest rate permitted by Applicable Law.

**5.1.6 Form and Transmittal of Invoices.** Statements or invoices shall be sent to Purchaser by mail or facsimile to the address or facsimile number designated in Section 11.1. All invoices from Seller must be accompanied with certified telemetry or other metering information as required in Section 8.1.1. Purchaser may change the address or facsimile number by providing written notice thereof to Seller. Each invoice shall be in a form and substance reasonably acceptable to both Seller and Purchaser.

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## ARTICLE 6

### INTERCONNECTION, CONSTRUCTION, OPERATION AND PERFORMANCE GUARANTEES

#### 6.1 Interconnection.

##### 6.1.1 Generation Interconnection Agreement and Interconnection

**Facilities.** Seller shall enter into and shall maintain throughout the Term a Generation Interconnection Agreement (GIA) with the applicable Transmission Provider. Pursuant to the GIA, such Transmission Provider and Seller shall design, finance, install, maintain, and operate the Interconnection Facilities as required under the Interconnection Agreement.

**6.1.2 Purchaser's Right of Review of the Generation Interconnection Agreement; Date for Required Completion of Interconnection Facilities; Payment of Interconnection Costs.** Before Seller enters into the Generation Interconnection Agreement, Seller agrees to provide to Purchaser the final draft of such Agreement as and when such draft is made available to Seller. Purchaser shall have the right to comment on such draft within ten (10) Business Days after the same is provided to Purchaser by or on behalf of Seller and Seller shall use reasonable efforts to cause Purchaser's comments to be incorporated into the Generation Interconnection Agreement as executed and delivered by the parties thereto. Notwithstanding anything expressed or implied herein to the contrary:

(a) the Generation Interconnection Agreement shall provide for the completion of all Interconnection Facilities no later than \_\_\_\_\_; and

(b) As between Seller and Purchaser, Purchaser shall have no liability for the payment of any Interconnection Costs.



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### 6.2 Operation and Maintenance.

**6.2.1 General.** Seller shall submit a written annual maintenance plan for the coming year no later than 60 Days prior to the start of each Contract Year. Such plan shall be subject to Purchaser's acceptance. Any and all changes to such plan shall be immediately communicated to Purchaser in writing and shall be subject to Purchaser's acceptance. Seller agrees to operate and maintain the Project, the Interconnection Facilities, its Meters (if any), and all other equipment and systems interconnecting with the Interconnection Facilities or the interconnected Transmission System in accordance with the applicable manufacturer's specifications and in a manner that is reasonably likely to:

- (a) maximize the output of Energy [and Environmental Attributes] from the Project consistent with Prudent Utility Practices; and
- (b) result in an expected useful life for such facilities of not less than twenty-five (25) years;

all in compliance with all Permits and applicable laws, ordinances, rules, regulations, orders and other requirements, now or hereafter in effect, of any governmental authority, and in accordance with Prudent Utility Practice.

**6.2.2 Operation and Maintenance Plan.** Seller shall inspect, maintain and repair the Project and the components thereof in accordance with Prudent Utility Practices, and shall keep records with respect to inspections, maintenance, and repairs thereto. Upon request by Purchaser, Seller shall make available to Purchaser during Seller's regular business hours all plans and records of such inspections, maintenance, and repairs.

**6.2.3 Coordination of Project Operation.** Seller shall operate the Project on a continuous, reliable and sustained basis until the end of the Term, subject to curtailments pursuant to Section 3.5 and outages in accordance with **Exhibit I** hereto. The Parties shall coordinate operation of the Project with Purchaser's electric system in accordance with such **Exhibit I**. In addition, Seller shall cooperate in good faith with Purchaser's reasonable maintenance scheduling requests consistent with Prudent Utility Practices so as to, without limitation, maximize Purchaser's return on its third-party sales of the Energy [and Environmental Attributes].

### 6.3 Commercial Operation Date Guarantee; Delay Payments.

**6.3.1 Guaranteed Commercial Operation Date.** Seller shall cause the Commercial Operation Date to occur, including causing each Generator to achieve Generator Completion by, [\_\_\_\_\_] (the "**Guaranteed Commercial Operation Date**").

#### 6.3.2 Delay Payments.

(a) For each Day after the Guaranteed Commercial Operation Date that the Commercial Operation Date has failed to occur, Seller agrees to pay Purchaser *per diem* delay liquidated damages on a per Generator basis in an amount calculated as provided below (the "**Delay Payment**"). Except as provided below in this Section 6.3.2, Delay Payments on a per Generator basis shall be paid by Seller to Purchaser for each Day that each Generator is late in achieving Generator Completion, commencing with the Day after the Guaranteed Commercial Operation Date through (but not including) the Commercial Operation Date.

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The Delay Payment for each Generator that has failed to achieve Generator Completion by the Guaranteed Commercial Operation Date shall be an amount equal to the product of (x) \_\_\_\_\_ dollars (\$\_\_\_\_\_) multiplied by (y) the number of Days from (and including) the Day after the Guaranteed Commercial Operation Date to (but not including) the date upon which such Generator achieves Generator Completion.

Purchaser shall not be entitled to any Delay Payment hereunder with respect to any Generator to the extent Seller's delay in achieving Generator Completion with respect to such Generator was caused by:

- (i) Purchaser;
- (ii) a delay due to a Force Majeure Event; or
- (iii) the failure of Purchaser to secure Transmission Services from the applicable Transmission Provider.

In the event Seller's delay in achieving Generator Completion with respect to a Generator is caused by any of the events described in (i), (ii) or (iii) of this Section 6.3.2(a), then with respect to the affected Generator(s) the Guaranteed Commercial Operation Date shall be extended by a number of Days equal to the period of such delay. Except as otherwise provided herein, Purchaser and Seller agree that the remedies provided for in this Section 6.3.2(a) shall be the exclusive remedies of Purchaser for Seller's breach of its obligation under Section 6.3.1.

The maximum liquidated damages payable by Seller in connection with delays in achieving the Commercial Operation Date by the Guaranteed Commercial Operation Date shall be \_\_\_\_\_ dollars (\$\_\_\_\_\_). Seller shall pay such amount (i.e., \_\_\_\_\_ (\$\_\_\_\_\_)) to Purchaser as liquidated damages upon any termination of the Project or this Agreement pursuant to Section 6.3.2(b).

(b) If for reasons other than the termination of this Agreement pursuant to Section 2.4 or 2.5, Seller fails to complete a Major Milestone by the Guaranteed Major Milestone Deadline therefor or fails to achieve the Commercial Operation Date as of a date that is [\_\_\_\_\_] Days after the Guaranteed Commercial Operation Date (the "**Non-Completion Termination Date**"), Purchaser may at any time prior to the Commercial Operation Date terminate this Agreement; provided, that if the delay in achieving the Commercial Operation Date is caused by any of items (i), (ii), and (iii) in Section 6.3.2(a), then the Non-Completion Termination Date shall be extended by a number of Days equal to the period of such delay, but in no case to a date later than [\_\_\_\_\_]. Following such termination, Seller shall owe Purchaser the Delay Payments as set out in Section 6.3.2(a) **[THE INITIAL NONCOMPLETION TERMINATION DATE SHOULD BE THE DATE WHEN THE MAXIMUM DELAY PAYMENTS PERMITTED UNDER THE AGREEMENT WILL HAVE BEEN INCURRED, PURSUANT TO SECTION 6.3.2(a).]**

**6.3.3 Security for Delay Payments.** Concurrently with execution of this Agreement, Seller has provided to Purchaser a Letter of Credit, available for drawings solely for a default in Seller's obligation to pay Delay Payments as set forth in this Section 6.3. Such Letter of Credit is in the amount of **[the maximum amount of delay damages as set forth in Section 6.3.2(a)]**. Seller shall cause such Letter of Credit to remain in place until each of the following has occurred: (a) the Commercial Operation Date has occurred and (b) Purchaser has certified to the issuer of the Letter of Credit that any Delay Payment due from Seller has been paid.

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## ARTICLE 7

### PROJECT GUARANTEES

**7.1 Annual Output Guarantee.** Seller warrants and covenants that the Energy output for each Contract Year, as calculated immediately following the end of such Contract Year, shall have been no less than the Guaranteed Annual Output. For each MWh that the actual Energy output during the Contract Year is less than the Guaranteed Annual Output for such Contract Year, Seller shall pay Purchaser liquidated damages in the amount of the Cost to Cover for such MWh of Energy. Notwithstanding the foregoing, Purchaser shall not be entitled to any liquidated damages under this Section 7.1 to the extent Seller's failure to meet the Guaranteed Annual Output was caused by a Transmission Provider, Purchaser or a Force Majeure Event.

**7.2 Hourly Guarantee.** Not later than forty-five (45) minutes prior to the start of each hour during the Contract Term, Seller shall provide to Purchaser a forecast of the Project output for the next schedule hour to be delivered to the Delivery Point. If the Project output actually delivered to the Delivery Point in such hour is less than the forecast amount supplied by Seller by more than twenty percent (20%), Purchaser shall be entitled to a credit, against amounts otherwise due and owing by Purchaser to Seller, in an amount equal to the product of (a) the amount of Energy greater than twenty percent (20%) of the forecast amount not delivered to the Delivery Point multiplied by (b) the difference between the Market Price for such amount of Energy in such hour and the purchase price for such amount of Energy pursuant to Section 3.3.

**7.3 Project Availability Guarantee.**

**7.3.1 Guaranteed Project Availability.** Seller warrants and covenants that for each Contract Year during the Initial Term, as calculated at the beginning of the next succeeding Contract Year, the Project Mechanical Availability Percentage shall not be less than ninety-eight percent (98%) of the Required Installed Capacity for such Contract Year.

**7.3.2 Payment of Amounts Owing for Failure of Project Mechanical Availability Percentage to Meet Project Availability Guarantee.** For each percentage point (rounded to the nearest 1/100 of one percent) by which the Project Mechanical Availability Percentage for any Contract Year is less than ninety-eight percent (98%) of the Required Installed Capacity for such Contract Year, Seller shall pay Purchaser liquidated damages in an amount equal to the product of (a) the amount of such percentage points (as so rounded) multiplied by (b) the Required Installed Capacity multiplied by (c) the Contract Capacity Rate.

**7.3.3 Payment of Amounts Owing for Failure to Meet Project Availability Guarantee.** For the second Contract Year and for each Contract Year thereafter, no later than the thirtieth (30<sup>th</sup>) Day of such Contract Year, Seller shall deliver to Purchaser an invoice showing Seller's computation of the actual Energy output and the Project Mechanical Availability Percentage for the immediately preceding Contract Year and the amount of liquidated damages due Purchaser in respect thereof, if any. Seller shall pay to Purchaser, by wire transfer of immediately available funds to the account specified in writing by Purchaser for such purpose or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in each such invoice. Any disputed invoices shall be treated as set forth in Section 5.1.3.

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### 7.4 Seller Guaranty; Additional Security; Financial Statements.

**7.4.1 Delivery of Guaranty for Output Obligations.** With respect to the obligations of Seller set forth in Sections 6.3, 7.1, 7.2 and 7.3, Seller shall cause one or more of its respective Affiliates (each, a "**Seller Guarantor**") having an Earnings-to-Interest Ratio of at least 2.00, to execute and deliver to Purchaser prior to the Commercial Operation Date a guaranty in favor of Purchaser, in the form attached as **Exhibit G**, under the terms of which Seller Guarantor unconditionally guarantees the full and prompt payment of Seller's payment obligations of this Agreement, in a maximum aggregate amount not to exceed \_\_\_\_\_ dollars (\_\_\_\_\_). Such Guaranty shall remain in effect for the Term and thereafter until Purchaser has certified to the Guarantor that no damages are owed by Seller.

**7.4.2 Additional Security.** In lieu of the obligation to provide a guaranty as set forth in Section 7.4.1, or in the event that such a guaranty has been provided and at any time subsequent thereto Seller Guarantor shall no longer have an Earnings-to-Interest Ratio of at least 2.00 as determined at the end of any calendar quarter during the Term based on the Seller Guarantor's interest coverage at the end of the twelve (12)-month ending with such calendar quarter, then Seller shall provide to Purchaser Additional Security in the amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_) and for the term of the guaranty described in Section 7.4.1(a). In the event Seller fails to provide such Additional Security within five (5) Business Days, then an Event of Default shall be deemed to have occurred pursuant to Section 12.1.1(f) hereof, and Purchaser shall be entitled to exercise any of the remedies set forth in Article 12 hereof.

**7.4.3 Cash As Additional Security.** If such Additional Security consists of cash, the escrow agreement with the applicable Custodian (to which Seller, Seller Guarantor and Purchaser shall be parties) shall provide, without limitation, that:

- (a) such cash shall be invested by the Custodian at the direction of Seller in such Permitted Investments as Seller shall select; and
- (b) Seller shall be entitled, on a current basis, to all investment earnings derived from all investments of such cash.

The fees and expenses of such Custodian shall be paid by Seller.

### 7.5 Financial Statements.

Seller shall provide to Purchaser the following:

- (a) within forty-five (45) Days after the close of each calendar quarter (commencing with the calendar quarter ending \_\_\_\_\_), the unaudited financial statements of Seller Guarantor for the calendar quarter just ended; and
- (b) within one hundred and twenty (120) Days after the close of each fiscal year (commencing with the fiscal year ending \_\_\_\_\_), the unaudited financial statements of Seller Guarantor for the fiscal year just ended; provided, that if Seller Guarantor otherwise has audited financial statements prepared for the fiscal year in question, then such audited financial statements of Seller Guarantor shall be provided in lieu of the aforementioned unaudited financial statements.

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## ARTICLE 8

### MEASUREMENT AND METERING; PROJECT DATA

#### 8.1 Metering Equipment.

Seller shall provide and cause to be installed, all metering (including meters at any Project substation identified as the Delivery Point) and data processing equipment needed for the registration, recording, and transmission of information regarding the Energy generated from the Generator and delivered to the Delivery Point, real and reactive power output, voltage output, current output, and other related parameters that are required for computing the payments due to Seller from Purchaser ("**Meters**"). Upon installation, the Meters shall become the property of Purchaser. Purchaser shall operate and maintain all such equipment in accordance with Prudent Utility Practices. All Meters and data processing equipment shall meet or exceed the Technical Requirements.

**8.2 Measurements.** Readings of the Meters shall be conclusive as to the amount of Energy delivered under this Agreement; provided, that if the Meters are discovered to be inaccurate pursuant to Section 8.3 and the Parties do not agree on the actual energy delivered during the period when the Meters were registering inaccurately, the period to be used for purposes of calculating measurements pursuant to this Section 8.2 shall be one-half of the period from the date of the last previous test of the Meter through the date of the test that found the Meters to be inaccurate, but in no event more than one hundred eighty (180) Days from the date of the last previous test of such the Meters.

#### 8.3 Testing and Correction.

**8.3.1 Required Testing by Seller; Purchaser's Right to Conduct Tests; Testing of Purchaser's Meters.** The accuracy of Meters shall be tested and verified not less than annually and at Seller's expense. Such annual testing and verification shall be performed within thirty (30) Days following the beginning of each Contract Year by a third party selected by Purchaser and approved in writing by Seller. In addition, at Seller's option, the accuracy of the Meters may be tested and verified at Seller's expense at more frequent intervals. Seller shall provide to Purchaser at least twenty (20) Days' prior written notice of the date upon which any such test is to occur. Purchaser and its consultants and representatives shall have the right to be present at and observe each such test. Seller shall prepare a written report setting forth the results of each such test, and shall provide Purchaser with copies of such written report not later than thirty (30) Days after completion of such test.

**8.3.2 Standard of Meter Accuracy; Resolution of Disputes as to Accuracy.** The following steps shall be taken to resolve any disputes regarding the accuracy of any Meter:

- (a) If Seller disputes a Meter's accuracy or condition, it shall so advise the Purchaser in writing.
- (b) Purchaser shall, within fifteen (15) Days after receiving such notice, advise Seller in writing as to its position concerning the Meter's accuracy and reasons for taking such position.

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(c) If the Parties are unable to resolve the dispute through reasonable negotiations, then either Party may cause an unaffiliated third-party engineering company mutually acceptable to the Parties to test the Meter that is the subject of dispute.

(d) If such Meter is found to be inaccurate by more than two percent (2%) or if such Meter is for any reason out of service or fails to register, then the Parties shall use their best efforts to estimate the correct amounts of energy delivered during the periods affected by such inaccuracy, service outage or failure to register by the best available means. In the event that, as a result of such estimate: (i) the amount of Energy credited to Purchaser is decreased, Seller shall reimburse Purchaser for any overpayment made by Purchaser, such reimbursement to be in the form of (A) a deduction from the next succeeding payment or payments by Purchaser for electrical energy due Seller pursuant to Section 3.3 or (B) cash, if no such succeeding payments in an amount exceeding the amount of such overpayment are or shall be due; or (ii) the amount of Energy credited to Purchaser is increased, Purchaser shall pay Seller for such increased credit for Energy, if any, at the purchase price set forth in Section 3.3 that is effective for the periods during which such Energy is estimated to have been delivered. Notwithstanding the foregoing, if, upon test, Purchaser's meters for determining amounts of energy delivered under this Agreement are found to be inaccurate by not more than two percent (2%), then any previous recordings of such meters shall be deemed accurate. Purchaser shall promptly cause meters found to be inaccurate to be adjusted to correct to the extent practicable such inaccuracy.

### **8.4 Real Time Data; Other Project Data.**

**8.4.1 Real Time Data.** Seller shall make available to Purchaser on a real-time, Generator-by-Generator basis, (a) the information and data referred to in Section 8.1, and (b) any other data from the Project that Seller receives on a real-time basis. Seller shall provide such real time data to Purchaser on the same basis as the basis on which Seller receives the data (e.g., if Seller receives the data in four second intervals, Seller shall also make the data available to Purchaser in four second intervals). Seller shall present the real-time data in an electronic form that interacts seamlessly with real-time electronic data received by Purchaser from any other [type of generation] project operated by Seller or an Affiliate of Seller. For the purpose of receiving the real-time data contemplated in this Section 8.4.1, Seller shall provide to Purchaser either a terminal or a direct interface with Seller's equipment at the Site.

**8.4.2 Other Project Data.** Within thirty (30) Days after the end of each calendar month, Seller shall provide to Purchaser a monthly report in electronic format acceptable to Purchaser, which report shall include information on the Actual Operational Hours of the Generator, summaries of production of the Generator, any other significant events related to the operation of the Generator and any supporting information that Purchaser may reasonably request. In addition, Seller shall maintain an electronic fault log of operations of the Project (including all information reasonably required to confirm Project and Generator availability) during each hour of the Term beginning as of the Commercial Operation Date and shall provide such log to Purchaser on a monthly basis. Without limiting the foregoing, Seller shall promptly furnish Purchaser with copies of such plans, specifications, records and other information and data relating to the Project, any construction and installation activities, the arrangements between Seller and the applicable Transmission Provider, the ownership, operation, use or maintenance of the Project, or Seller Guarantor's Earnings-to-Interest Ratio, as may be reasonably requested by Purchaser from time to time. Purchaser shall maintain the confidentiality of Seller's confidential and proprietary information provided pursuant to this section in accordance with the terms and provisions of a confidentiality agreement mutually agreed to by the Parties.

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## ARTICLE 9

### RECORDS; REPORTS AND REVIEWS

#### 9.1 Maintenance of Records; Quarterly Reports.

**9.1.1 Maintenance of Records.** Each Party shall keep complete and accurate records, and shall maintain such data as may be necessary for the purpose of ascertaining the accuracy of each statements of charges submitted hereunder for a period of two (2) years from the date the applicable statement was delivered.

#### 9.1.2 Quarterly Reports.

(a) Within thirty (30) Days after the end of each calendar quarter during the Term, Seller shall provide to Purchaser a written quarterly report, which shall include:

- (i) information on the Average Annual Output;
- (ii) summaries of production of each Generator;
- (iii) any other significant events related to the operation of each Generator; and
- (iv) any supporting information that Purchaser may reasonably request.

(b) If Purchaser determines that, for purposes of Financial Interpretation No. 46R (FIN 46R), Seller is a variable interest entity and that, as a result of being a variable interest entity, consolidated financial reporting will be required for Purchaser and Seller, Purchaser shall so notify Seller in writing. Within thirty (30) Days after Seller's receipt of such notification and within thirty (30) Days after the end of each calendar quarter during the Term, Seller shall provide to Purchaser a written quarterly report, which shall include:

(i) Descriptions of the following obligations of Seller for the immediately preceding calendar quarter:

- (A) On-balance sheet obligations;
- (B) Gas purchase obligations;
- (C) Lease obligations and commitments;
- (D) Off-balance sheet commitments; and
- (E) Contingent obligations;

and

(ii) All material contracts (or summaries if the original contracts are not immediately available) of Seller then in effect, together with any related agreements, if any, including, but not limited to:

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- (A) Equity-related agreements;
- (B) Debt and other borrowings documents;
- (C) Material asset or stock acquisitions or dispositions;
- (D) Documents under which guarantees or indemnities have been provided;
- (E) Material supplier and customer contracts;
- (F) Related-party contracts;
- (G) Documents related to material hedging activities;
- (H) Contingent obligations and financial commitments;
- (I) Leasing arrangements and off-balance sheet obligations; and
- (J) Management and outsourcing contracts.

### 9.2 Right To Review.

**9.2.1 Review Rights.** Purchaser shall have the right, upon reasonable notice to Seller and during Seller's regular business hours and without materially interfering with the conduct of Seller's business, to access and review all of Seller's records, reports, data, calculations and statements, maintained by Seller pursuant to Section 9.1.1, that Seller provides or is obligated to provide to Purchaser under this Agreement. Purchaser shall bear Purchaser's costs of performing such review, provided that Seller cooperates with such review. Purchaser shall not be obligated to pay or reimburse Seller for any costs (including the cost of photocopies) that Seller may incur as a result of such review.

**9.2.2 Refunds of Overpayments and Underpayments.** Should any review performed pursuant to Section 9.2.1 reveal a billing error or errors that resulted in an overpayment by Purchaser, Seller shall refund to Purchaser the amount of the overpayment plus interest thereon from the date such overpayment was made by Purchaser to (but not including) the date Purchaser actually receives the refund thereof from Seller, such interest to be calculated at an annual rate equal to the Prime Rate in effect on the date such overpayment was made by Purchaser plus two percent (2%), but not in excess of the highest interest rate permitted under Applicable Law. Should any review performed pursuant to Section 9.2.1 reveal a billing error or errors that resulted in an underpayment by Purchaser, Purchaser shall pay to Seller the amount of the underpayment plus interest thereon from the Due Date of the applicable payment to (but not including) the date Seller actually receives the payment thereof from Purchaser, such interest to be at an annual rate equal to the Prime Rate in effect on the date such overpayment was made by Purchaser plus two percent (2%), but not in excess of the highest interest rate permitted under Applicable Law.



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## ARTICLE 10

### RELEASE AND INDEMNITY; INSURANCE

**10.1 Release and Indemnity.** Each Party releases and shall defend, indemnify and hold harmless each of the Indemnitees of the other Party from and against all claims, losses, harm, suits, liabilities, obligations, damages, penalties, costs and expenses (including, but not limited to, reasonable attorneys' fees and any incremental taxes payable by the Indemnitees on the amount of any indemnities paid by the indemnifying Party to the Indemnitees pursuant to this Section 10.1) of whatsoever kind and nature (including, without limitation, relating to the injury to or death of any person, including employees of the indemnifying Party) that may at any time or from time to time be imposed on, incurred by or asserted against the Indemnitees, arising out of or in connection with the construction, installation, start up and testing of the Project, the Interconnection Facilities and the Meters, the delivery of energy from the Project to the Delivery Point, the ownership, operation, use or maintenance of the Project, or, in the case of Seller as indemnifying Party, the failure of Seller to have observed or performed any of Seller's obligations or liabilities under this Agreement. To the fullest extent permitted by applicable law, the foregoing shall apply regardless of any fault, negligence, strict liability or product liability of any of the Indemnitees and shall apply to any claim, action, suit or proceeding brought by any employee of the indemnifying Party. However, the indemnifying Party shall not be required to so defend, indemnify or hold harmless any such Indemnitee from any claim, loss, harm, liability, damage, cost or expense to the extent the same is caused by or results from the negligence of such Indemnitee.

#### **10.2 Insurance.**

**10.2.1 Insurance During Construction.** During the construction of the Project, Seller shall, at Seller's expense, maintain or cause to be maintained Builder's Risk insurance covering the Project (on a completed value form) on an "all-risk" basis (including coverage for testing and start-up, earthquake, landslide, tornado, hurricane, and flood), for the full replacement value of the Project.

**10.2.2 Insurance During Commercial Operation.** From and after the Commercial Operation Date, Seller shall, at Seller's expense, maintain or cause to be maintained property and casualty loss insurance and other appropriate insurance for the Project in accordance with Prudent Utility Practices, including the following:

(a) Commercial general liability insurance including all the usual coverages known as Premises/Operations Liability, Products/Completed Operations, Personal/Advertising Injury, Contractual Liability, Independent Contractors Liability, Stop Gap/Employers Liability, Explosion, Collapse, or Underground (XCU), Broad Form Property Damage and Fire Damage Legal. Such insurance coverages must provide primary coverage limits of no less than One Million Dollars (U.S. \$1,000,000) for injuries or death to one or more persons or damage to property resulting from any one occurrence and a One Million Dollars (U.S. \$1,000,000) aggregate limit.

(b) Workers' compensation and employer's liability insurance, and such other forms of insurance which Seller is required by law to provide for the Project, providing statutory benefits and other states' endorsement and USL&H Act coverage (if any exposure exists), covering Losses resulting from injury, sickness, disability or death of the employees of Seller. Seller shall require that all Subcontractors maintain all forms or types of insurance with respect to Subcontractors' employees as are required by law

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with limits of not less than One Million Dollars (U.S. \$1,000,000) per accident, One Million Dollars (U.S. \$1,000,000) for disease, and One Million Dollars (U.S. \$1,000,000) for each employee.

(c) Umbrella Excess Liability Insurance not less than Five Million Dollars (U.S. \$5,000,000) covering employer's liability and commercial general liability. The umbrella and/or excess policies shall not contain endorsements which restrict coverages as set forth in Sections 10.2.2(a) and 10.2.2(b).

(d) Bodily Injury, Property Damage, Personal Injury & Advertising Injury.

(e) All-risk property insurance including boiler & machinery coverage, earthquake, landslide, tornado, hurricane and other high wind weather conditions, and flood, subject to appropriate sublimits, covering physical loss or damage for the full replacement value of the Project.

**10.2.3 Endorsements.** The insurance required under Sections 10.2.1, 10.2.2(a), 10.2.2(c) and 10.2.2(d) shall be endorsed to include Puget Sound Energy, Inc., its officers, directors, employees and agents as additional insureds or loss payees and shall not be reduced or canceled without sixty (60) Days' prior written notice to Purchaser. In addition, Seller's insurance shall be primary as respects Purchaser, and any other insurance or self-insurance maintained by Purchaser shall be excess of and not contributing insurance with Seller's insurance.

**10.2.4 Requirements of Coverage.** All insurance policies required to be obtained hereunder shall provide insurance for occurrences throughout the Term. All insurance coverage pursuant hereto shall be issued by an insurer with a Best's Rating of not less than "A-7" or such other insurer as is reasonably acceptable to Purchaser. Seller shall provide Purchaser with certification that all insurance policies are in full force and effect, including upon Purchaser's request (a) a copy of the insurance policy's declaration pages, showing the insuring Seller, policy effective dates, limits of liability and the schedule of forms and endorsements, (b) a copy of the endorsements naming Puget Sound Energy, Inc., its officers, directors, employees and agents, as additional insureds or loss payees, showing the policy number, and signed by an authorized representative of the insurance company, (c) a copy of the "endorsements form list" to the insurance policy showing endorsements issued on the policy, and including any Seller-specific or manuscript endorsements and (d) a copy of an endorsement stating that the coverages provided by the policy to Purchaser or any other additional insured shall not be terminated, reduced or otherwise materially changed without providing at least sixty (60) Days' prior written notice to Purchaser, copies of the "cross-liability" or "severability of interests" clause from the commercial general liability policies, indicating that, except with respect to the limits of insurance, and any rights or duties specifically assigned to the first named insured, the insurance applies as if each insured were the only named insured, and separately to each insured against whom claim is made or suit is brought.

**10.2.5 Deductibles.** Deductibles in excess of Fifty Thousand Dollars (U.S. \$50,000) shall be subject to review and reasonable approval by Purchaser, and Seller shall be responsible for the payment of all deductible amounts with respect to the insurance required to be maintained under this Section 10.2.

**10.2.6 Policy Non-Renewal or Changes.** In the event that any policy is written on a "claims-made" basis and such policy is not renewed or the retroactive date of such policy is to be changed, Seller shall obtain for each such policy or policies the broadest basic and supplemental extended reporting period coverage or "tail" reasonably available in the commercial

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insurance market for each such policy or policies and shall provide Purchaser with proof that such basic and supplemental extended reporting period coverage or "tail" has been obtained.

**10.2.7 No Limitation.** The requirements of this Section 10.2 as to insurance and acceptability to Purchaser of insurers and insurance to be maintained by Seller are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Seller under this Agreement.

## ARTICLE 11

### NOTICES

Any notice or other communication required, permitted or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth below or at such other address as a Party may designate for itself from time to time by notice hereunder:

To Purchaser:

Puget Sound Energy, Inc.

Phone: 425-

Fax: 425-

To Seller:

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Each notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows:

- (a) if received by first class, registered, or certified United States mail or overnight delivery service, return receipt requested, postage prepaid;
- (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or paid through an arrangement with such carrier, the next Business Day after the same is delivered by the sending Party to such carrier;
- (c) if sent by fax and if concurrently with the transmittal of such fax the sending Party contacts the receiving Party at the phone number set forth above to indicate such fax has been sent (which indication by phone may be done by leaving a voicemail for the receiving Party at such phone number), at the time such fax is transmitted by the sending Party as shown by the fax transmittal confirmation of the sending Party; or

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(d) if delivered in person, upon receipt by the receiving Party.

Either Party may from time to time change the recipient or its address by giving the other Party notice of the change in accordance with this section.

## ARTICLE 12

### DEFAULTS AND REMEDIES

#### 12.1 Events of Defaults and Rights Upon Event of Default.

**12.1.1 Events of Default.** If either Party (a "Defaulting Party"), or Seller Guarantor pursuant to clauses (c) and (d) below:

(a) fails to pay any amount due hereunder, when, after notice by the non-defaulting Party to the Default Notice Parties is delivered in accordance with Article 11, and such failure is not cured, by payment of the amount due plus interest at an annual rate equal to the Prime Rate then in effect plus 2% from the date due until paid (but in no event more than the maximum rate permitted by Applicable Law), within ten (10) Business Days after the date that such notice is received by the Defaulting Party;

(b) otherwise defaults (other than pursuant to Section 12.1.1(c), (d), (e) or (f)) in the performance of its obligations under this Agreement if such default has not been cured by the Defaulting Party within sixty (60) Days after the date of receipt by the Default Notice Parties of written notice from the non-defaulting Party setting forth, in reasonable detail, the nature of such default; provided, that in the case of a default that is not reasonably capable of being cured within the sixty (60)-Day cure period, the Defaulting Party shall have additional time to cure the default if it commences to cure the default within such sixty (60)-Day cure period, it diligently pursues such cure, and such default is cured within no more than one hundred eighty (180) Days after receiving such notice; provided, further, that the Defaulting Party shall not be relieved of its duty to pay amounts due under this Agreement during the cure period, whether the amount due arises from the Event of Default or otherwise;

(c) is subject to any involuntary bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar proceeding (whether under any present or future statute, law, or regulation), including the involuntary appointment of any trustee, receiver, custodian, or the like of such Defaulting Party or all or any substantial part of its assets, and such proceeding has not been terminated or dismissed within thirty (30) Days after the commencement thereof; commences any voluntary bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar proceeding (whether under any present or future statute, law, or regulation), including the appointment, with the consent or acquiescence of the Defaulting Party, of any trustee, receiver, custodian, or the like of such Defaulting Party or all or any substantial part of its assets; or Seller Guarantor commences or is subject to any bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar proceeding (whether under any present or future statute, law, or regulation) with respect to Seller Guarantor (in which event Seller shall be deemed to be the Defaulting Party), the provider of any Letter of Credit given pursuant to Section 6.3.3 (in which event Seller shall be deemed to be the

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Defaulting Party), unless the guaranty or Letter of Credit provided by such Person is replaced in form and substance and by an entity satisfactory to the non-defaulting Party within five (5) Business Days after the commencement of such proceeding;

(d) Seller Guarantor defaults under the guaranty issued by Seller Guarantor hereunder, in which event Seller shall be deemed to be the Defaulting Party;

(e) breaches Section 6.3.3; or

(f) breaches Article 7,

such failure, default or breach by the Defaulting Party described above shall be deemed to be an "Event of Default" under this Agreement.

Notwithstanding anything expressed or implied herein to the contrary:

(i) upon the occurrence of an Event of Default by Seller, Purchaser shall give any notice of such Event of Default to each of the Default Notice Parties; provided, that Purchaser shall only be required to give such notice to Seller Lender if, prior to the occurrence of such default, Seller or Seller Lender has provided to Purchaser written notice of the address, telephone number and fax number to which notices to Seller Lender are to be sent;

(ii) upon the occurrence of an Event of Default by Purchaser, Seller shall give any notice of such Event of Default to each of the Default Notice Parties.

**12.1.2 Rights Upon Event of Default.** Upon the occurrence of an Event of Default by a Defaulting Party and after any cure period applicable to such Event of Default as provided in Section 12.1.1, the non-defaulting Party shall have the following rights, which rights the non-defaulting party may exercise individually or in any combination:

(a) to terminate this Agreement by written notice to the Defaulting Party and to recover in connection with such termination its Cost to Cover pursuant to Section 7.1 and based on the remainder of the Term;

(b) to suspend performance of its obligations and duties hereunder upon written notice to the Defaulting Party;

(c) if the non-defaulting Party is Purchaser, to exercise all rights as a secured party under the Security Documents, including: (i) the right to foreclose on the security interests granted therein, or any portion thereof, and apply the net proceeds resulting therefrom against Purchaser's Cost to Cover and (ii) enter into possession of the Project and operate and maintain the Project for the account, and at the expense, of Seller, including producing and delivering Energy to Purchaser in accordance with the terms of this Agreement; and

(d) to pursue any other right or remedy under this Agreement or now or hereafter existing at law, in equity or otherwise.

**12.2 Specific Performance and Injunctive Relief.** Each Party shall be entitled to specific performance with respect to, and shall be entitled, without the necessity of filing any bond, to enjoin any actual or threatened breach of any material obligation of the other Party under

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this Agreement. The Parties agree that specific performance is proper in the event of any actual or threatened breach of any material obligation of the other Party under this Agreement. The Parties in any action for specific performance agree that all expenses incurred by the prevailing Party in such proceeding, including reasonable attorneys' fees at trial and upon appeal, shall be awarded to the prevailing Party in such proceeding.

### ARTICLE 13

#### LIMITATION OF LIABILITY

EXCEPT TO THE EXTENT INCLUDED IN THE COST TO COVER OR OTHER AMOUNTS SPECIFICALLY PROVIDED HEREIN TO BE PAID, AND EXCEPT FOR ANY LIABILITIES OF EITHER PARTY ARISING UNDER SECTION 10.1, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, EXEMPLARY, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF A PARTY'S PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT, WHETHER BASED ON OR CLAIMED UNDER CONTRACT, TORT (INCLUDING SUCH PARTY'S OWN NEGLIGENCE), STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR IN EQUITY. IT IS EXPRESSLY UNDERSTOOD AND AGREED BY THE PARTIES THAT ANY AMOUNTS OWING BY SELLER TO PURCHASER PURSUANT TO SECTION 6.3 OR 7.3 HEREOF ARE NOT INTENDED, NOR SHALL THEY BE INTERPRETED OR CONSTRUED, TO CONSTITUTE SPECIAL, INCIDENTAL, EXEMPLARY, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES FOR PURPOSES OF THIS ARTICLE 13.

### ARTICLE 14

#### CONSENT TO JURISDICTION

Any disputes arising out of, in connection with, or with respect to this Agreement, the subject matter hereof, or the performance or nonperformance of any obligation hereunder shall be adjudicated in a state or federal court of competent civil jurisdiction sitting in the State of Washington and nowhere else. Each of the Parties irrevocably consents and agrees that any legal action or proceedings with respect to this Agreement may be brought in any of the state or federal courts located in King County, State of Washington, and that, by execution and delivery of this Agreement, each Party:

- (a) accepts the exclusive jurisdiction of the aforesaid courts;
- (b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court with respect to such documents;
- (c) irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any suit, action, or proceedings with respect to this Agreement brought in any such court, and further

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irrevocably waives, to the fullest extent permitted by law, any claim that any such suit, action, or proceeding brought in any such court has been brought in any inconvenient forum;

(d) agrees that service of process in any such action may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Party at its notice address set forth herein, or at such other address of which the other Parties hereto shall have been notified, and

(e) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by Applicable Law.

### ARTICLE 15

### ASSIGNMENT

**15.1 Restriction on Assignments.** Except as otherwise provided below, neither Party may assign or transfer this Agreement, or any of its rights, title or interests herein, hereto or hereunder, and Seller shall not assign or transfer any of its rights, title or interests in or to the Project or any part thereof (either directly or through the transfer of interests in Seller), without the other Party's prior written consent, which consent shall not be unreasonably withheld. The non-assigning Party may withhold its consent (without limitation) if the other Party proposes to assign or transfer its rights or delegate its duties under this Agreement to any party having a Speculative-Grade Long-Term Debt Rating. [Purchaser may, without the consent of Seller, sell, transfer, assign, convey, encumber or otherwise dispose of all or any portion of the Environmental Attributes.] Any assignment in violation of this provision shall be void.

**15.2 Assumption by Assignee; No Release from Liabilities.** Seller shall cause any permitted assignee or transferee of Seller's interests in, to or under this Agreement to assume all existing and future obligations of Seller to be performed under this Agreement. Upon any permitted assignment or transfer of this Agreement, the assigning or transferring Party shall nevertheless continue to be and shall remain liable for the performance of its obligations hereunder in accordance with the terms hereof.

**15.3 Binding Effect.** Subject to the other provisions of this Article 15, this Agreement shall bind and inure to the benefit of the Parties and their permitted successors and assigns.

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### 15.4 Purchaser's Options

**15.4.1** Purchaser shall have an option (the "**Transfer Option**") to purchase all of the interests that are the subject of any proposed assignment or transfer permitted under this Article 15 on terms not less advantageous to Seller or Purchaser than those that Seller is willing to accept from the proposed transferee. The Transfer Option shall be exercisable at any time within sixty (60) Days after Purchaser receives written notice of the Transfer Option (the "**Transfer Option Notice**") from Seller. The Transfer Option Notice shall contain (a) a clear and concise statement that it is an offer to sell to Purchaser the interests in the Project that are the subject of the proposed assignment or transfer, (b) a description of the proposed assignment or transfer, (c) the name and address of the prospective transferee, (d) all of the terms of the proposed assignment or transfer (including, but not limited to, the purchase price and terms of payment), and (e) a representation, warranty and covenant that no other assignment or transfer is being considered by Seller as of the date of the Transfer Option Notice and that no other assignment or transfer shall be considered or effected by Seller until the six-month period referred to below in this Section 15.4.1 has elapsed. Seller shall give the Transfer Option Notice at least sixty (60) Days in advance of the proposed date of the proposed assignment or transfer. Purchaser shall have the right to exercise the Transfer Option by giving Seller written notice of such exercise within the applicable sixty (60)-Day period. If the Transfer Option is not exercised in accordance with this Section 15.4.1, Seller may assign or transfer the specified interests to the prospective transferee named in the Transfer Option Notice, provided that such assignment or transfer is made in strict accordance with the terms of the proposed assignment or transfer set forth in the Transfer Option Notice and is completed within six (6) months after the expiration of the right to exercise the Transfer Option. After such six-month period has elapsed, any assignment or transfer by Seller shall again be subject to the restrictions on assignment set forth in this article and to the Transfer Option.

**15.4.2** Purchaser shall have an option (the "**Power Purchase Option**") for a period of five (5) years after the end of the Term to purchase all of the net electrical output from the Project that is the subject of any proposed sale of such output on the same terms as those which Seller is willing to accept from the proposed purchaser of such output. The Power Purchase Option shall be exercisable at any time within sixty (60) Days after Purchaser receives written notice of the Power Purchase Option (the "**Power Purchase Option Notice**") from Seller. The Power Purchase Option Notice shall contain (i) a clear and concise statement that it is an offer to sell to Purchaser all of the net electrical output from the Project that is the subject of any proposed sale of such output, (ii) a description of the proposed purchase and sale, (iii) the name and address of the prospective purchaser, (iv) all of the terms of the proposed purchase and sale of such output (including, but not limited to, the purchase price and terms of payment), and (v) a representation, warranty and covenant that no other purchase and sale of such output is being considered by Seller as of the date of the Power Purchase Option Notice and that no other purchase and sale of such output shall be considered or effected by Seller until the six-month period referred to below in this Section 15.4.2 has elapsed. Seller shall give the Power Purchase Option Notice at least sixty (60) Days in advance of the proposed date of the proposed purchase and sale transaction. Purchaser shall have the right to exercise the Power Purchase Option by giving Seller written notice of such exercise within the applicable sixty (60)-Day period. If the Power Purchase Option is not exercised in accordance with this Section 15.4.2, Seller may sell such output to the prospective purchaser named in the Power Purchase Option Notice, provided that such purchase and sale is made in strict accordance with the terms set forth in the Power Purchase Option Notice and is completed within six (6) months after the expiration of the right to exercise the Power Purchase Option. After such six-month period has elapsed, any purchase and sale of such output by Seller shall again be subject to the Power Purchase Option.



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### 15.5 Purchase Pursuant to Options

**15.5.1** If the Transfer Option is exercised in accordance with Section 15.4.1, Purchaser shall purchase from Seller, and Seller shall sell and transfer to Purchaser, the interests in the Project specified in the Transfer Option Notice in accordance with the terms of the proposed assignment or transfer set forth in the Transfer Option Notice. If the terms of the proposed assignment or transfer include consideration other than money, Purchaser shall have the right to substitute for such consideration the monetary equivalent thereof. If the Parties cannot agree upon such monetary equivalent, then the monetary equivalent shall be determined by appraisal. In such event, the Parties shall select an appraiser who shall, within sixty (60) Days after his appointment, determine the monetary equivalent of the nonmonetary consideration. If the Parties cannot agree upon an appraiser within sixty (60) Days after the exercise of the Transfer Option, then the Parties shall, within ten (10) Days thereafter, each select an appraiser and the two appraisers so selected shall, within thirty (30) Days after their selection, select a third appraiser. If the two appraisers cannot agree upon a third appraiser, then either Party may petition the American Arbitration Association to appoint a third appraiser. Within sixty (60) Days after the appointment of the last of the appraisers to be appointed, the three appraisers shall determine by majority vote the monetary equivalent of the nonmonetary consideration.

**15.5.2** If the Power Purchase Option is exercised in accordance with Section 15.4.2, Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the net electrical output from the Project specified in the Power Purchase Option Notice in accordance with the terms set forth in the Power Purchase Option Notice.

**15.6 Closing.** Unless otherwise agreed by the Parties, the closing of any sale pursuant to the exercise of a Transfer Option or Power Purchase Option shall take place at the principal office of Purchaser on the first regular business Day following a period of sixty (60) Days after the determination of the terms of such transfer or sale in accordance with Sections 15.4 and 15.5.

**15.7 Survival.** Sections 15.4, 15.5 and 15.6 (and the Transfer Option and the Power Purchase Option) shall survive the expiration of the Term.

## ARTICLE 16

### FINANCING LIENS

Seller, without the consent of Purchaser, may grant a security interest in its interests in, to and under this Agreement to Seller Lender as security for any loan made for the purpose of financing or refinancing the construction and/or operation of the Project and the Interconnection Facilities. [Notwithstanding the foregoing or anything else expressed or implied herein to the contrary, Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of the Environmental Attributes to Seller Lender.] Promptly after granting such security interest, Seller shall notify Purchaser in writing of the name, address, and telephone and facsimile numbers of each Seller Lender to which Seller's interest under this Agreement has been encumbered. Such notice shall include the names of the account managers or other representatives of Seller Lender to whom all written and telephonic communications are to be addressed. After giving Purchaser such initial notice, Seller shall promptly give Purchaser notice of any change in the information provided in the initial notice or any revised notice.

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If Seller encumbers its interest under this Agreement as permitted by this Article 16, the following provisions shall apply:

- (a) Seller Lender shall have the right, but not the obligation, to perform any act required to be performed by Seller under this Agreement to prevent or cure an Event of Default by Seller, and such act performed by Seller Lender shall be as effective to prevent or cure an Event of Default as if done by Seller.
- (b) Purchaser shall give Seller Lenders notice of, and the opportunity to cure as provided in clause (a) above, any breach or default of this Agreement by Seller.
- (c) if the Seller Lender forecloses or takes a deed in lieu of foreclosure,
  - (i) Purchaser shall, at Lender's request, continue to perform all of its obligations hereunder, and Seller Lender or its nominee may perform in the place of Seller; provided, that to the extent that Seller Lender or its nominee exercises any right under this Agreement, the terms and conditions of this Agreement shall apply to and be binding upon Seller Lender to the same extent as Seller, (ii) Purchaser shall accept performance in accordance with this Agreement by Seller Lender or its nominee and (iii) Purchaser shall make representations to Seller Lender as set forth in Section 17.2.
- (d) Upon the receipt of a written request from Seller or any Seller Lender, Purchaser shall execute or arrange for the delivery of such certificates, consents, opinions, and other documents as may be reasonably required by Seller Lender for Seller to consummate any financing or refinancing of the Project or any part thereof; provided, however, that any such agreement shall not constitute a modification hereof unless Purchaser, in its sole discretion, otherwise so agrees in writing.

### ARTICLE 17

#### REPRESENTATIONS, COVENANTS, AND WARRANTIES

**17.1 Seller's Representations and Warranties.** Seller represents and warrants throughout the Term as follows:

- (a) Seller is a [corporation][limited liability company], duly organized and validly existing and is currently active under the laws of the state of [\_\_\_\_\_].
- (b) Seller has the power and authority to enter into and perform this Agreement and the Security Documents and is not prohibited from entering into this Agreement or the Security Documents or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement or the Security Documents, except where such failure does not have a material adverse effect on Seller's performance under this Agreement or the Security Documents.
- (c) Seller has obtained, or will obtain prior to commencement of deliveries of Test Power hereunder, all regulatory approvals required by any governmental authority, whether federal, state or local, in order to perform its obligations hereunder and under the Security Documents.

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(d) The execution and delivery of this Agreement and the Security Documents, consummation of the transactions contemplated herein and in the Security Documents, and fulfillment of and compliance by Seller with the provisions of this Agreement and the Security Documents will not conflict with or constitute a breach of or a default under or require any consent, license, or approval that has not been obtained pursuant to any of the terms, conditions, or provisions of any law, rule, or regulation; any order, judgment, writ, injunction, decree, determination, award, or other instrument or legal requirement of any court or other agency of government; the documents of formation of Seller or any contractual limitation, restriction, or outstanding trust indenture, deed of trust, mortgage, loan agreement, lease, other evidence of indebtedness, or any other agreement or instrument to which Seller is a party or by which it or any of its property is bound and will not result in a breach of or a default under any of the foregoing.

(e) Seller has no reason to believe that the Construction Permits and Operational Permits will not be obtained in the ordinary course of business.

(f) Seller has taken all such action necessary to authorize the execution and delivery of, and the performance by Seller of its obligations under, this Agreement and the Security Documents.

(g) [THIS SECTION 17.1(g) IS APPLICABLE ONLY TO QUALIFYING FACILITIES] the Project is a "qualifying small power production facility" or a "qualifying cogeneration facility" within the meaning of Section 3(17)(C) or 3(18)(B), respectively, of the Federal Power Act, as amended by Section 201 of the Public Utility Regulatory Policies Act of 1978 (PURPA), and pursuant to notice filed with FERC under 18 C.F.R. Section 292.207(a), Seller has certified that the Project is a "qualifying facility" within the meaning of 18 C.F.R. Section 292.101(b)(1); the representations and statements set forth in such certification are true, accurate and complete as the date of the certification and the date of this Agreement; and such certification has not been revoked, terminated or cancelled and is in full force and effect on the date of this Agreement.

(h) Seller owns, will own or has all rights necessary to produce and sell to Purchaser the Energy using the Turbines and the Balance of Plant as contemplated by this Agreement free from any claim of infringement, misappropriation or violation of the rights of others;

(i) [THIS SECTION 17.1(g) IS APPLICABLE ONLY TO QUALIFYING FACILITIES] Seller shall furnish Purchaser with such documentation and information as Purchaser may request to verify Seller's representations and warranties set forth in clause (g) of this Section 17.1 (including, but not limited to, copies of the application and certification referred to in clause (g) of this Section 17.1, together with copies of any correspondence or other communication to or from FERC);

(j) This Agreement is a legal, valid, and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

**17.2 Purchaser's Representations and Warranties.** Purchaser represents and warrants throughout the Term as follows:

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(a) Purchaser is a corporation duly organized, validly existing, and is currently active under the laws of the State of Washington, authorized to conduct business in each jurisdiction where necessary for the conduct of its business, except where such failure does not have a material adverse effect on Purchaser's performance under this Agreement.

(b) Purchaser has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(c) The execution and delivery of this Agreement, the consummation of the transactions contemplated herein, and the fulfillment of and compliance by Purchaser with the provisions of this Agreement will not conflict with or constitute a breach of or a default under or require any consent, license, or approval that has not been obtained pursuant to any of the terms, conditions or provisions of any law, rule, or regulation; any order, judgment, writ, injunction, decree, determination, award, or other instrument or legal requirement of any court or other agency of government; the documents of formation of Purchaser or any contractual limitation, restriction, or outstanding trust indenture, deed of trust, mortgage, loan agreement, lease, other evidence of indebtedness, or any other Agreement or instrument to which Purchaser is a party or by which it or any of its property is bound and will not result in a breach of or a default under any of the foregoing.

(d) Purchaser has taken all such action necessary or advisable to authorize the execution and delivery of, and the performance by Purchaser of its obligations under, this Agreement.

(e) This Agreement is a legal, valid, and binding obligation of Purchaser enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

### ARTICLE 18

#### MISCELLANEOUS

**18.1 Liquidated Damages.** With respect to any provisions herein providing for the payment of liquidated damages by Seller to Purchaser, the Parties acknowledge and agree that it is extremely impractical and difficult to assess actual damages in the event that Seller fails to perform under such provisions, and Seller therefore agrees that each method of calculating liquidated damages (including the Cost to Cover) as provided in such provisions is a fair and reasonable calculation of actual damages to Purchaser in the event that Seller fails to perform under such Sections 6.3, 7.1, 7.2 and 7.3.

**18.2 Severability.** The invalidity, in whole or in part, of any of the articles or section of this Agreement shall not affect the validity of the remainder of such articles or sections.

**18.3 Amendment.** No modification, amendment, or other change to this Agreement shall be effective unless agreed to in writing by each of the Parties.

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**18.4 No Waiver.** Failure or forbearance by any Party to exercise any of its rights or remedies under this Agreement shall not constitute a waiver of such rights or remedies in that or any other instance. No Party shall be deemed to have waived any right or remedy resulting from such failure to perform unless it has made such waiver specifically in writing.

**18.5 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be deemed to constitute one and the same instrument.

**18.6 No Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement, and this Agreement is not intended to impart any rights enforceable by any Person that is not a Party.

**18.7 Time.** Unless otherwise specified in this Agreement, all references to specific times under this Agreement shall be references to Pacific standard or Pacific daylight savings time, whichever is then prevailing.

**18.8 Headings, Captions; Construction; Conflict Between Agreement and Exhibits.** All indexes, titles, subject headings, section titles and similar items are provided for the purpose of reference and convenience and are not intended to affect the meaning, content or scope of this Agreement. The Parties collectively have prepared this Agreement, and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof. Because both Parties have participated in the drafting of this Agreement, the usual rule of contract construction that resolves ambiguities against the drafter shall not apply.

**18.9 Forward Contract.** The Parties acknowledge and agree that this Agreement and the transactions consummated under this Agreement constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that Seller is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

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

**18.11 No Agency.** This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship, franchise or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, act as or be an agent or representative of, or otherwise to bind the other Party.

**18.12 Waiver of Jury Trial.** Each of the Parties knowingly, voluntarily, and intentionally waives the right it may have to a trial by jury in respect of any litigation based hereon, or arising out of, under, or in connection with this Agreement and any agreement contemplated hereunder, or any course of conduct, course of dealing, statements (whether verbal or written), or actions of the Parties. Furthermore, each of the Parties waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived. This provision is a material inducement for the Parties to enter into this Agreement.

**18.13 Effect of Force Majeure Event.** Notwithstanding any other provision of this Agreement, each Party's obligations under this Agreement shall be suspended by a Force Majeure Event but only to the extent that the Force Majeure Event prevents the affected Party

## Exhibit J. Prototype PPA

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from performing its obligations under this Agreement. The affected Party's time for performance shall be extended by a period of time reasonably necessary to compensate for the delay caused by the Force Majeure Event; provided, that the affected Party shall use diligent efforts to remedy or overcome the Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments required to be made hereunder.

**18.14 Rights and Remedies Cumulative.** Except as otherwise expressly provided in this Agreement, all rights and remedies of either Party under this Agreement and at law and in equity shall be cumulative and not mutually exclusive and the exercise of one right or remedy shall not be deemed a waiver of any other right or remedy. Nothing contained in any provision of this Agreement shall be construed to limit or exclude any right or remedy of either Party (arising on account of the breach or default by the other Party or otherwise) now or hereafter existing under any other provision of this Agreement, at law or in equity.

**18.15 Governmental Authority.** This Agreement is subject to the rules, regulations, orders and other requirements, now or hereafter in effect, of all governmental authorities (including the WUTC and FERC) having jurisdiction over the Project, this Agreement, the Parties or either of them. Upon execution of this Agreement, Purchaser shall submit this Agreement to the WUTC for review and shall subsequently notify Seller as to whether, within thirty (30) Days following such submission, the WUTC has raised any issues with respect to this Agreement. If (a) the WUTC raises any issues with respect to this Agreement, and (b) Purchaser does not, within one hundred twenty (120) Days following the submission of this Agreement to the WUTC for review, otherwise notify Seller in writing that this Agreement is effective, then either Party shall have the right to terminate this Agreement by giving the other Party written notice of such termination, whereupon this Agreement shall be void *ab initio* and of no force or effect. In no event shall either Party incur any liability (whether for lost revenue or lost profits or otherwise) as a result of such termination. All laws, ordinances, rules, regulations, orders and other requirements, now or hereafter in effect, of governmental authorities that are required to be incorporated in agreements of this character are by this reference incorporated in this Agreement.

**18.16 Entire Agreement.** This Agreement (including the attached Exhibits, which are incorporated by this reference) and all amendments to this Agreement contain the complete Agreement between Seller and Purchaser with respect to the matters contained in this Agreement and supersede all other agreements and understandings, whether written or oral, with respect to the matters contained in this Agreement.

In Witness Whereof, the Parties have caused this Agreement to be executed and delivered as of the date first set forth above.

**PUGET SOUND ENERGY, INC.**  
a Washington corporation

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

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

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

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

# Exhibit J. Prototype PPA

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**[Insert Name of Seller]**

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

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

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

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

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

## EXHIBITS

EXHIBIT A-1	Project Description
EXHIBIT A-2	Site Description
EXHIBIT B	Description of Generator
EXHIBIT C	Location of Delivery Point and Project Substation
EXHIBIT D	Description of the Permits
EXHIBIT E	Contract Rate and Renewal Rate
EXHIBIT F	Example of Calculation of Excess Output Payment under Section 5.1.2
EXHIBIT G	Form of Guaranty of Seller Guarantor
EXHIBIT H	Form of Generator Final Completion Certificate
EXHIBIT I	Operating Procedures and Coordination
EXHIBIT J	Termination Amounts



# Exhibit J. Prototype PPA

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## EXHIBIT A-1 PROJECT DESCRIPTION

# Exhibit J. Prototype PPA

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## EXHIBIT A-2 SITE DESCRIPTION

# Exhibit J. Prototype PPA

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## EXHIBIT B DESCRIPTION OF GENERATORS

# Exhibit J. Prototype PPA

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## EXHIBIT C

### LOCATION OF DELIVERY POINT AND PROJECT SUBSTATION

*This **Exhibit C** is to be completed following the execution and delivery of this agreement as provided in Section 2.1 hereof.*

# Exhibit J. Prototype PPA

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## EXHIBIT D DESCRIPTION OF THE PERMITS

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## EXHIBIT E

<b>Contract Capacity Rate (\$ per MW)</b>	<b>Contract Energy Rate (\$ per MWh)</b>	<b>Renewal Capacity Rate (\$ per MW)</b>	<b>Renewal Energy Rate (\$ per MWh)</b>
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# Exhibit J. Prototype PPA

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## EXHIBIT F

### EXAMPLE OF CALCULATION OF EXCESS OUTPUT CREDIT UNDER SECTION 5.1.2

The sample calculation set forth below is based on the following assumed facts:

- (1) Contract Year in which the total Energy delivered or deemed delivered to Purchaser Under this Agreement was [ 150 ] MWhs.
- (2) The annual Mean Project Output equals [100] MWh. 110% of the Mean Project Output for the Contract Year in reference equals [110] MWh (100 MWh times 1.10).
- (3) The Excess Output for the Contract Year in question equals [40] MWh ( 150 MWh of Energy delivered or deemed delivered during the Contract Year in reference , minus 110 MWh [being 110% of the Mean Project Output for the Excess Output Calculation Period in question]).
- (4) The Excess Output Credit Rate for the Contract Year in reference shall be as set forth in the definition thereof.

Given the above assumed facts, the Excess Output Payment for the Contract Year in reference would be calculated as follows:

$$\text{Excess Output} = 150 - [ 100 * 110\% ] = 40 \text{ MWhs}$$

$$\text{Excess Output Credit} = [40] * [\text{Contract Rate or Renewal Rate, as applicable}] * 15\%$$

# Exhibit J. Prototype PPA

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## EXHIBIT G FORM OF GUARANTY OF SELLER GUARANTOR

*[Form to be provided.]*



# Exhibit J. Prototype PPA

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## EXHIBIT H

### FORM OF GENERATOR FINAL COMPLETION CERTIFICATE

#### GENERATOR FINAL COMPLETION CERTIFICATE

DATE OF ISSUANCE \_\_\_\_\_  
\_\_\_\_\_

OWNER: \_\_\_\_\_

CONTRACTOR: \_\_\_\_\_

Project: \_\_\_\_\_

OWNER's Contract No. \_\_\_\_\_ CONTRACTOR's Project No. \_\_\_\_\_

Capitalized terms used herein shall have the meaning set forth in the \_\_\_\_\_ Power Purchase Agreement dated \_\_\_\_\_, 2003, between \_\_\_\_\_, as Seller, and Puget Sound Energy, Inc., as Purchaser.

\_\_\_\_\_, as Contractor under that certain ***[insert description of Contract]*** hereby certifies that Generator Completion for all \_\_\_\_\_ Generator has been achieved.

Executed by Contractor on \_\_\_\_\_

Date

\_\_\_\_\_  
\_\_\_\_\_, as Contractor

By: \_\_\_\_\_  
(Authorized Signature)

# Exhibit J. Prototype PPA

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\_\_\_\_\_, as Seller and owner of the Project, hereby concurs in Contractor's certification as set forth above and accepts this Generator Final Completion Certificate.

\_\_\_\_\_  
\_\_\_\_\_, as  
Seller and owner of the Project

By: \_\_\_\_\_  
(Authorized Signature)

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

# Exhibit J. Prototype PPA

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## EXHIBIT I

### OPERATING PROCEDURES AND COORDINATION

The Parties hereby agree as follows:

#### 1. Definitions

All capitalized terms not specifically defined below shall have the meaning as set forth in this Agreement, unless the specific application clearly indicates a different meaning.

**1.1 "Dispatchers(s)"** means Purchaser's representative or representatives responsible for monitoring and operating Purchaser's electric resources.

**1.2 "Immediate Outage"** means the occurrence of an immediate reduction or suspension of the electrical output from any Generator in response to an abnormal operating condition. An Immediate Outage is distinguished from an Unplanned Required Outage in that the abnormal condition causing an Immediate Outage requires prompt shutdown or curtailment of one or more Generator.

**1.3 "Scheduled Maintenance"** means the occurrence of reduced or suspended Project or Generator operation for the purpose of performing routine or regular maintenance to the Project in accordance with Prudent Utility Practices. Scheduled Maintenance is distinguished from Immediate Outages and Unplanned Required Outages in that the duration and timing of Scheduled Maintenance can be reasonably forecast.

**1.4 "Scheduler(s)"** means Purchaser's representative or representatives responsible for day-to-day resource planning and scheduling.

**1.5 "Unplanned Required Outage"** means the occurrence of reduced or suspended Project or Generator operation caused by abnormal operating conditions that require corrective action. An Unplanned Required Outage is distinguished from an Immediate Outage in that the required repair or maintenance for an Unplanned Required Outage can be delayed or scheduled.

#### 2. Designation of Operating Representatives

**2.1** Purchaser shall notify Seller of designated Dispatchers and Schedulers. Seller shall notify Purchaser of designated Operators. The Dispatchers, Schedulers, and Operators so designated shall be authorized to administer the terms of this **Exhibit I**. Each Party shall notify the other of any changes to operating representatives.

**2.2** Each Party shall maintain a 24-hour telephone number that can be used to contact operating representatives designated under this **Exhibit I**. Each Party shall notify the other of any changes to the telephone number.

#### 3. Notification

Notification under this **Exhibit I** shall be by telephone or facsimile unless explicitly stated otherwise for a particular application. Prior notification of an event or situation to be made by

# Exhibit J. Prototype PPA

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Seller to Dispatcher or Scheduler pursuant to this **Exhibit I** shall be given to Dispatcher or Scheduler, respectively, a reasonable amount of time in advance of such event or situation.

## 4. Outages

### 4.1 Scheduled Maintenance

(a) Submittal of Proposed Scheduled Maintenance. At least sixty (60) Days prior to the commencement of each Year, Seller shall submit to Purchaser in writing a proposed forecast of Scheduled Maintenance for such Year and the six months immediately following such Year. In such proposed forecast, Seller shall endeavor to confine Scheduled Maintenance to the months of May and June. Such proposed forecast shall set forth the reason, timing, expected duration, and impact upon project output, and the scheduling flexibility of each Scheduled Maintenance.

(b) Review of Proposed Scheduled Maintenance. Purchaser shall have thirty (30) Days to review the proposed forecast of Scheduled Maintenance. Following this review, Purchaser may submit in writing to Seller comments and suggested starting dates for Scheduled Maintenance.

(c) Final Forecast of Scheduled Maintenance. Following good faith consideration of Purchaser's suggested timing of Scheduled Maintenance, Seller shall establish the final forecast of Scheduled Maintenance and send such written forecast to Purchaser prior to the commencement of the Year. Such final forecast shall confine Scheduled Maintenance to the months of May and June, unless Purchaser reasonably requests otherwise pursuant to clause (b) of this Section 4.1 and Seller agrees to such request, such agreement not to be unreasonably withheld.

(d) Updates to Forecast. Seller shall notify Purchaser of any change to the Scheduled Maintenance forecast as soon as practicable.

(e) Notification to Purchaser. Not less than seven (7) Days prior to a Scheduled Maintenance, Seller shall notify the Scheduler of the timing, expected duration and the impact upon the Project output. Prior to reducing the Project output for a Scheduled Maintenance, Seller shall notify the Dispatcher of the latest information regarding the timing, the rate at which the Project will be removed, or ramped down, from service, expected duration and the impact upon Project output. During the Scheduled Maintenance, Seller shall notify the Dispatcher of any changes to the expected duration of the Scheduled Maintenance outage as soon as practicable.

(f) Start-up. Seller shall notify the Dispatcher prior to returning the Project to service following a Scheduled Maintenance outage. Such notification shall include the timing of the start-up and the rate at which the Project will be returned, or ramped up, to service.

### 4.2 Unplanned Required Outage

(a) Notification to Purchaser. Upon the occurrence of an event necessitating an Unplanned Required Outage, Seller shall notify the Scheduler of the reason, timing, expected duration, the impact upon Project output, and the scheduling flexibility of each Unplanned Required Outage. The Scheduler and Seller shall agree upon a schedule for the Unplanned Required Outage, which schedule shall minimize the impact upon Purchaser's electric system and Project operations. If the Scheduler and

## Exhibit J. Prototype PPA

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Seller cannot agree, Seller shall schedule the Unplanned Required Outage and give the Scheduler and Dispatcher prior notice of such schedule. Unless otherwise agreed to by Seller and Scheduler, Seller shall use reasonable efforts to confine all Unplanned Required Outages to weekends, holidays, and, to the extent necessary, non-holiday weekdays other than between the hours of 7 a.m. to 10 a.m. and 4 p.m. to 7 p.m. local time.

(b) Updates. During the Unplanned Required Outage, Seller shall notify the Dispatcher of any changes to the expected duration of the outage as they become known.

(c) Start-up. Seller shall not return the Project to service following a full or partial shutdown without prior notice to Dispatcher. Such notification shall include the timing of the start-up and the ramp up rate of that portion of the Project returning to service.

### 4.3 Immediate Outage

(a) Notification to Purchaser. As soon as practicable after the occurrence of an Immediate Outage, Seller shall notify the Dispatcher, to the extent information is available, of the reason, timing, expected duration and the impact upon Project output of each Immediate Outage.

(b) Updates. During an extended Immediate Outage, Seller shall notify the Dispatcher of any changes to the expected duration of the outage as they become known.

(c) Start-up. Seller shall notify the Dispatcher prior to returning the Project to service following an Immediate Outage. Such notification shall include the timing of the start-up and the ramp up rate of that portion of the Project returning to service. In the event Seller is able to initiate an immediate restart following an Immediate Outage, Seller shall notify Dispatcher of the above information as soon as practicable.

### 4.4 Outage Reports

Purchaser may from time-to-time request, and Seller shall provide, a report of the cause of any Project outage and the actions taken by Seller to correct the situation.

# Exhibit J. Prototype PPA

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## EXHIBIT J TERMINATION AMOUNTS

Contract Year

Termination Amount

# Exhibit K. Modified WSPP Agreement

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## Master Confirmation Agreement to WSPP Agreement

By this Master Confirmation Agreement, dated as of \_\_\_\_\_, \_\_\_\_ (“Effective Date”), \_\_\_\_\_ and Puget Sound Energy, Inc. agree to amend specified sections of the WSPP Agreement, including the Service Schedules and Exhibits attached thereto, effective [March 16, 2007], and as amended from time to time in accordance with the guidelines and procedures of WSPP Inc. (“WSPP Agreement”) Capitalized terms used but not otherwise defined herein have the meanings set forth in the WSPP Agreement, except that references in the WSPP Agreement and herein to “this Agreement” shall be deemed to mean the WSPP Agreement as modified by this Master Confirmation Agreement.

The terms and conditions set forth in this Master Confirmation Agreement are incorporated by reference into each oral or electronic agreement and Confirmation between the Parties that is subject to the WSPP Agreement, whether or not these terms and conditions are referenced therein, and each transaction between the Parties pursuant to the WSPP Agreement, shall be subject to the terms set forth in this Master Confirmation Agreement, whether entered into before, on or after the date hereof.

### A. Set-off

The following is added as a new section 22.4 immediately after the provisions in Section 22.3:

#### **"22.4 SET-OFF.**

After calculation of a Termination Payment, the Non-Defaulting Party ("NDP") may, at its option and in its discretion, set off, against any sum or obligation (whether matured or unmatured or whether or not contingent) (collectively, "Obligation") owed to the Defaulting Party ("DP") by NDP under this Agreement or under any other agreement(s), instrument(s) or undertaking(s), any Obligation owed by DP or any of its affiliates to NDP or any of its affiliates (irrespective of place of payment or booking office of the Obligation) under this Agreement or under any other agreement(s), instrument(s) or undertaking(s). The obligations of DP and NDP under this Agreement in respect of such amounts shall be deemed satisfied and discharged to the extent of any such setoff exercised by NDP and/or NDP's affiliates. NDP will give DP notice of any setoff effected under this Section as soon as practicable after the setoff is effected provided that failure to give such notice shall not affect the validity of the setoff.

If an obligation is unascertained, NDP may in good faith estimate that obligation and setoff in respect of the estimate, subject to the relevant Party accounting to the other when the obligation is ascertained. To the extent that any transactions are not yet liquidated, the NDP shall be entitled, at its option and in its discretion, to withhold payment of a commercially reasonable portion of the aggregate amount, if any, determined under the first paragraph above to be payable by NDP to DP after any pertinent setoff(s), until such transactions are liquidated. Nothing in this Section 22.4 shall be effective to create a charge or other security interest except as may be provided under applicable law. This setoff provision shall be in addition to any right of setoff, netting, off-set, combination of accounts, counterclaim, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise)."

## Exhibit K. Modified WSPP Agreement

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### B. Governing Law

**Section 24** is amended by deleting the word “Utah” and replacing it with the words “New York” and inserting “other than those applicable to contracts executed and performed therein” after “thereof.”

### C. No Fiduciary Relationship

**Section 37** is amended by inserting the following new language at the end thereof:

“Each Party further represents and warrants to the other Party, as of the date of each Confirmation, and of each delivery of capacity and/or energy in connection with the transaction related to such Confirmation, that the other Party is not acting as a fiduciary for or an adviser to it in respect of such transaction and it is not relying upon any representations of the other Party other than those expressly set forth in the WSPP Agreement, any Confirmation or any written guarantee of the obligations of such other Party.”

### D. Recordings

**Section 32.5** is amended by adding the following to the end of that section before the period:

“, provided that each party will provide the other party with copies of any such recordings introduced into evidence.”

### E. Guarantee Grace Period

**Section 22.1(e)(ii)** is amended by deleting the phrase, “, and such failure shall not be remedied within three (3) Business Days after written notice.”

### F. Forward Contracts

**Section 35** is amended by inserting the phrase “, the Master Confirmation Agreement” between “this Agreement” and “and the related Confirmation(s)” in the fourth line thereof.

### G. Deletion of Alternative Dispute Resolution

**Section 21.3(d)** is amended by deleting the second sentence thereof.

**Section 22.3** is amended by:

- 1) Deleting the last sentence in Section 22.3(e)(i); and
- 2) deleting the first sentence in Section 22.3(f).



## Exhibit K. Modified WSPP Agreement

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**Section 34** is hereby deleted in its entirety.

**Exhibit D** is hereby deleted in its entirety.

### H. Insecurity

Notwithstanding any provision of law (including, without limitation, the Uniform Commercial Code as adopted in the state of New York, if applicable) to the contrary, unless otherwise agreed by the Parties in a separate written agreement, neither Party (for purposes of this section, "First Party") shall have any obligation pursuant to the Agreement or otherwise to provide to the other Party any adequate assurance of performance, any letter of credit, any cash prepayment or any other kind of collateral, security or credit support to secure First Party's performance of its obligations under the transaction described in any Confirmation, even if the other Party has any grounds for insecurity regarding the performance by First Party of its obligations under any Confirmation.

### I. Payment of Undisputed Amounts

**Section 9.4** is revised in its entirety as follows:

"In order to dispute a bill in whole or in part, a Party must (i) have a good faith belief that the bill is incorrect and (ii) provide written notice of the dispute to the other Party to the transaction. Such written notice shall specify the amount in dispute and state the basis for the dispute. In case any portion of any bill is in dispute, the undisputed amount shall be paid when due. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued from and including the due date to but excluding the date paid with interest calculated in the manner set forth in Section 9.3. A Party shall have the right to dispute the accuracy of any bill or payment only for a period of two (2) years from the date on which the bill was initially delivered."

### J. Non-Payment

Notwithstanding any provision of the WSPP Agreement to the contrary (including, without limitation, Section 22 thereof), the non-payment of any amount disputed in good faith shall not constitute an "Event of Default" under the WSPP Agreement or any Confirmation thereunder with respect to either Party.

### K. Payment Netting

**Section 28.1** is deleted in its entirety and replaced with the following: "The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date pursuant to all transactions through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of electric energy during the monthly billing period under this Agreement, interest, and payments or credits,

# Exhibit K. Modified WSPP Agreement

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shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.”

**Section 28.2** is deleted in its entirety. Furthermore, the Parties agree that Exhibit A shall not be applicable to any transaction under this Agreement.

## L. Amendment

No amendment or modification to this Master Confirmation Agreement shall be enforceable unless reduced to writing and executed by both Parties.

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

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

**PUGET SOUND ENERGY, INC.**

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

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

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

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

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

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

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

## Capacity and Energy Exchange Agreement

Between

Puget Sound Energy, Inc.

And

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

Dated as of \_\_\_\_\_, \_\_\_\_\_

# Exhibit L. Prototype Exchange Agreement

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## CAPACITY AND ENERGY EXCHANGE AGREEMENT

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

### Recitals

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

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

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

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

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

### Agreement

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

#### 1 Definitions

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

# Exhibit L. Prototype Exchange Agreement

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

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

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

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

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

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

- (a) [\_\_\_\_\_]; or
- (b) such other point or points as may be agreed upon by the Parties' dispatchers or schedulers.

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

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

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

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

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

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

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

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

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

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

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

- (a) [\_\_\_\_\_]; or

## Exhibit L. Prototype Exchange Agreement

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

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

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

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

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

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

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

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

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

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

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

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

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

"**Uncontrollable Forces**" means any cause or causes that by the exercise of due diligence the Party unable to perform could not reasonably have been expected to avoid and that by the exercise of due diligence that Party has been unable to overcome, including, but not limited to, the following: emergency or electrical disturbance on or transmitted through a Party's electric system or any electric system with which a Party is directly or indirectly interconnected; failure or threat of failure of equipment or facilities; flood, earthquake, volcanic activity, wind, storm, drought, fire, pestilence, lightning and other natural catastrophes; epidemic, war, riot, civil disturbance or disobedience; sabotage, vandalism, strike, lockout, labor disturbance or labor or

# Exhibit L. Prototype Exchange Agreement

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material shortage; government priorities; restraint by court order or public authority; action or inaction by any governmental authority or agency; inability to obtain necessary authorizations or approvals from any governmental agency or authority; and inability to obtain needed transmission service from the Transmission Provider.

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

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

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

## 2 Effective Date and Termination

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

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

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

- (a) orders that this Agreement be interpreted, modified, or extended in such a manner that either or both Parties are required to (i) incur any new or different obligation not contemplated by this Agreement to the other Party, (ii) extend any obligation under this Agreement to any Third Party, or (iii) incur any obligation to serve any Third Party; or
- (b) determines in an order or judgment that this Agreement, or its operation or effect, is unjust, unreasonable, unlawful or otherwise not in the public interest;

then the Parties promptly shall attempt in good faith to renegotiate the terms and conditions of this Agreement to arrive at a new, mutually acceptable capacity and energy exchange agreement; provided, that nothing in this Section 2.3 shall apply to orders or determinations by [the PUC or] the WUTC or to judicial review of such orders or determinations. If the terms and

## Exhibit L. Prototype Exchange Agreement

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conditions cannot be so renegotiated within six (6) months following the date such order or determination is issued, either Party thereafter may, by written notice to the other Party pursuant to this Section 2.3, terminate this Agreement, effective on the later of (a) the end of the Contract Year in which such other Party receives such notice, and (b) one hundred eighty (180) days following such other Party's receipt of such notice of termination.

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

### 3 Capacity and Energy Exchange

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

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

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

### 4 Scheduling Requirements

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

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

- (a) at a rate of delivery in excess of [\_\_\_\_\_] MW for any Hour;
- (b) with more than two changes in the rate of delivery applicable during any Day, except as provided in Section 4.3; or



## Exhibit L. Prototype Exchange Agreement

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(c) at a rate of delivery during any Hour of any Day that is less than twenty-five percent (25%) of the highest rate of delivery scheduled for any Hour during such Day.

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

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

## 5 Term

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

(a) [date]; or

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

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

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

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

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

# Exhibit L. Prototype Exchange Agreement

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## 6 Continuity of Service

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

- (a) Uncontrollable Forces;
- (b) work on the Party's electric system (including installation, removal, investigation, inspection, repair, maintenance, improvement, renewal or replacement), which work is consistent with Good Utility Practice or determined by that Party to be necessary;
- (c) actions, which may occur automatically or manually, taken by a Party consistent with Good Utility Practice or determined by a Party to be necessary, to protect the performance, integrity, reliability or stability of that Party's electric system;
- (d) automatic protective devices or other automatic protective methods on a Party's electric system that are installed and operated in accordance with Good Utility Practice or that are determined by that Party to be necessary; or
- (e) actions taken in good faith by a Party to prevent, reduce or eliminate (i) hazard to life or property or (ii) unsatisfactory, or jeopardy to continuity of, electric service within that Party's Service Area. Without limiting the generality of the foregoing, it is expressly agreed that any service under this Agreement may be interrupted, suspended, curtailed or allowed to fluctuate if transmission by a Third Party of such service from the electric system of PSE, as Delivering Party, to the PSE Point of Delivery or from the [Exchange Party] Point of Delivery to the electric system of PSE, as Receiving Party, is interrupted, suspended, curtailed or allowed to fluctuate due to Uncontrollable Forces or any cause beyond PSE's reasonable control to eliminate such interruption, suspension, curtailment or fluctuation in such transmission.

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

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

6.4 Protection of Facilities. Each Party shall be responsible for protecting its facilities from possible damage in connection with service under this Agreement that results from conditions or causes on the other Party's facilities. Nothing in this Section 6.4 shall alter the liability provisions in Section 7.1.

# Exhibit L. Prototype Exchange Agreement

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## 7 Liability and Indemnity

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

(a) Loss resulting from Willful Misconduct; and

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

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

7.3 Indemnity.

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

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

## 8 Regulatory Authority

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

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

## Exhibit L. Prototype Exchange Agreement

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

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

(a) comprised by or which incorporates this Agreement or

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

## 9 Miscellaneous

9.1 Notices. Except as provided in Section 9.2, any notice provided for in, or served, given or made in connection with, this Agreement shall be in writing and shall be deemed properly served, given or made if delivered in person or sent by registered or certified United States mail, properly addressed and stamped with the required postage, as follows:

If to [Exchange Party]:

[address]  
Attn: [\_\_\_\_\_]

If to PSE:

Puget Sound Energy, Inc.  
PSE Building  
10885 N.E. 4<sup>th</sup> Street  
Bellevue, Washington 98004  
Attn: [\_\_\_\_\_]

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

## Exhibit L. Prototype Exchange Agreement

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

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

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

- (a) to any Person into which or with which the Party making the assignment or transfer is merged or consolidated or to which such Party transfers substantially all of its electric utility properties; or
- (b) to any Person that wholly owns, is wholly owned by or is wholly owned in common with the Party making the assignment or transfer.

No assignment or transfer, with or without the consent of the other Party, shall relieve a Party of any obligation under this Agreement. Subject to the foregoing provisions of this Section 9.4, this Agreement shall be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors, transferees and assigns. Any successor to or transferee or assignee of the right of a Party, whether by voluntary transfer, judicial sale, foreclosure sale, or otherwise, shall be subject to all provisions and conditions of this Agreement to the same extent as though each successor, transferee, or assignee were an original party to this Agreement.

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

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

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

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

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

## Exhibit L. Prototype Exchange Agreement

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

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

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

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

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

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

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

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

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

# Exhibit L. Prototype Exchange Agreement

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## **Puget Sound Energy, Inc.**

By \_\_\_\_\_  
[Name]  
[Title]

Date Signed: \_\_\_\_\_, 200\_\_

## **[Exchange Party]**

By \_\_\_\_\_  
[Name]  
[Title]

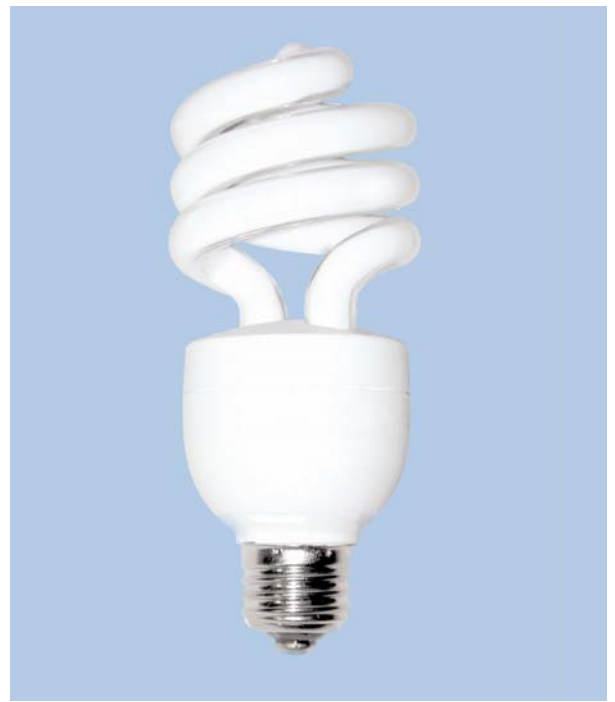
Date Signed: \_\_\_\_\_, 200\_\_

# Request for Proposals

January 2008



## Demand Side Resources





# Table of Contents

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## **Introduction and Background**

1	Summary of Solicitation .....	2
2	Minimum Requirements.....	2
3	Advisory Group Process.....	2
4	Additional Information about PSE’s Energy Efficiency Programs .....	3
5	Funding .....	3
6	PSE's Integrated Resource Plan (IRP) .....	4

## **Products Requested**

1	Products of Specific Interest.....	5
2	Timing .....	6

## **Proposal Requirements and Guidelines**

1	Eligible Respondents.....	7
2	Proposal Requirements.....	7
3	Other Requirements .....	13
4	Credit Requirements .....	14
5	Evaluation and Ranking of Energy Efficiency Proposals .....	14
6	Post-Proposal Negotiations and Awarding of Contracts .....	16
7	Confidentiality/Disclosure .....	16
8	Contact Information and Submission of Proposals .....	17
9	2008 Demand Side Resources RFP Schedule .....	18

## **List of Exhibits**

# Introduction and Background

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Puget Sound Energy, Inc. (PSE) currently provides a variety of energy efficiency services to their retail electric and natural gas customers in all market segments. These programs provide energy efficiency resources as part of PSE's resource portfolio, and are consistent with PSE's Integrated Resource Plan (IRP). Furthermore, PSE is committed to ensuring that all customers have access to programs by offering a mix of programs that make energy efficiency services available to all customer classes and that address all major end uses.

## 1 Summary of Solicitation

PSE is seeking proposals for programs to acquire electric and gas energy efficiency resources from retail electric customer sites throughout its electric service territory. This solicitation is intended to comply with the requirements of WAC 480-107 and is separate from the RFP for specific targeted energy efficiency services issued in June 2007.

This Request for Proposals (RFP) is intended to supplement and enhance PSE's ongoing energy efficiency efforts. It is consistent with the electric and gas resource strategies in PSE's 2007 Integrated Resource Plan

Requested services are to be delivered by year-end 2009.

Fuel conversion (electricity to natural gas) and demand response programs are excluded from this solicitation.

## 2 Minimum Requirements

Projects must satisfy all requirements of WAC 480-107-065:

- (1) Any conservation supplier may participate in the bidding process. A utility may allow a utility subsidiary to participate as a conservation supplier, on conditions described in WAC 480-107-135 Conditions for purchase of electrical power or savings from a utility's subsidiary or affiliate. A decision to allow a utility subsidiary to participate must be explained in the utility's RFP submittal.
- (2) All conservation measures included in a project proposal must:
  - (a) Produce electrical savings over a time period greater than five years, or a longer period if specified in the utility's RFP. A measure with an expected life that is shorter than the contract term must include replacements through the contract term;
  - (b) Be consistent with the utility's integrated resource plan; and
  - (c) Produce savings that can be reliably measured or estimated with accepted engineering methods.

## 3 Advisory Group Process

Key to the development of PSE's overall energy efficiency targets is participation of PSE's Conservation Resource Advisory Group ("CRAG"). PSE's CRAG was formally established as part of the settlement of PSE's 2001 general rate case that the Washington Utilities & Transportation Commission (WUTC) approved in Docket Nos. UE-011570 and UG-011571

# Introduction and Background

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("Conservation Agreement"). The CRAG's specific purpose is to work with PSE in the development of conservation plans, targets and budgets. The CRAG includes ratepayer representatives as well as representatives of select energy efficiency policy organizations. (See list of organizations represented in **Exhibit VI.**) Members of the CRAG participated in the development of the Company's 2007 Integrated Resource Plan, including the conservation potential assessment, and PSE's energy efficiency targets and budgets. PSE intends to consult with the CRAG as part of its process for analyzing proposals submitted in response to this RFP, although the Company retains the full responsibility for decision-making and selection of any successful proposals.

## 4 Additional Information About PSE's Energy Efficiency Programs

As part of the Conservation Agreement the WUTC approved a requirement that PSE's "[Energy Efficiency] Programs will be designed to achieve all savings that are not independently captured by consumer acquisition, that are cost-effective to the Company, and economically feasible for consumers, taking into account incentives provided by PSE."

The Conservation Agreement establishes the process for planning and review of PSE energy efficiency programs through 2009. A mix of programs shall be offered to ensure service to all customer sectors. PSE is required to establish overall annual energy savings targets and specific programs to achieve those targets in two year cycles, with 2008-2009 constituting the next full planning period.

The Conservation Agreement further stipulates that PSE's achievement of its annual targets shall be subject to a penalty mechanism. In its decision on PSE's most recent General Rate Case, the WUTC adopted a mechanism for electric energy efficiency programs that includes incentives as well as penalties. Gas energy efficiency programs continue to operate under the penalty mechanism established by the Conservation Agreement.

The measure of program cost effectiveness was established by the WUTC in its *First Supplemental Order to Docket No. UE-920630*, which states, "Unless and until a different measure is approved, the cost effectiveness of conservation programs should be calculated on a total resource cost basis."

## 5 Funding

Funding for proposals under this RFP shall be provided by the Company's electric ratepayers, through the *Electric Conservation Service Rider* (Electric Schedule 120) and *Gas Conservation Service Tracker* (Gas Schedule 120) approved by the WUTC. Limited additional funding for residential electric efficiency programs is provided as part of the Conservation and Renewable Discount pursuant to power purchase arrangements with the Bonneville Power Administration. PSE electric and gas tariff schedules may be viewed at <http://www.pse.com/InsidePSE/RatesElecTariffsRules.aspx>.

# Introduction and Background

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## 6 PSE's Integrated Resource Plan (IRP)

This RFP is intended to be consistent with the guidance provided by PSE's most recent IRP. PSE filed its most recent IRP with the WUTC on May, 2007. The May 2007 IRP may be found on the PSE web site at <http://www.pse.com/energyEnvironment/pse2007IRPcharts.aspx>.

The IRP examines PSE's electric and gas resource needs over the next 20 years, and through technical analysis considers factors such as price, supply, demand and risk. This analysis generally describes the mix of conservation programs and supply resources that might best meet electric or gas resource needs.

The overall IRP strategy with respect to electric resources is to develop a diversified, balanced electric resource portfolio that meets customer needs, results in reasonable energy supply costs and mitigates market risks. PSE's IRP indicates near-term electric and gas resource needs, which grow over time, due to growing load in its service territory, the loss of existing resources and the expiration of power purchase and non-utility generation contracts. PSE's electric and gas energy needs are greatest in the winter.

A portion of these needs will be met through conservation. Specifically, the IRP electric guidance calls for 438 aMW of electric demand-side resources by 2027 from a combination of energy efficiency and fuel conversion, to displace electric loads. Most of the electric demand-side energy savings were accelerated into the first half of the planning period, resulting in 329 aMW of savings by 2017 (299 aMW from energy efficiency and 30 aMW from fuel conversion and distributed generation, all savings at the busbar and including 6.7% line loss factor).

Gas resource guidance calls for 69.7 million therms of gas energy efficiency by 2027, ramped in over time. This is equivalent to gas efficiency savings at a constant average rate of 2.8 million therms per year, or 28.5 million therms by 2017.

PSE's IRP provides the general strategic direction for demand-side program planning and resource acquisition targets, but does not commit to or preclude the Company from acquiring specific conservation measures, program types, or specific amounts of energy savings. Similar to supply-side resource acquisitions, specific determinations about actual conservation acquisitions will be based on specific opportunities and near-term implementation considerations.

# Products Requested

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This RFP seeks proposals for electric and natural gas energy efficiency resources from all customer classes and end uses, consistent with PSE's 2007 Integrated Resource Plan and the evaluation criteria discussed in Section 8 of this RFP. Proposals are to involve installation of equipment and technologies for any of a wide variety of electricity or gas end-uses. Projects are to be installed at PSE electric or gas retail customer sites, and may be from any customer class, excluding retail wheeling sites where the customer is responsible for procuring their own power or gas supply (Electric Schedules 448 or 449; Gas Schedule 57). A prototype Energy Efficiency Agreement is included as **Exhibit B**.

Although there are no restrictions imposed by this RFP on the size of the energy efficiency savings projects that may be proposed, PSE reserves the right to exercise its discretion to ensure a diverse program mix, reasonable cost levels, and appropriate program scale, and to ask bidders to consider changes to their proposal.

## 1 Products of Specific Interest

PSE will consider proposals for any electric or gas energy efficiency projects that meet the general requirements of this solicitation. However, PSE is particularly interested in the following types of projects:

### 1.1 Residential Energy Conservation Products

PSE is interested in proposals that generate residential electric and/or gas savings. Serious consideration will be given to proposals that extend PSE program abilities at a competitive cost effective level or that offer unique cost-effective opportunities outside the scope of present PSE programs.

### 1.6 Compressed Air Systems

PSE is interested in proposals that take a systems approach to energy efficiency in compressed air systems. The approach will look for system optimization opportunities both on the demand and supply side.

### 1.7 Dust Collection Systems

PSE is interested in proposals that provide solutions to improve the energy efficiency of the dust collection systems in industrial facilities. The focus is on maintaining the system energy efficiency while meeting the requirements of on going process or production changes.

### 1.8 Industrial Ventilation Systems

PSE is interested in proposals that provide solutions to improve the energy efficiency of the industrial ventilation systems. The focus is on the fan energy savings but heating/cooling energy efficiency can be included.

### 1.9 Chiller System Optimization

Provide a proposal to optimize the chilled water system that includes supply and demand side: chillers, pumps, heat rejection equipment, distribution system and controls. Systems must be serving commercial building cooling loads in any commercial segment such as but not limited to building campus cooling loads, offices, data centers, hospitals, etc.

# Products Requested

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## 1.10 Small Business Program Aggregator/Marketer

Proposal is requested to aggregate and market PSE's individual rebate offering to the small business customers that are currently marketed and delivered separately. The goal to achieve a more complete and comprehensive retrofits of energy using systems in the small business segment.

## 1.11 Boiler Room Optimization

A proposal for a prescriptive approach to comprehensive optimization of the boiler system is requested. The focus is to improve the efficiency by implementation of measures within the boiler room; however, proposals that touch elements outside the boiler room, such as distribution and terminal devices, are equally encouraged. Both commercial and industrial applications, hot water and steam systems will be entertained.

## 1.13 Resource Accounting Software

Packaged pc or web-based resource accounting software application to be used in support of PSE's Resource Conservation Manager Program to organize, analyze, and report energy, water, sewer, and solid waste consumption and cost data.

Software must have ability to organize site information, utility accounts and meters, input monthly billing data, accept electronic downloads, benchmark and rank facilities by Energy Use Index, normalize energy usage for variation in weather and area, and calculate avoided cost savings. Consideration will be given to existing products or development of a PSE branded web-based application. Please note that due to the unique attributes of this requested product, some categories in the standard application form and directions do not apply.

## 1.14 Combined Heat and Power

CHP installations which recover waste heat from electrical generation process to offset PSE electrical loads and reduce PSE natural gas loads for stage 1 heating, water heating, or process applications. Systems must be sized at under 150 kW electrical output, have a generating efficiency of at least 30% and have a combined cycle efficiency of 80%. Applications include fuel cells, advanced turbines, and integrated combined cycle technologies to produce both electricity and useable heat.

## 2 Timing

All proposals are to be bid under the assumption that delivery of program services is to be based on eighteen months between 7/1/2008 and 12/31/2009, unless otherwise specified in **Section 3.1** above. The actual contract period for these projects will be negotiated, but will not go beyond 12/31/2009 unless otherwise specified in **Section 3.1** above.

# Proposal Requirements and Guidelines

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## 1 Eligible Respondents

Eligible respondents must demonstrate experience pursuant to **Section 5.7.10** in operating a utility-sponsored energy efficiency program, or significant experience participating as a contractor on utility program(s). PSE-affiliated subsidiaries are excluded from bidding on this RFP. Proposals from other utilities and/or their subsidiaries will be considered, since this may increase the number of qualified respondents and thus increase the overall creativity and competitiveness of responses to this RFP. Proposals from PSE retail customers will also be considered.

## 2 Proposal Requirements

All Proposals must satisfy the following requirements:

### *Energy Savings Delivered*

The Regional Technical Forum (RTF) has determined that certain electric efficiency measures should be deemed to produce specific annual savings over a specific life. In addition, the RTF has developed calculators for determining the savings of certain measures, rather than flat deemed values. PSE encourages respondents to use RTF deemed values or deemed calculations where appropriate. Gas measures may use energy savings values or calculation methods consistent with the RTF for like electric measures where applicable.

In all other cases, energy savings calculations must use commonly accepted engineering practices, and be verifiable using established measurement and verification (M&V) protocols or methodologies such as described in the RTF document, *Appendix P, Energy Savings Verification Protocols*, developed for BPA's Conservation and Renewables Discount, or International Performance Measurement & Verification Protocols (IPMVP). Complete documentation of all calculations and data sources for all inputs must be provided.

To obtain access to the RTF deemed measure savings tables and calculators, as well as RTF energy savings M&V protocols, send an email to [EES@pse.com](mailto:EES@pse.com) with your contact name and email address. Within seven business days you will receive an email from BPA's C&RD website administrator with Guest sign on authorization and instructions. Once signed on to the site, you will have access to deemed measure tables, calculators and M&V protocols. See also, [www.ipmvp.org](http://www.ipmvp.org) for M&V protocols. Accepted measure lives are listed in **Exhibit C**.

Should deemed savings and measure lives be adjusted after contract award, but prior to implementation, PSE will use the savings and measure lives in place as of the beginning of the implementation period to determine achieved savings from the program.

### *Cost-effectiveness*

Proposals will be evaluated using the Utility Cost test and the Total Resource Cost test described in **Exhibit D**. Respondents are responsible for providing the measure-specific savings, lives, and costs of their proposals, but the calculation of cost-effectiveness will be performed by PSE. The data requirements to be included with proposals are described in **Exhibit D**. Template tables for cost effectiveness input data and itemization of proposal costs are provided in **Exhibit A**. Costs and savings numbers must match consistently throughout the proposal. Failure to provide all required data may result in disqualification of a proposal.

# Proposal Requirements and Guidelines

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Cost effectiveness of projects will include PSE program administrative costs. These administrative costs will be determined and applied by PSE and are not the respondent's responsibility. PSE will review its historical administrative costs to determine both the magnitude of additional costs and an equitable method for distributing these costs.

## *Quality*

Projects must not result in significant reduction to the quality of the customers' end-use processes or products, or customer satisfaction with equipment operation, comfort, or other amenities that result from using energy. Proposals should demonstrate that adequate quality assurance procedures will be implemented.

## *Limitations*

PSE will not accept proposals for education, information, or operations and maintenance programs that do not consist of installation of hardware measures. PSE will also not accept proposals for the following programs that PSE plans to continue to operate:

- Low Income Retrofit: PSE currently has contracts with the State of Washington, Department of Community, Trade and Economic Development for delivery of these services.
- NW Energy Efficiency Alliance (NEEA, the "Alliance") - PSE contributions for regionally operated energy efficiency market transformation efforts. All proposals are not to compete with efforts underway in the region by the Alliance ([www.nwalliance.org/projects/index.asp](http://www.nwalliance.org/projects/index.asp)). The primary distinction between NEEA market transformation efforts and programs sought under this RFP is that NEEA programs are focused on equipment manufacturers and retailers, not end use consumers.
- Large Power User - Self-Directed Program - Savings acquired from retail wheeling customers that only use PSE distribution services, and do not purchase retail power from PSE (Electric Tariff Schedules 448 and 449).
- Energy Education Program - Powerful Choices for the Environment curriculum offered to middle school students.
- Resource Conservation Manager - Behavioral, operations and maintenance efforts targeted at School Districts.

***Proposals for fuel conversion will not be considered under this RFP.***

Although the 2007 IRP addresses these types of demand-side resources, a number of analytical and implementation issues remain to be resolved with regulators and other stakeholder groups before PSE sets a policy for pursuit of these types of programs.

## *Pricing and Payment Terms*

Proposals shall be bid on a fixed-price basis, with payment tied to the verification of measure installation and/or energy savings, per the requirements in **Section 5.7.6**, as well as any other terms and conditions included in any Definitive Agreement between PSE and the respondent. ***Long-term performance contracting proposals and proposals that require significant up-front payments are discouraged.***



# Proposal Requirements and Guidelines

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The bid price shall be itemized as shown in **Exhibit A Table 4** and included in the proposal per **Section 5.7.1**.

## *Resource Proposal Submittal*

PSE requires that respondents conform to the following format for presenting their bid information. Proposals that do not follow this format are at risk of being disqualified. The Proposal Checklist provided in **Exhibit A, Table 1** identifies the items that must be included in all proposals.

### Summary Data

Respondents must complete the following project summary forms provided as per **Exhibit A** of this RFP. Cost and savings numbers must be consistent throughout all tables where applicable.

- Table 1. Proposal Checklist
- Table 2. Proposal Summary Data Sheet
- Table 3. Proposal Cost Effectiveness Input Sheet
- Table 4. Proposal Cost Summary Sheet

These forms should be included at the beginning of each proposal. If a proposal has multiple options with different savings or costs, tables 2, 3, and 4 must be provided for each option.

### Proposal Overview

Provide a narrative summary of the resource proposal in no more than 3 pages. Costs and savings should be on a per unit or per treatment basis.

### Description of Project

1. Describe the product(s) being offered in response to the RFP including: the energy efficiency measure(s), the specific customer(s) or customer type(s), the facility type(s) where the measure(s) will be located, the implementation strategy, project quality assurance and verification, as well as any other additional information deemed relevant by the respondent.
2. Provide an estimate of the projected annual energy savings of the project when completed, per the requirements of **Section 5.1**. Provide details of the derivation of savings for each measure included in the project, and documentation of the basis for those estimates. Provide a monthly distribution of those savings. If system capacity savings are proposed, provide a description of what hour those savings are available or alternatively an hourly shape of savings.
3. Provide an estimate of the useful life for each measure and documentation of data sources. Describe any maintenance and replacement requirements to achieve projected savings of the measure(s) over the measure life.
4. Provide a timeline for savings achievements, showing when measure installation and savings begin to come online, through completion of the entire program. If savings begin

# Proposal Requirements and Guidelines

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- to accrue prior to project completion, estimate savings achieved for each month until completion.
5. Provide details of any and all customer obligations necessary for the installation of measures, including any share of the cost of the installed measure, and other fees or costs for participation, estimates of customer's time involvement, use of customer premises, etc.
  6. Describe who is to own and operate the energy efficiency measure(s) after they are installed.
  7. List and describe who is to install the measure(s), including any installation subcontractors and, where applicable, party responsible for commissioning and verification of installation.
  8. If the proposal is partially or entirely similar to an existing PSE program, describe and support any reasons that the proposed project may better benefit PSE and its customers than PSE's existing energy efficiency programs.

## Price & Payment Terms

1. Provide a total bid price per the requirements of Section 5.6 and include an itemized summary of costs per **Exhibit A, Table 4**.
2. Describe the proposed payment plan, including the schedule and amount of payments, the conditions that must be met before payment is made, and how payments may be adjusted following any verification of savings procedures.
3. Provide an estimate and description of fees, shared savings arrangements, or any other payments or contributions the customer or third-party will be obligated to pay for the installation of any portion of the proposed measure(s). If applicable, describe available customer payment plans.

## Schedule for Implementation

The proposal should provide a work schedule showing key tasks and milestones for the proposed project from the point a contract is awarded through project completion. Include a schedule item for each significant project development and implementation activity. Indicate actions to be taken to ensure the schedule will be met. Periodic progress reports will be required.

## Savings Verification Plan

1. Describe the procedures that will be used to verify measure installation and energy savings from the installed measures. For estimates that are to be made, describe how they are derived and the assumptions and sources used to develop the estimates.
2. For energy savings that are to be measured, describe the proposed measurement procedures. Protocols for measurement of energy savings may be found at [www.rtf.nwppc.org](http://www.rtf.nwppc.org). Procedures for obtaining guest access may be found in **Section 5.1**. Also, generally accepted M&V protocols are available at [www.ipmvp.org](http://www.ipmvp.org).
3. Note where interaction with other end-uses, if any, are involved, and provide estimates of the interactive effects on measured savings. Provide sufficient detail on the measurement procedures, including the type of measurement (e.g., billing analysis or

# Proposal Requirements and Guidelines

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end-use metering) and the participants included in the measurement. The savings verification plan should address both first year annual savings and savings persistence over the proposed life of the measure.

4. Describe any plans to verify estimated savings. Describe any procedures that will be in place to measure the persistence of the energy savings. Protocols for verification of energy savings may be found at [www.rtf.nwppc.org](http://www.rtf.nwppc.org). Procedures for obtaining guest access may be found in **Section 5.1**.
5. Describe PSE's role in the proposed verification plans. Describe any information, data, or support that PSE will need to provide to the verification plan.
6. Describe the timeline for savings verification. Specifically describe the links between measure installation, verification of savings and payment.

## Marketing Plans

1. Provide, if applicable, a description of the marketing plan that will be used to recruit participants. Describe how customers will be contacted, eligibility for participation, and how customers will be selected/rejected for participation. PSE reserves the right to coordinate and/or implement all marketing activities. Marketing will be reviewed during contract negotiations.
2. Describe any general marketing assistance the respondent expects PSE to provide. This may include customer lists, customer billing records, letters of introduction, or support by PSE's customer service representatives.
3. Describe the expected simple payback for participants with and without any financial incentives. (Simple payback is to be calculated as the participant's cost divided by the annual energy bill savings.)
4. Include a clear description of any financial incentives the customer will receive.

## Customer Service Plan

1. Describe how participant complaints will be addressed
2. Describe any and all written or implied warranties that will be provided to customers regarding quality of materials and installation.
3. Describe the intention to track and provide customer information to PSE. Any respondents currently operating programs should provide PSE with sample reports or other documentation to show program data tracked and reporting capability.
4. List any complaints received from participants regarding the conduct of past energy efficiency programs by the respondent and the disposition of each complaint.
5. If respondent is currently operating a similar program, please provide two end-use customer references. Provide name, address, telephone and e-mail.

# Proposal Requirements and Guidelines

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## Financial Capability

1. Provide a description of plans for financing the energy efficiency project(s).
2. Describe the proposed security arrangements (i.e., bank letter of credit, payment bond, corporate guarantee, or other security).
3. Be prepared to provide, if the proposal is selected for negotiation, a demonstration of the ability to obtain a level of insurance, such as general business and liability insurance, sufficient to cover major project contingencies.

## Experience and Qualifications of the Respondent

1. Provide a general description of the organization, its background and experience in projects similar to your proposal. List all affiliated companies, including holding companies, subsidiaries, and predecessor companies associated with the responding entity.
2. Provide form of business classification (i.e., sole proprietorship, partnership, or corporation) and Dun's number, if known.
3. Please provide names and resumes of all individuals who will be assigned to this project. Include project roles for each individual, i.e. management, field implementation, etc. Include any professional relationship with PSE customers.
4. Provide a list of prior organizations for which key management team members have worked if such organizations have provided services similar to those in the proposal, and specifically note any services provided to PSE or its predecessors.
5. Provide three references from jobs performed within the last two years where the respondent has provided similar services to those proposed for PSE. These references must include at least one contact person at another utility to whom the respondent has provided services. References may also include electric customers for whom the respondent has provided energy efficiency services similar to those included in the respondent's proposal. Provide name, title, address, telephone number and e-mail for these references.
6. List and describe any licenses that you or your subcontractors have or will be required to obtain to perform the type of work described in your proposal.
7. Describe how your proposal complies with all applicable codes, permits and licenses legally required for the measure installations proposed. A list of the necessary permits will also be required during negotiation.
8. List all lawsuits, regulatory proceedings, or arbitration in which the respondent or its affiliates or predecessors have been engaged related to the types of services proposed if the proposal is selected for negotiation. Identify the parties involved in such lawsuits, proceedings, or arbitration, and the final resolution or present status of such matters.

# Proposal Requirements and Guidelines

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## 3 Other Requirements

### *Signatures and Certifications*

The proposal must contain the signature of a duly authorized officer or agent of the respondent submitting the proposal.

The respondent's duly authorized officer or agent shall certify in writing that:

- The respondent's proposal is genuine; not made in the interest of, or on behalf of, any undisclosed person, firm, or corporation; and is not submitted in conformity with any anti-competitive agreement or rules.
- The respondent has not directly or indirectly induced or solicited any other respondent to submit a false or sham proposal.
- The respondent has not solicited or induced any other person, firm, or corporation to refrain from proposing.
- The respondent has not sought by collusion to obtain for himself/herself any advantage over any other respondent.

### *No Reassignment*

All proposals shall state that there will be no reassignment of proposals during the evaluation or negotiation stage and that in the event respondent and PSE negotiate and execute Definitive Agreements based on respondent's proposal, the Definitive Agreements and obligations thereunder shall not be sold, transferred or assigned or pledged as security or collateral for any obligation without the prior written permission of PSE which permission shall not be unreasonably withheld. Any project lender who takes an assignment of the Definitive Agreements for security and exercises any rights under such agreements will be bound to perform such agreements to the same extent.

### *Conflict of Interest Disclosure*

All respondents shall disclose in their proposal any and all relationships between themselves, the project and/or members of their project team and PSE, its employees, its customers, or members of PSE's CRAG.

### *Validity, Deadlines and Regulatory Consent*

All proposals shall specify the date through which the proposal is valid. Respondents should note that Definitive Agreements might not be executed or obtained until near the end of 2008. PSE will seek regulatory consent to revisions of its energy efficiency tariffs consistent with the results of this RFP process, such consent to be in form and substance satisfactory to PSE in its sole discretion. It is preferred that the respondent provides proposals that remain valid for a period that allows for negotiation of Definitive Agreements.

# Proposal Requirements and Guidelines

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## *Environmental Attributes*

1. All proposals must state that all Environmental Attributes associated with the project will accrue to the ownership and beneficial use of PSE. All proposals must state that all kWh savings associated with the project(s) will accrue to the ownership and beneficial use of PSE.
2. Detail the disposal of waste to be removed from customer facilities as part of energy efficiency projects, including the disposal of toxic and contaminated waste. Describe any recycling strategies to be incorporated into disposing of removed materials from the project.
3. Detail specific environmental aspects of the project, including any planned utilization of recycled materials in equipment supplied to the project.

## 4 Credit Requirements

PSE reserves the right to require adequate credit assurances which may include, but not be limited to, a corporate parental guaranty and/or a letter of credit in a form and amount, for a term and from a corporate parent or a financial institution acceptable to PSE. In the event PSE anticipates that additional credit assurances may be required from a respondent, PSE reserves the right to request that the respondent reply in writing regarding its intent to provide such credit assurances prior to the beginning of negotiations on any Definitive Agreement. "Adequate credit assurances" shall include, but not be limited to, security for the value associated with market-based damages for failure to perform, delays in implementation, failure to meet energy savings targets, failure to meet minimum customer service quality levels and/or other forms of default or non-performance.

The respondent should be aware that PSE may require negative control provisions (covenants restricting respondent business practices that could jeopardize respondent's ability to perform its obligations) in the Definitive Agreements that respondent and PSE might execute in connection with respondent's proposal, in addition to any that may be included in the prototype Energy Efficiency Agreement (**Exhibit B1**).

PSE prefers acquisitions that do not impose credit support requirements on PSE. If any respondent intends to propose that PSE provide credit support (e.g., in the form of a letter of credit or otherwise), the respondent must describe in its proposal all desired terms and conditions regarding such credit support.

## 5 Evaluation and Ranking of Energy Efficiency Proposals

Consistent with the requirements of WAC 480-107-070 and 480-107-165, as well as the Conservation Settlement, PSE will evaluate and rank energy efficiency proposals based on a structured evaluation process. Proposals will be expected to conform with all of the basic requirements in this RFP regarding content, format, and submittal. Any proposal that does not adhere to these requirements is at risk of being disqualified from consideration.

After initial screening for compliance with the basic requirements for this RFP, proposals will be assessed with regard to the evaluation criteria identified below:

# Proposal Requirements and Guidelines

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- Compatibility of proposal with the products requested in **Section 3**. For bids on Preferred Products, proposals will be assessed on coverage of the scope of requested services. Proposals for other types of programs will be assessed for compatibility and overlap with existing PSE programs. Impacts on diversity of PSE's program mix and appropriateness of program scale will also be considered.
- Cost-effectiveness. Resource projects must have benefit-cost ratios greater than 1.0 for the UC and TRC tests. This is a minimum threshold only. PSE is not obligated to award contracts to all proposals that pass this criterion. PSE reserves the right to add administrative costs incurred by PSE, modify measure savings and lives that do not conform with the requirements of **Section 5.1**, and adjust dollar values assigned to non-energy savings benefits.
- Amount of energy savings and method used to calculate savings, including documentation of data sources. PSE will apply standard measure savings where recognized by the RTF as described in **Section 5.1**. For measures not listed by the RTF, the savings and measure life must be accompanied by supporting documentation. Note that cost effectiveness tables D-1 and D-2 (**Exhibit D**) reflect measures calibrated to PSE load shapes, a refinement from the regional load shapes.<sup>1</sup>
- Life of savings and degradation of savings over time – preference given to long-term, stable savings. The measure lives listed in **Exhibit C** will be used to evaluate the cost-effectiveness of proposals.
- Demonstrated ability to deliver proposed savings at proposed cost and within proposed time frame.
- Terms of payment. The potential financial risk or risk of under-performance to which PSE may be exposed based on the relationship between services delivered and the proposed terms of payment for services.
- PSE will consider the information received in response to **Section 5.7.9** and **Section 7** to this RFP in determining risk associated with the financial condition of and performance by a respondent and any third parties depended upon by respondent. Lower-risk respondents are preferred.
- Costs, time, complexity, or other resource commitments imposed upon PSE by implementation of a proposal.
- Public benefits including environmental, economic and community impacts. Such benefits should be identified if they are unique to the program being proposed, not attributes that are generic to all energy efficiency programs, such as reduced generation emissions.

Proposals will be ranked and nominated to a short list of potential finalists, based on balancing of all the evaluation criteria. If any proposal is deemed unacceptable in any category during the process, PSE may, at its sole discretion, eliminate that proposal from further review. Conversely, PSE may, at its sole discretion, ask a respondent to correct minor deficiencies to their proposal.

PSE may continue the evaluation analysis and additional due diligence throughout the evaluation and negotiation period to reflect more current information and future direction received from IRP updates, regulatory proceedings, or other guidance.

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<sup>1</sup> PSE's CE is now based on NWPC load shapes calibrated to PSE's load shape.

# Proposal Requirements and Guidelines

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PSE intends to seek the advice and assistance of the CRAG, with the goal of reaching consensus as to the final short list of proposals to be selected for further pursuit.

At the completion of the evaluation, including any updated analyses, PSE will move forward with finalists from the short list on further discussions and, potentially, negotiations of the terms and conditions of Definitive Agreements. Definitive Agreements are subject to regulatory consent.

## 6 Post-Proposal Negotiations and Awarding of Contracts

It is PSE's intent to negotiate both price and non-price factors during any post-proposal negotiations with a respondent whose proposal is selected for further discussions at the completion of the Stage II evaluation. It is also PSE's intent to include in ongoing analysis of a proposal any additional factors that may impact the total cost of a project until such time as PSE and respondent might execute Definitive Agreements.

Definitive Agreements, if any, would be based on the outcome of these continuing negotiations. PSE has no obligation to enter into a Definitive Agreement with any respondent to this RFP and may terminate or modify this RFP at any time without liability or obligation to any respondent. This RFP shall not be construed as preventing PSE from entering into any agreement that it deems appropriate at any time before, during, or after this RFP process is complete. PSE reserves the right to negotiate only with those respondents and other parties who propose transactions that PSE believes, in its sole opinion, to have a reasonable likelihood of being executed substantially as proposed.

PSE, with the mutual consent of the respondent, may elect to implement a proposal earlier than 7/1/2008.

PSE reserves the right to issue subsequent RFPs for energy efficiency resources, including RFPs for specific, targeted energy efficiency programs.

## 7 Confidentiality/Disclosure

A Mutual Confidentiality Agreement (MCA) is included as **Exhibit E** to this RFP. Respondents must sign the Confidentiality Agreement and provide two signed originals to PSE at least one week prior to the proposal due date. PSE will countersign the MCA and return one fully executed agreement to the respondent. Only one MCA per respondent is required, regardless of the number of proposals submitted.

To the extent required by law or regulatory order, PSE will make available to the public a summary of all proposals received and the final ranking of all such proposals. PSE also intends to make summary information regarding proposals available to the CRAG, as necessary to enable this group to carry out its planning and review responsibilities. CRAG members will be required to agree to keep proposal information confidential in order to have access to individual proposal information. If an organization represented on the CRAG elects to bid on this RFP, that organization will resign from the CRAG through 12/31/2009.

PSE may retain all information pertinent to this RFP process for a period of 7 years or until PSE concludes its next general electric rate case, whichever is later.



# Proposal Requirements and Guidelines

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## 8 Contact Information and Submission of Proposals

A sealed set of two (2) hard copies, plus one electronic copy on CD-ROM, of the proposal shall be submitted via U.S. mail, courier service, or hand delivery to PSE at the address shown below.

***All proposals must be received by no later than 5:00 PM Pacific Time on February 29, 2008. In addition, respondents are to provide two signed originals of the Mutual Confidentiality Agreement (Exhibit E) by February 22, 2008.***

All costs to participate in this RFP process are the responsibility of the respondent.

Questions and requests regarding this RFP should be sent to EES@pse.com.

Contact for proposal submittals:

Carolyn Tash, Energy Efficiency Services  
Phone: 425- 456-2601  
Fax: 425- 456-2706

Address for U.S. Mail:  
Puget Sound Energy  
P.O. Box 97034, EST-10W  
Bellevue, WA 98009-9734

Address for courier or hand delivery:  
Puget Sound Energy  
355 110<sup>th</sup> Avenue NE, EST-10W  
Bellevue, WA 98004

Deliver to mail room on Level P-2 of garage

# Proposal Requirements and Guidelines

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## 9 2008 Demand Side Resources RFP Schedule

October 12, 2007	Draft RFP Filed with WUTC
October 29, 2007	PSE Public Meeting on Draft RFP
December 11, 2007	Public Comments Due
January 10, 2008	WUTC Comments Expected
January 11, 2008	PSE Issues Final RFP
January 23, 2008	PSE Hosts Pre-proposal Conference
February 29, 2008	Offers Due to PSE
March 31, 2008	Short List Selected, Respondents Notified
April 15, 2008	Target Date for Executing Letter(s) of Intent
December 31, 2008	Complete Contract Negotiations with Short List finalists

The above schedule is subject to adjustment based on CRAG and WUTC review as well as the actual timing of PSE's evaluation process.

## List of Exhibits

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Exhibit A	Summary Data Tables
Exhibit B	Prototype Energy Efficiency Agreement
Exhibit C	Measure Lives
Exhibit D	Proposal Cost Detail and Calculation of Cost Effectiveness
Exhibit E	Mutual Confidentiality Agreement
Exhibit F	Organizations participating in the CRAG

## Exhibit A. Summary Data Tables

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**Table A-1. Proposal Checklist**

Item	Section of PSE RFP	Location in Proposal
Summary Data	5.7.1	(section/page #)
Proposal Overview	5.7.2	
Description of Project	5.7.3	
Price & Payment Terms	5.7.4	
Schedule for Implementation	5.7.5	
Savings Verification Plan	5.7.6	
Marketing Plan	5.7.7	
Customer Service Plan	5.7.8	
Financial Capability	5.7.9	
Experience and Qualifications of the Respondent	5.7.10	
Signatures and Certifications	6.1	
No Reassignment	6.2	
Conflict of Interest Disclosure	6.3	
Validity, Deadlines and Regulatory Consent	6.4	
Environmental Attributes	6.5	
Mutual Confidentiality Agreement	10	

# Exhibit A. Summary Data Tables

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## Table A-2. Proposal Summary Data Sheet

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

Respondent Organization: \_\_\_\_\_

Primary Proposal Contact Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_

Proposed Start date: \_\_\_\_\_ Proposed End date: \_\_\_\_\_

### Technical Information

Total Annualized energy savings for all installed measures: \_\_\_\_\_ kWh; \_\_\_\_\_ Therms

Target Customer Segment(s): Residential Single Family, Multi-family or Mobile Home;

Commercial (Business type, e.g. office, retail, if applicable) and/or Industrial (Sector, if applicable)

\_\_\_\_\_

Total Participating Customers: \_\_\_\_\_

Retrofit or New construction: \_\_\_\_\_

Energy Efficiency Measures to be Installed: \_\_\_\_\_

Total Measures Installed: \_\_\_\_\_

End-use Involved- Select one or more: Heating, Air Conditioning, Water Heating, Appliances, Lighting, Year Round Process, Seasonal Process (describe: \_\_\_\_\_

\_\_\_\_\_ )

### Cost Information

Total Respondent Cost of proposal (Bid Amount \$): \_\_\_\_\_

Total Incentives (\$) for PSE-customers: \_\_\_\_\_

Total Incentives (\$) to be offered to others (specify): \_\_\_\_\_

Estimated Customer Contributions toward cost of installation of Measures: \_\_\_\_\_

## Exhibit A. Summary Data Tables

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Expected services from PSE (list type and quantity - e.g., est. hrs.): \_\_\_\_\_

\_\_\_\_\_

### Payment Schedule

Summarize proposed method for being paid by PSE (e.g., timing, amount): \_\_\_\_\_

\_\_\_\_\_

### Other

Method to recruit customers: \_\_\_\_\_

\_\_\_\_\_

# Exhibit A. Summary Data Tables

**Table A-3. Proposal Cost Effectiveness Input Sheet**

Identify each measure, and list quantities under the appropriate End Use column. Use separate sheets for electric and gas measures. See **Exhibit D** for definitions.

Category	Residential Space Heat	Residential Water Heat	Residential Lighting	Residential Dryer	Residential Heat Pump	Commercial Appliances	Commercial Cooling	Commercial Heating	Commercial Lighting	Industrial / Flat
<b>Number of Units</b>										
Measure aaa										
Measure bbb										
Measure ccc										
Measure ddd										
<b>Annual kWh or Therm Savings Per Unit</b>										
Measure aaa										
Measure bbb										
Measure ccc										
Measure ddd										
<b>Average Measure Life</b>										
Measure aaa										
Measure bbb										
Measure ccc										
Measure ddd										
<b>Unit Measure Cost (avg.)</b>										
Measure aaa										
Measure bbb										
Measure ccc										
Measure ddd										
<b>Unit O&amp;M Cost (avg.)</b>										
Measure aaa										
Measure bbb										
Measure ccc										
Measure ddd										
<b>Per Unit Incentive</b>										
Measure aaa										
Measure bbb										
Measure ccc										
Measure ddd										

# Exhibit A. Summary Data Tables

**Table A-4. Proposal Cost Summary Sheet**

See **Exhibit D** for explanation.

Respondent Direct Costs	Rate (\$/Unit)	Unit (Hours, etc.)	Proposal Total
<b>Proposer Measure Installation Costs</b>			
Measure/Equipment Costs			
Labor			
Other Material			
Travel, Vehicles			
Other (specify):			
<b>Program Implementation Costs</b>			
Incentives \$ (grants, rebates)			
Marketing/Advertising			
Customer Service & Complaint Resolution			
Savings Verification			
Activity Tracking & Reporting			
Other (specify):			
<b>Respondent Admin. Costs</b>			
Program Planning and Design Labor			
Planning and Design Other Costs			
Project Management Labor			
Support Staff Labor			
Legal			
Travel			
Other (specify):			
<b>TOTAL RESPONDENT COSTS*</b>			
<b>Other Costs or Benefits</b>			<b>Total</b>
O&M Costs over measure life			
Customer Costs			
<b>Third-Party Contributions (\$)</b>			
❖ Identify Contributor			
<b>Quantifiable (\$), Non-Energy Savings Costs (Benefits)</b>			
❖ Describe (list) Quantified Non-Energy Savings Items			
<b>Non-Energy Costs (Benefits)</b>			
❖ List any "non-quantified" costs(benefits)			
<b>Other Costs (if any)</b>			
Specify:			

\*Total Respondent Cost line is intended to sum to the Proposal Bid Amount on **Table 1**. If not, please explain discrepancies.



# Exhibit B. Prototype Energy Efficiency Agreement

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## AGREEMENT FOR PROFESSIONAL SERVICES

NO. [\_\_\_\_\_]

This Agreement, dated as of [\_\_\_\_\_], 200[\_\_\_], is entered into by and between Puget Sound Energy, Inc. ("PSE") and [\_\_\_\_\_] ("Consultant").

### Section 1. The Services

- 1.1 Consultant shall perform the services described in the attached Schedule A, which is incorporated herein by this reference.
- 1.2 Except as otherwise specifically provided in this Agreement, Consultant shall furnish the following, all as the same may be required to perform the services described in paragraph 1.1 in accordance with this Agreement: personnel, labor and supervision; technical, professional and other services; equipment, materials, goods and other property; and data, information, computer programs and other items. All such services, property and other items furnished or required to be furnished, together with all other obligations performed or required to be performed, by Consultant under this Agreement are sometimes collectively referred to in this Agreement as the "Services."
- 1.3 All provisions of this Agreement are intended to be correlative and complementary, and any Services required by one provision and not mentioned in another shall be performed to the same extent as though required by all. Details of the Services that are necessary to carry out the intent of this Agreement, but that are not expressly required, shall be performed or furnished by Consultant as part of the Services, without any increase in the compensation otherwise payable under this Agreement.

### Section 2. Schedule

- 2.1 If a schedule for performance of any Services is specified in or pursuant to this Agreement, Consultant shall commence, prosecute and complete such Services in accordance with such schedule.
- 2.2 If a schedule for performance of any Services is not specified in or pursuant to this Agreement, Consultant shall commence such Services upon notice to proceed from PSE and shall thereafter diligently prosecute such Services to completion.

### Section 3. Compensation

- 3.1 As full compensation for satisfactory performance of the Services, PSE shall pay Consultant the compensation described in Schedule A.

## **Exhibit B. Prototype Energy Efficiency Agreement**

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- 3.2 Unless otherwise provided for in Schedule A, Consultant shall submit to PSE, within twenty (20) days after the end of each calendar month, Consultant's invoice for the compensation payable pursuant to this Agreement for the Services performed during such month. Each of Consultant's invoices shall set forth a detailed description of the Services performed during the applicable month, the number of hours spent performing such Services, the dates on which such Services were performed and a detailed itemization of any reimbursable costs and expenses incurred in connection with such Services. Further, Consultant shall provide with respect to each such invoice such receipts, documents, compensation segregations, information and other items as PSE may reasonably request to verify the invoice.
- 3.3 Consultant shall place the number of this Agreement on all of its invoices. Consultant shall submit such invoices by mailing to PSE at its address for notices specified in this Agreement or such other address as PSE may provide in writing to Consultant. PSE may change such address for invoices by giving Consultant written notice of the change.

PSE shall pay amounts due and owing stated in each of Consultant's invoices within thirty (30) days after PSE's receipt and verification thereof.

### **Section 4. Performance by Consultant**

- 4.1 Consultant shall not (by contract, operation of law or otherwise) delegate or subcontract performance of any Services to any other person or entity without the prior written consent of PSE. Any such delegation or subcontracting without PSE's prior written consent shall be voidable at PSE's option. No delegation or subcontracting of performance of any of the Services, with or without PSE's prior written consent, shall relieve Consultant of its responsibility to perform the services in accordance with this Agreement. Consultant shall be fully responsible for the performance, acts and omissions of Consultant's employees, Consultant's subcontractors and any other person or entity that performs or furnishes any Services (collectively, the "Support").
- 4.2 Consultant shall at all times be an independent contractor and not an agent or representative of PSE with regard to performance of the Services. Consultant shall not represent that it is, or hold itself out as, an agent or representative of PSE. In no event shall Consultant be authorized to enter into any agreement or undertaking for or on behalf of PSE.
- 4.3 Consultant shall perform the Services in a timely manner and in accordance with the standards of the profession. At the time of performance, Consultant shall ensure that it is properly licensed, equipped, organized and financed to perform the Services in accordance with this Agreement. Subject to compliance with the requirements of this Agreement, Consultant shall perform the Services in accordance with its own methods.
- 4.4 Consultant shall fully cooperate with PSE and coordinate the Services with related work performed by PSE and others. If any Services depend upon the results of work performed by PSE or others, Consultant shall, prior to commencing such Services, notify PSE of any actual or apparent deficiencies or defects in such other work that render such other work unsuitable for performance of the Services in accordance with this Agreement.
- 4.5 Consultant shall not hire any employee of PSE to perform any of the Services. Consultant shall employ persons to perform the Services who are fully experienced and properly qualified to perform the same. Consultant shall, if so requested by PSE, remove from performance of the Services any person PSE determines to be incompetent, careless or otherwise objectionable. Without limitation of the foregoing, Consultant shall assign to performance of the Services any

## Exhibit B. Prototype Energy Efficiency Agreement

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personnel specified in this Agreement and shall not (for so long as they remain in Consultant's employ) reassign or remove any of them without the prior written consent of PSE. If any such personnel leave Consultant's employ or are reassigned or removed by Consultant, Consultant shall replace them with personnel acceptable to PSE.

- 4.6 Consultant shall promptly pay (and secure the discharge of any liens asserted by) all Support. Consultant shall furnish to PSE such releases of claims and other documents as may be requested by PSE to evidence such payment (and discharge).
- 4.7 Consultant shall take all reasonable precautions to protect against any bodily injury (including death) or property damage that may occur in connection with the Services. Without limiting the generality of the foregoing, Consultant shall provide all required safety equipment, safe tools and a safe work place for all Support.

### Section 5. Compliance with Laws

- 5.1 Consultant shall comply (and shall use its best efforts to ensure that the Services and Support comply) with all applicable laws, ordinances, rules, regulations, orders, licenses, permits and other requirements, now or hereafter in effect, of any governmental authority (including, but not limited to, such requirements as may be imposed upon PSE and applicable to the Services). Consultant shall furnish such documents as may be required to effect or evidence such compliance. All laws, ordinances, rules, orders required to be incorporated in agreements of this character are incorporated in this Agreement by this reference.
- 5.2 To the extent applicable, Consultant shall comply with Executive Order No. 11246, the Rehabilitation Act of 1973 and the Vietnam Era Veterans' Readjustment Assistance Act of 1972 and all of the orders, rules and regulations promulgated thereunder (including, but not limited to, 41 CFR Part 60-1, 41 CFR Part 60-250 and 41 CFR Part 60-741), all as the same may have been or may be amended from time to time. The "equal opportunity clause" set forth in 41 CFR Section 60-1.4, the "Affirmative Action Obligations for Disabled Veterans and Veterans of the Vietnam Era" clause of 41 CFR Section 60-250.4 and the "Affirmative Action for Handicapped Workers" clause of 41 CFR Section 60-741.4 are incorporated herein by this reference. Consultant certifies that segregated facilities (within the meaning of 41 CFR Section 60-1.8) are not and will not be maintained or provided for Consultant's employees and that Consultant will not permit its employees to work at any location under Consultant's control where segregated facilities are maintained. Consultant shall obtain a similar certification from other parties as required by 41 CFR Section 60-1.8.

### Section 6. Inspection; Examination of Records

- 6.1 The Services shall at all times be subject to inspection by and to the acceptance of PSE, but the making of (or failure or delay in making) any inspection or granting any acceptance shall not relieve Consultant of responsibility for performance of the Services in accordance with this Agreement, notwithstanding PSE's knowledge of defective or non-complying performance, its substantiality or the ease of its discovery. Consultant shall provide PSE sufficient, safe and proper facilities and equipment for such inspection and free access to such facilities.

## Exhibit B. Prototype Energy Efficiency Agreement

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- 6.2 Consultant shall promptly furnish PSE with such information related to the Services as may be requested by PSE. Until the expiration of three (3) years after final payment of the compensation payable under this Agreement, Consultant shall provide PSE access to (and PSE shall have the right to examine, audit and copy) all of Consultant's books, documents, papers and records that are related to the Services or this Agreement.

### Section 7. Property and Confidential Information

- 7.1 PSE shall own all products, writings, information, and other property, whether tangible or intangible, created, made, developed, first reduced to practice or acquired by Consultant or any Support in connection with the Services or this Agreement (including, but not limited to, inventions, processes, methods, concepts, documents, drawings, specifications, calculations, maps, sketches, notes, reports, data, estimates, models, samples, completed Services and Services in progress) whether or not delivered to PSE. Consultant hereby assigns to PSE, and shall cause all Support to assign to PSE, any and all patent, copyright, trade secret and other intellectual property rights that Consultant or any Support may have in and to such property, subject to the reservation set forth in paragraph 7.3. Consultant shall take such action (including, but not limited to, the execution, acknowledgment and delivery of documents) as may be requested by PSE to effect, perfect or evidence PSE's ownership of such property. Consultant shall deliver such property (together with any property furnished by PSE or the cost of which is included in the compensation payable under this Agreement) to PSE upon request and in any event upon the completion, termination or cancellation of this Agreement.
- 7.2 Consultant hereby grants to PSE a permanent, assignable, non-exclusive, royalty-free license to use any products, writings, information and other property, whether tangible or intangible, that is not described in paragraph 7.1, but that is furnished by Consultant or Support in connection with the Services or otherwise under this Agreement.
- 7.3 Consultant reserves or is hereby granted a perpetual, non-assignable, nonexclusive, royalty-free license to use in its performance of professional services for others any inventions, processes, methods or concepts created, made, developed, first reduced to practice or acquired by Consultant in connection with the Services.
- 7.4 Consultant shall not, and shall cause the Support not to, without the prior written consent of PSE, disclose to any third party any information received in connection with the Services unless:
- (a) the information is known to Consultant prior to receiving the same directly or indirectly in connection with the Services;
  - (b) the information is generally available to the public at the time of disclosure by Consultant (other than by reason of any breach of this paragraph 7.4);
  - (c) the information is received by Consultant from a third party who does not have any obligation to keep the same confidential; or
  - (d) the information is legally required to be disclosed, provided that the disclosing party is given reasonable prior notice to enable it to seek a protective order, and Consultant discloses only that information which, in the reasonable judgment of its counsel, is required to be disclosed.

## Exhibit B. Prototype Energy Efficiency Agreement

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If so requested by PSE, Consultant shall obtain from Support nondisclosure agreements in form and content satisfactory to PSE.

- 7.5 Except as may be required by law, neither party to this Agreement shall, without the prior written consent of the other, make any news release or public announcement or place any advertisement stating that PSE and Consultant have contracted for the Services specified in this Agreement or have entered into any business relationship. Consultant shall not use any PSE name, trademark or service mark in any promotional materials of Consultant without PSE's prior written consent, which is subject to the sole discretion of PSE to grant or withhold. In the event that PSE approves the use of its name, trademark, or service mark in any announcement, news release or promotional materials of Consultant, all of the contents shall be submitted to PSE's Corporate Communications Department for review prior to any publication by Consultant.

### Section 8. Release, Indemnity and Hold Harmless

- 8.1 Subject to the limitations set forth in paragraph 8.3, Consultant releases and shall defend, indemnify and hold harmless PSE from and against all claims, costs, liabilities, damages and expenses (including, but not limited to, reasonable attorneys' fees) arising, directly or indirectly, out of or in connection with any of the following:
- (a) any fault, negligence, strict liability or product liability of Consultant or any Support in connection with the Services or this Agreement;
  - (b) any lien asserted by any Support upon any property of PSE in connection with the Services or this Agreement;
  - (c) any failure of Consultant, any Support or the Services to comply with any applicable law, ordinance, rule, regulation, order, license, permit and other requirement, now or hereafter in effect, of any governmental authority; and
  - (d) any breach of or default under this Agreement by Consultant.
- 8.2 To the fullest extent permitted by applicable law, paragraph 8.1 shall apply regardless of any fault, negligence, strict liability or product liability of PSE; provided, however, that paragraph 8.1 shall not require Consultant to indemnify PSE against any liability for damages arising out of bodily injury or property damage caused by or resulting from the sole negligence of PSE. Further, in the case of concurrent negligence of Consultant and/or any Support, on the one hand, and PSE, on the other hand, Consultant shall be required to indemnify PSE only to the extent of the negligence of the Consultant and/or the Support.
- 8.3 In connection with any action to enforce Consultant's obligations under paragraph 8.1 above, Consultant waives any immunity, defense or protection under any workers' compensation, industrial insurance or similar laws (including, but not limited to, the Washington Industrial Insurance Act, Title 51, of the Revised Code of Washington).
- 8.4 Consultant releases and shall defend, indemnify and hold harmless PSE from and against all claims, costs, liabilities, damages, expenses (including, but not limited to, reasonable attorneys' fees), and royalties based upon any actual or alleged infringement or misappropriation of any patent, copyright, trade secret, trademark or other intellectual property right by any of the Services. Further, if any of the Services infringes or misappropriates any patent, copyright, trade secret, trademark or other intellectual property right, Consultant shall:

## Exhibit B. Prototype Energy Efficiency Agreement

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- (a) procure for PSE the right to use such Services;
- (b) replace such Services with equivalent Services that do not infringe or misappropriate any such right; or
- (c) modify such Services so that they no longer infringe or misappropriate any such right.

### Section 9. Workers' Compensation and Insurance

- 9.1 With respect to all persons performing the Services, Consultant or its Support shall secure and maintain in effect at all times during performance of the Services insurance coverage in accordance with the applicable laws relating to workers' compensation and employer's liability insurance (including, but not limited to, the Washington Industrial Insurance Act and the laws of the state in which any such person was hired), regardless of whether such insurance coverage is mandatory or merely elective under the law. Consultant shall furnish to PSE such assurance and evidence of such insurance coverage (such as copies of insurance policies and Certificates of Compliance issued by the Washington State Department of Labor and Industries) as PSE may request.
- 9.2 Consultant shall secure and maintain insurance with provisions, coverages and limits substantially as specified in the attached certificate of insurance, endorsement and/or schedule of insurance requirements or, if none is attached, with such provisions, coverages and limits as PSE may from time to time specify to protect PSE, its successors and assigns, and the respective directors, officers, employees, and agents of PSE and its successors and assigns (collectively, the "Additional Insureds") from any claims, losses, harm, costs, liabilities, damages and expenses (including, but not limited to, reasonable attorneys' fees) that may arise out of any property damage, bodily injury (including death) or professional liability related to the Services. Upon PSE's request, Consultant shall furnish PSE with such additional assurance and evidence of such insurance (such as copies of all insurance policies and endorsements) as PSE may request. Within thirty (30) days after any renewal or any notice of termination, cancellation, expiration or alteration in any policy of insurance required under this Agreement, Consultant shall deliver to PSE a certificate of insurance acceptable to PSE with respect to any replacement policy.
- 9.3 All policies of insurance required under this Agreement shall:
- (a) be placed with such insurers and under such forms of policies as may be acceptable to PSE;
  - (b) with the exception of workers' compensation, employer's liability and professional liability insurance, be endorsed to name the Additional Insureds as additional insureds;
  - (c) be primary insurance with respect to the interests of the Additional Insureds;
  - (d) with respect to any insurance or self-insurance maintained by any of the Additional Insureds, be excess and non-contributory insurance with respect to the insurance required hereunder,
  - (e) with the exception of workers' compensation, employer's liability and professional liability insurance, apply severally and not collectively to each insured against whom any claim is made or suit is brought, except that the inclusion of more than

## Exhibit B. Prototype Energy Efficiency Agreement

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one insured shall not operate to increase the insurance company's limits of liability as set forth in the insurance policy; and

- (f) provide that the policies shall not be canceled or their limits or coverage reduced or restricted without giving at least 30 days' prior written notice to the Contract Services Department of Puget Sound Energy, Inc., P.O. Box 90868, Bellevue, WA 98009-0868.

- 9.4 Consultant shall ensure that any policy of insurance that Consultant or any Support carries as insurance against property damage or against liability for property damage or bodily injury (including death) shall include a provision providing a waiver of the insurer's right to subrogation against each of the Additional Insureds. To the extent permitted by its policies of insurance, Consultant hereby waives all rights of subrogation against each of the Additional Insureds.
- 9.5 The requirements of this Agreement as to insurance and acceptability to PSE of insurers and insurance to be maintained by Consultant are not intended to and shall not in any way limit or otherwise affect any other obligation of Consultant under this Agreement.

### Section 10. Changes

- 10.1 PSE may at any time, by written notice thereof to Consultant, make changes in the Services within the general scope of this Agreement (including, but not limited to, additions to or deletions from any Services, suspension of performance and changes in the schedule and location of performance).
- 10.2 If any change under paragraph 10.1 causes an increase or decrease in the cost of or the time required for, performance of the Services, an equitable adjustment in the compensation and schedule under this Agreement shall be made to reflect such increase or decrease, and this Agreement shall be modified in writing accordingly. Such equitable adjustment shall constitute full compensation to Consultant for such change. If any change under paragraph 10.1 results in a decrease in the Services to be performed, Consultant shall not be entitled to anticipated profit on Services not performed and the loss of anticipated profit shall not reduce the decrease in compensation under this Agreement resulting from such change. Further, Consultant shall not be entitled to any reallocation of cost, profit or overhead.
- 10.3 Notwithstanding any dispute or delay in arriving at a mutually acceptable equitable adjustment under paragraph 10.2, Consultant shall immediately proceed with performance of the Services as changed pursuant to paragraph 10.1. If Consultant intends to assert a claim for equitable adjustment under paragraph 10.2, Consultant must, within fifteen (15) days after Consultant's receipt of any notice under paragraph 10.1 that does not set forth an adjustment acceptable to Consultant, submit to PSE a written statement of the basis and nature of the adjustment claimed. Consultant shall not be entitled to any adjustment unless such written statement is submitted by Consultant to PSE within the applicable fifteen (15) day period.

### Section 11. Correction of Non-compliances

- 11.1 Consultant shall, at its expense, promptly correct, to PSE's satisfaction, any Services found to be defective or not in compliance with the requirements of this Agreement.

## Exhibit B. Prototype Energy Efficiency Agreement

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- 11.2 If PSE directs Consultant to correct defective or non-complying Services or to otherwise achieve compliance with this Agreement and Consultant thereafter fails to comply or indicates its inability or unwillingness to comply, then PSE may, upon ten (10) days' advance written notice to Consultant of PSE's intention to do so, correct (or cause to be corrected) the defect or noncompliance or otherwise achieve compliance by the most expeditious means available to it (by contract or otherwise) and charge to or otherwise recover from Consultant (e.g., by setoff against compensation payable under this Agreement) the cost thereof.
- 11.3 PSE's right to make corrections and otherwise achieve compliance and recover from Consultant the cost thereof is in addition to all other rights and remedies available to PSE under this Agreement or otherwise by law and shall in no event be construed or interpreted as obligating PSE to make any correction of defective or non-complying Services or to otherwise achieve compliance with this Agreement. Consultant's obligation to correct defective or non-complying Services shall not in any way limit or otherwise affect any other obligation of Consultant under this Agreement. Further, Consultant's obligations shall not be limited or affected in any way by any corrections or other obligations performed (or caused to be performed) by PSE or by PSE's right to perform (or cause to be performed) the same.

### Section 12. Termination

- 12.1 PSE may at any time, by written notice thereof to Consultant, terminate this Agreement as to all or any portion of the Services not then performed, whether or not Consultant is then in breach or default. Upon receipt of any such notice of termination, Consultant shall, except as otherwise directed by PSE, immediately stop performance of the Services to the extent specified in such notice.
- 12.2 In the event of termination pursuant to paragraph 12.1, an equitable adjustment shall be made in the compensation payable to Consultant under this Agreement; provided, that such compensation as so adjusted shall in no event exceed a percentage of the total compensation otherwise payable under this Agreement equal to the percentage of the Services satisfactorily completed at the time of termination. Further, Consultant shall not be entitled to any reallocation of cost, profit or overhead. Consultant shall not in any event be entitled to anticipated profit on Services not performed on account of such termination. Consultant shall use its best efforts to minimize the compensation payable under this Agreement in the event of such termination.
- 12.3 If PSE purports to terminate or cancel all or any part of this Agreement for Consultant's breach or default when Consultant is not in breach or default which would permit such termination or cancellation, such termination or cancellation shall be deemed to have been a termination by PSE pursuant to paragraph 12.1 and the rights of the parties shall be determined accordingly.

### Section 13. Performance Reductions

The parties hereto acknowledge that under the settlement of PSE's 2001 general rate case, Docket Nos. UE-11570 and UG-011571, approved by the Washington Utilities and Transportation Commission in its Twelfth Supplemental Order dated June 20, 2002, PSE is responsible for meeting annual energy savings targets and is liable financially should targets not be met. Consultant agrees to participate in such responsibility and liability by accepting an energy savings target equal to [\_\_\_\_\_] kilowatt-hours per year. If Consultant fails to meet such energy savings target, or if Consultant otherwise



## Exhibit B. Prototype Energy Efficiency Agreement

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impedes or undermines PSE's ability to achieve targeted energy efficiencies with customers of PSE similarly situated to those targeted by Consultant for energy efficiencies, the Services provided by Consultant under this Agreement shall be deemed to be decreased, and PSE shall have the right to reasonably adjust the compensation under this Agreement to reflect Consultant's equitable share of the responsibility and financial liability of PSE under the Conservation Settlement for annual energy savings targets not being met.

### Section 14. Miscellaneous

- 14.1 Any notice, request, designation, direction, statement or other communication under this Agreement shall be in writing and shall be delivered in person or mailed, properly addressed and stamped with the required postage, to the intended recipient at the address and to the attention of the person specified in Schedule A. Either party hereto may change its address specified in Schedule A by giving the other party notice of such change in accordance with this paragraph.
- 14.2 Consultant shall not (by contract, operation of law or otherwise) assign this Agreement or any right or interest in this Agreement without the prior written consent of PSE. For the purposes of the foregoing, any transfer of a controlling interest in Consultant by a transfer of Securities or otherwise, and any transfer of all or substantially all of the assets of Consultant, shall be deemed an assignment of this Agreement. Any assignment without PSE's prior written consent shall be voidable at PSE's option. No such assignment, with or without PSE's prior written consent, shall relieve Consultant of its responsibility to perform the Services in accordance with this Agreement. Subject to the foregoing restriction on assignment by Consultant, this Agreement shall be fully binding upon, inure to the benefit of and be enforceable by the respective successors, assigns and legal representatives of the parties to this Agreement.
- 14.3 The failure of PSE to insist upon or enforce strict performance by Consultant of any of the provisions of this Agreement or to exercise any rights under this Agreement shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon any such provisions or rights in that or any other instance; rather, the same shall be and remain in full force and effect.
- 14.4 The obligations of Consultant under Sections 6, 7, 8, 11, 12, 13 and 14, and all provisions of this Agreement that may reasonably be interpreted or construed as surviving the completion, termination or cancellation of this Agreement, shall survive the completion, termination or cancellation of this Agreement.
- 14.5 The rights and remedies of PSE set forth in any provision of this Agreement are in addition to and do not in any way limit any other rights or remedies afforded to PSE by any other provision of this Agreement, by any Support or by law.
- 14.6 This Agreement sets forth the entire agreement of the parties hereto, and supersedes any and all prior agreements, with respect to the Services. No amendment or modification of any provision of this Agreement (other than changes pursuant to Section 10) shall be valid unless set forth in a written amendment to this Agreement signed by both parties.
- 14.7 The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted. The headings of sections of this Agreement are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such sections.

# Exhibit B. Prototype Energy Efficiency Agreement

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- 14.8 Consultant shall not commence or prosecute any suit, proceeding of claim to enforce the provisions of this Agreement, to recover damages for breach of or default under this Agreement, or otherwise arising under or by reason of this Agreement, other than in the courts of the State of Washington or the United States District Court, Western District of Washington. Consultant hereby irrevocably consents to the jurisdiction of the courts of the State of Washington with venue laid in King County and the United States District Court, Western District of Washington, at Seattle.
- 14.9 This Agreement shall be interpreted, construed and enforced in all respects in accordance with the laws of the State of Washington, without regard to such state's conflict of laws principles.

PSE: **Puget Sound Energy, Inc.**

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

By \_\_\_\_\_

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

Consultant: [ \_\_\_\_\_ ]

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

By \_\_\_\_\_

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

# **Exhibit B. Prototype Energy Efficiency Agreement**

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## **SCHEDULE A**

### **AGREEMENT FOR PROFESSIONAL SERVICES**

**NO. [\_\_\_\_\_]**

#### **Section 1. Scope of Services**

[Describe.]

Any additional work required or changes in the work specified will be by written change orders signed by authorized representatives of Consultant and PSE prior to commencement of any additional work or changes in the work specified.

#### **Section 2. Schedule for Performance**

Consultant shall commence its Services on [\_\_\_\_\_], 200[\_\_\_], and thereafter diligently prosecute the Services to completion on [\_\_\_\_\_], 200[\_\_\_] or notification of termination according to Section 12 of the Agreement for Professional Services.

#### **Section 3. Compensation**

As full compensation for satisfactory performance of the Services, PSE shall pay Consultant [describe]. The total amount of this contract will not exceed \$[\_\_\_\_\_] for Consultant's Services [and \$[\_\_\_\_\_] for product rebates] without the prior written consent of an authorized representative of PSE. [The amount for the product rebates will be payable in advance in order to meet Consultant's payment obligations to retailers. The balance will be payable upon receipt of Consultant's invoice detailing the then current charges for work completed by Consultant.]

# Exhibit B. Prototype Energy Efficiency Agreement

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## Section 4. Address for Notices

### To Puget Sound Energy, Inc.:

For All Matters Related to Technical Specifications and Project Oversight:

Puget Sound Energy, Inc.  
Energy Efficiency Services  
355 110<sup>th</sup> Avenue NE, EST-10W  
Bellevue, WA 98004  
Attn: [\_\_\_\_\_] ]  
Tel: (425) [\_\_\_\_\_] ]

For All Matters Related to the Parties' Contractual Relationship or Other Legal Notices:

Puget Sound Energy, Inc.  
Purchasing Department  
10885 NE 4th Street, PSE-10  
Bellevue, WA 98004  
Attn: [\_\_\_\_\_] ]  
Tel: (425) [\_\_\_\_\_] Fax: (425)  
[\_\_\_\_\_] ]

To Consultant:

[Name]  
[Address]  
Attn: [\_\_\_\_\_] ]  
Tel: [\_\_\_\_\_] ]

## Exhibit C. Measure Lives

Commercial and Industrial Measures	Years
<b>Commercial and Industrial HVAC and Refrigeration</b>	
HVAC -Unitary Systems	15
HVAC - Central Systems	15
Heat Recovery Systems	15
Chillers	20
<b>Commercial and Industrial Controls</b>	
HVAC Controls, including Energy Management Systems	15
Lighting Control Systems	15
Process and Other Efficiency Control Systems	10
Commissioning/Retro-commissioning	5
<b>Commercial and Industrial Process Efficiency Improvements</b>	
Refrigeration Systems	19
Motor and Drive Systems	15
Fan, Compressor and Pump Systems	15
ENERGY STAR Qualified Transformers	15
Other Process Modifications	15
Food Storage – Free standing Freezers	19
Food Storage – Free standing Refrigerators	19
Laundry - Commercial ENERGY STAR Qualified Clothes Washer	8
<b>Commercial and Industrial Lighting Improvements</b>	
Fluorescent, Compact Fluorescent, or HID Luminaires/Fixtures	12
LED and EL Exit Signs	10
Low Voltage Halogen	10
<b>Commercial and Industrial Building Thermal Improvements</b>	
Roof, Ceiling and Wall Insulation	15
Exterior Roof Insulation	10
Duct Insulation	15
Insulated Windows (minimum Class .35 for new construction)	20
<b>Commercial and Industrial Domestic Water Heating Improvements</b>	
Insulation	10
Low Flow Devices	5
Heat Pump Water Heaters	15
Water Heater Tank, not to exceed warranty period	Up to 15

Measure lives are consistent with PSE's filed Electricity Conservation tariffs and/or RTF.

This list may not include all possible measures. For Measures not listed, respondent should recommend a measure life, with supporting data, experience, or evaluation findings.

See next page for residential measures.

## Exhibit C. Measure Lives

Residential Measures	Years
<b>Residential Lighting</b>	
Screw-in CFL's (ENERGY STAR qualified)	9
CFL Fixtures (ENERGY STAR qualified)	15
<b>Residential HVAC</b>	
Air-source heat pump conversions-Mobile homes (ENERGY STAR qualified & install to RTF specification)	18
Air-source heat pump upgrades-Mobile homes (ENERGY STAR qualified & install to RTF specification)	18
Heating supply duct sealing - Single family (PTCS or qualifying equivalent specification)	20
Heating duct sealing - Mobile home (PTCS or qualifying equivalent specification)	20
Heating supply duct insulation	20
<b>Residential Water Heating</b>	
Domestic water heater (natural gas) = .62 EF or greater	12
Water heater pipe insulation	15
Shower head & aerator replacement	6
<b>Residential Envelope – Existing &amp; New Construction</b>	
Shell insulation - Single & Multi-family	30
<b>Residential Appliances</b>	
Dishwasher (ENERGY STAR qualified)	9
Washing machine (ENERGY STAR qualified)	14

Measure lives are consistent with PSE's filed electricity conservation tariffs and/or RTF.

This list may not include all possible measures. For measures not listed, respondent should recommend a measure life, with supporting data, experience, or evaluation findings.

# Exhibit D. Proposal Cost Detail and Calculation of Conservation Cost Effectiveness

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## 1 Description of Tests

Puget Sound Energy will evaluate the cost effectiveness of proposals using a standard Utility Cost Test and a Total Resource Cost Test.

**Total Resource Cost Test (TRC Test)** measures the net value of energy efficiency programs to society as a whole. The TRC Test is a cost-effectiveness calculation which demonstrates if the total benefits, including electricity (defined by the **Conservation Cost Effectiveness Standard**) and other savings benefits, exceed total costs including those incurred by PSE, the Respondent, the customer, and any other contributing party. The benefits and costs not directly associated with electrical energy efficiency in this calculation may be difficult to quantify.

**Utility Cost Test (UC Test)** measures the net value of energy efficiency programs to the sponsoring utility. The UC Test is a cost-effectiveness calculation which demonstrates that the utility electricity savings benefits (defined by the **Conservation Cost Effectiveness Standard**), exceed the costs incurred by the utility.

**Conservation Cost Effectiveness Standard (CCES)** shows the full “avoided cost” to PSE of the energy saved, for the Type of Savings (defined by end use load shape and customer class) and life of the energy savings, or Measure Life. The CCES is based on the market costs projected by a power costing model, which would otherwise be incurred to provide energy from a generation source either directly or by contract plus credits for transmission and distribution system benefits, environmental externalities, and line losses. This value is expressed as the levelized value per kWh saved of future energy savings over the life of the measure. The CCES is based on Aurora forecast power costs at Mid-Columbia, and adds 35% for a power planning adjustment, 10% for environmental credits, 7.6% Residential and 6.1% Commercial/Industrial for avoided transmission and distribution losses, a valuation for avoided peak capacity, and \$31.87/kW-year distribution benefit. Load factors from the analysis in PSE’s 2007 IRP are used for end-use load shapes that define Type of Savings. Each Type of Savings has a CCES, or a value per kWh or Therm per Measure Life, up to 30 years. The values for the natural gas and electric CCES used to evaluate PSE’s 2008 - 2009 programs are shown in **Table D-1**.

Cost effectiveness of projects will allow for PSE administrative costs. PSE’s costs are expected to vary, depending upon the proposal content. At a minimum, PSE costs include some project management activities, coordination with customer data, and conducting customer satisfaction surveys for the respondent’s program activity.

## 2 Calculation Methodology

Puget Sound Energy’s determination that an energy efficiency project is cost-effective is a two-step process.

Step 1: The **Total Resource Cost test** determines that the value of all benefits of doing the project (energy savings plus other benefits like maintenance savings, improved productivity, etc.) is *greater than* the total projects costs. (Note: If the value of the energy benefits alone exceed the total cost, the equation is satisfied without the need to quantify further benefits.)

$$\text{Total benefits (\$)} > \text{Total costs (\$)}$$

# Exhibit D. Proposal Cost Detail and Calculation of Conservation Cost Effectiveness

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Step 2: IF Step 1 is satisfied, OR

IF: Total costs < 150% of value of energy benefits, AND there are documented additional benefits which cannot easily be quantified (e.g. improved indoor air quality), then the utility funding is limited by the Utility Cost Test

Utility benefits (\$) > Utility costs (\$),

also expressed as:

Value of kWh Savings (for measure life) > Utility funding (customer incentives + PSE administrative costs + Respondent costs.

## 3 Data Requirements

Puget Sound Energy requires the following data elements from the respondent to effectively consider cost effectiveness of the Proposal. These data elements are listed with short descriptions below.

**Exhibit I, Table 3**, 'Proposal Cost Effectiveness Input Sheet', is a template for providing the following information. Enter the information in the appropriate Column, based on the Type of Savings. All respondents must include this table in the Program Summary section at the beginning of each proposal.

- **Type of Savings.** Refer to customer segment and major end-use classification, as shown in column headers in **Table A-3** and **Exhibit A, Table 2**. Where a proposal may include more than one measure, involving more than one Type of Savings, each of the following items is required for each Type of Savings.
- **Number of Units.** Show the appropriate basis for reporting participation, expressed as the total number of units of an efficiency measure to be installed. In some cases, units may equal number of customers. In programs targeting a specific measure(s), units should equal number of measures to be installed. Respondents shall provide a unit definition as well as the projected number of units for each type of measure being installed.
- **Average Measure Life.** Provide the Measure Life, in years, for the measure. Where installations will result in varying measure lives, provide a weighted average life. Where measure lives are not provided in **Exhibit C**, or the respondent proposes a value that is different from those listed in **Exhibit C**, rationale and justification of the measure life should be attached.
- **Annual kWh Savings per unit.** Provide the average, one-full-year of kWh savings from the proposed unit; to be itemized for each proposed measure. (Average) Annual kWh savings per unit, times the Number of Units should result in the anticipated savings from all of the installations of this specific measure.
- **Measure Cost per unit.** Provide the known and measurable costs borne by all parties of purchasing and installing a unit energy-efficient measure at the customer's facility, not to include incentives, implementation costs, administrative costs, or ongoing operation and



## Exhibit D. Proposal Cost Detail and Calculation of Conservation Cost Effectiveness

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maintenance costs. Where the Measure Cost is expected to vary considerably across installations, provide an "average" measure cost such that the unit Measure Cost times the Number of Units represents the total costs of all measures installed.

- Operation & Maintenance (O&M) Costs. Provide the periodic or ongoing costs to ensure proper performance of a measure over its useful life; to be itemized on a unit basis for each proposed measure type.
- Incentive Amount: Provide the unit amount of grant or rebate paid to customers, vendors, or other identified parties, as an incentive to sell, purchase and/or install energy efficient measures.

Using **Exhibit A, Table 4**, 'Proposal Cost Summary Sheet', provide an itemized breakdown of the following project cost elements:

- Installed Measure Costs. Show all costs associated with the purchase and installation of measures at PSE-customer facilities.
- Program Implementation Costs. Detail the respondent's cost to field the proposed program excluding direct measure installation costs and administrative.
- Administrative Costs. Itemize, as shown in **Table A-4**, the respondent's remaining costs to administer the proposed program, not included elsewhere, such that the total costs included in the proposal have been captured when summing Administrative, Program Implementation and Installed Measure Costs, for inclusion in PSE's cost-effectiveness analysis.
- Total Respondent Costs. This line shows are the totals of Installed Measure Costs, Program Implementation Costs, and Administrative Costs and should equal the total proposal bid amount, per **Section 5.7.4**.
- O&M Costs. Include O&M costs that can be expected to maintain the installed measure in efficient operation over its measure life.
- Customer Costs. Indicate the portion of Measure Cost incurred by the customer, net of any Incentive Amount paid to the customer,
- Third-Party Contribution. Show funding contributions obtained from a party other than Puget Sound Energy or the participating customer.
- Quantifiable Non-Energy Savings Cost (Benefit). Provide the dollar value of non-energy costs (benefits) to the customer or society. Like annual energy savings, these costs (benefits) may recur on an annual or other periodic basis over the life of the program. Quantified Non-Energy Cost (Benefit) must be clearly described as well as quantified.
- Non-quantifiable, Non-Energy Savings Cost (Benefit): List and describe all Non-Energy Savings costs (benefits) of undertaking energy efficiency improvements that can be identified but not quantified.

# Exhibit D. Proposal Cost Detail and Calculation of Conservation Cost Effectiveness

**Table D-1. Electric Conservation Cost Effectiveness Standard – 2008 – 2009 (\$/kWh)**

Measure Life	Residential Space Heat	Residential Water Heat	Residential Lighting	Residential Dryer	Residential Heat Pump	Commercial Appliances	Commercial Cooling	Commercial Heating	Commercial Lighting	Industrial/ Flat	Commercial Ventilation
1	\$ 0.126	\$ 0.111	\$ 0.106	\$ 0.118	\$ 0.111	\$ 0.105	\$ 0.113	\$ 0.156	\$ 0.104	\$ 0.097	\$ 0.103
2	\$ 0.124	\$ 0.109	\$ 0.104	\$ 0.116	\$ 0.109	\$ 0.103	\$ 0.111	\$ 0.155	\$ 0.101	\$ 0.095	\$ 0.101
3	\$ 0.123	\$ 0.108	\$ 0.102	\$ 0.115	\$ 0.107	\$ 0.102	\$ 0.109	\$ 0.153	\$ 0.100	\$ 0.094	\$ 0.100
4	\$ 0.121	\$ 0.106	\$ 0.101	\$ 0.113	\$ 0.106	\$ 0.100	\$ 0.108	\$ 0.152	\$ 0.098	\$ 0.092	\$ 0.098
5	\$ 0.122	\$ 0.107	\$ 0.102	\$ 0.114	\$ 0.106	\$ 0.101	\$ 0.109	\$ 0.152	\$ 0.100	\$ 0.094	\$ 0.099
6	\$ 0.123	\$ 0.109	\$ 0.104	\$ 0.116	\$ 0.107	\$ 0.103	\$ 0.110	\$ 0.154	\$ 0.101	\$ 0.095	\$ 0.101
7	\$ 0.124	\$ 0.111	\$ 0.105	\$ 0.118	\$ 0.109	\$ 0.104	\$ 0.112	\$ 0.155	\$ 0.102	\$ 0.096	\$ 0.102
8	\$ 0.125	\$ 0.112	\$ 0.106	\$ 0.119	\$ 0.109	\$ 0.105	\$ 0.113	\$ 0.156	\$ 0.103	\$ 0.097	\$ 0.103
9	\$ 0.126	\$ 0.113	\$ 0.107	\$ 0.120	\$ 0.110	\$ 0.106	\$ 0.113	\$ 0.157	\$ 0.104	\$ 0.098	\$ 0.104
10	\$ 0.127	\$ 0.114	\$ 0.108	\$ 0.121	\$ 0.111	\$ 0.107	\$ 0.114	\$ 0.158	\$ 0.105	\$ 0.099	\$ 0.105
11	\$ 0.128	\$ 0.115	\$ 0.109	\$ 0.122	\$ 0.112	\$ 0.108	\$ 0.115	\$ 0.159	\$ 0.106	\$ 0.100	\$ 0.106
12	\$ 0.129	\$ 0.116	\$ 0.110	\$ 0.123	\$ 0.113	\$ 0.109	\$ 0.116	\$ 0.160	\$ 0.107	\$ 0.101	\$ 0.107
13	\$ 0.130	\$ 0.117	\$ 0.111	\$ 0.124	\$ 0.113	\$ 0.110	\$ 0.117	\$ 0.161	\$ 0.108	\$ 0.102	\$ 0.108
14	\$ 0.131	\$ 0.118	\$ 0.112	\$ 0.125	\$ 0.114	\$ 0.111	\$ 0.117	\$ 0.162	\$ 0.109	\$ 0.103	\$ 0.109
15	\$ 0.132	\$ 0.119	\$ 0.113	\$ 0.126	\$ 0.115	\$ 0.112	\$ 0.118	\$ 0.164	\$ 0.110	\$ 0.104	\$ 0.110
16	\$ 0.126	\$ 0.111	\$ 0.106	\$ 0.118	\$ 0.111	\$ 0.105	\$ 0.113	\$ 0.156	\$ 0.104	\$ 0.097	\$ 0.103
17	\$ 0.124	\$ 0.109	\$ 0.104	\$ 0.116	\$ 0.109	\$ 0.103	\$ 0.111	\$ 0.155	\$ 0.101	\$ 0.095	\$ 0.101
18	\$ 0.123	\$ 0.108	\$ 0.102	\$ 0.115	\$ 0.107	\$ 0.102	\$ 0.109	\$ 0.153	\$ 0.100	\$ 0.094	\$ 0.100
19	\$ 0.121	\$ 0.106	\$ 0.101	\$ 0.113	\$ 0.106	\$ 0.100	\$ 0.108	\$ 0.152	\$ 0.098	\$ 0.092	\$ 0.098

## Exhibit D. Proposal Cost Detail and Calculation of Conservation Cost Effectiveness

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Measure Life	Residential Space Heat	Residential Water Heat	Residential Lighting	Residential Dryer	Residential Heat Pump	Commercial Appliances	Commercial Cooling	Commercial Heating	Commercial Lighting	Industrial/ Flat	Commercial Ventilation
20	\$ 0.137	\$ 0.124	\$ 0.118	\$ 0.132	\$ 0.120	\$ 0.117	\$ 0.122	\$ 0.170	\$ 0.114	\$ 0.108	\$ 0.114
21	\$ 0.138	\$ 0.125	\$ 0.119	\$ 0.133	\$ 0.121	\$ 0.118	\$ 0.123	\$ 0.171	\$ 0.115	\$ 0.109	\$ 0.115
22	\$ 0.140	\$ 0.126	\$ 0.120	\$ 0.134	\$ 0.122	\$ 0.119	\$ 0.123	\$ 0.172	\$ 0.116	\$ 0.110	\$ 0.116
23	\$ 0.141	\$ 0.127	\$ 0.121	\$ 0.135	\$ 0.123	\$ 0.120	\$ 0.124	\$ 0.173	\$ 0.117	\$ 0.111	\$ 0.117
24	\$ 0.142	\$ 0.128	\$ 0.122	\$ 0.136	\$ 0.124	\$ 0.120	\$ 0.125	\$ 0.174	\$ 0.118	\$ 0.112	\$ 0.118
25	\$ 0.142	\$ 0.129	\$ 0.123	\$ 0.137	\$ 0.125	\$ 0.121	\$ 0.126	\$ 0.175	\$ 0.119	\$ 0.112	\$ 0.119
26	\$ 0.143	\$ 0.130	\$ 0.124	\$ 0.137	\$ 0.126	\$ 0.122	\$ 0.126	\$ 0.176	\$ 0.120	\$ 0.113	\$ 0.119
27	\$ 0.144	\$ 0.131	\$ 0.124	\$ 0.138	\$ 0.127	\$ 0.123	\$ 0.127	\$ 0.177	\$ 0.120	\$ 0.114	\$ 0.120
28	\$ 0.145	\$ 0.132	\$ 0.125	\$ 0.139	\$ 0.128	\$ 0.124	\$ 0.128	\$ 0.178	\$ 0.121	\$ 0.115	\$ 0.121
29	\$ 0.146	\$ 0.132	\$ 0.126	\$ 0.140	\$ 0.129	\$ 0.125	\$ 0.128	\$ 0.179	\$ 0.122	\$ 0.116	\$ 0.122
30	\$ 0.147	\$ 0.133	\$ 0.127	\$ 0.141	\$ 0.129	\$ 0.125	\$ 0.129	\$ 0.180	\$ 0.123	\$ 0.116	\$ 0.123

## Exhibit D. Proposal Cost Detail and Calculation of Conservation Cost Effectiveness

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**Table D-2. Gas Conservation Cost Effectiveness Standard,  
2006 – 2007 (Levelized \$/Therm)**

Measure Life	Space Heat Existing	Space Heat New	Water Heat	Process Heat
1	1.124	1.171	1.048	0.962
2	1.143	1.192	1.057	0.968
3	1.146	1.195	1.055	0.964
4	1.141	1.191	1.046	0.953
5	1.140	1.190	1.045	0.952
6	1.143	1.193	1.048	0.954
7	1.146	1.197	1.052	0.957
8	1.150	1.201	1.056	0.960
9	1.154	1.206	1.061	0.964
10	1.161	1.214	1.067	0.970
11	1.168	1.221	1.074	0.976
12	1.176	1.229	1.082	0.983
13	1.184	1.238	1.090	0.991
14	1.193	1.248	1.098	0.997
15	1.202	1.257	1.106	1.004
16	1.212	1.267	1.114	1.011
17	1.221	1.277	1.122	1.018
18	1.230	1.286	1.130	1.026
19	1.239	1.296	1.138	1.033
20	1.248	1.305	1.148	1.040
21	1.257	1.314	1.157	1.047
22	1.253	1.311	1.167	1.041
23	1.264	1.322	1.176	1.050
24	1.275	1.334	1.185	1.058
25	1.285	1.345	1.194	1.067
26	1.295	1.355	1.202	1.075
27	1.305	1.366	1.210	1.083
28	1.315	1.376	1.219	1.091
29	1.324	1.386	1.227	1.099
30	1.333	1.395	1.234	1.106

# **Mutual Confidentiality Agreement**

**Request for Proposals for Electric and Gas Demand-Side Resources**

**January, 2008**

# Exhibit E. Mutual Confidentiality Agreement

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## MUTUAL CONFIDENTIALITY AGREEMENT

This Agreement, dated as of \_\_\_\_\_, 2008, is entered into between Puget Sound Energy, Inc., ("PSE") and \_\_\_\_\_ ("\_\_\_\_\_"). PSE and \_\_\_\_\_ are sometimes referred to in this Agreement as "Party," and collectively as "Parties."

1. The Parties intend to enter into discussions regarding one or more potential transactions between the Parties involving the acquisition of electric energy efficiency resources or pilot projects or both. In the course of these discussions, each Party may disclose Confidential Information to the other. For the purposes of this Agreement, "Confidential Information" means any information or data disclosed in connection with such discussions in any form or media whatsoever by either Party (the "Disclosing Party") to the other Party (the "Receiving Party") which (a) if in tangible form, or other media that can be converted to readable form, is clearly and conspicuously marked as proprietary, confidential or private on each page thereof when disclosed; or (b) if oral or visual, is identified in writing as proprietary, confidential or private at the same time it is disclosed. "Confidential Information" includes all originals, copies, notes, correspondence, conversations and other manifestations, derivations and analysis of the foregoing.

2. Confidential Information shall not include information that (a) is or becomes generally available to the public other than by reason of the Receiving Party's breach of this Agreement; (b) the Receiving Party can reasonably demonstrate (i) was known by the Receiving Party, prior to its disclosure by the Disclosing Party, without any obligation to hold it in confidence, (ii) is received from a third party free to disclose such information without restriction, (iii) is independently developed by the Receiving Party without the use of Confidential Information of the Disclosing Party; (c) is approved for release by written authorization of the Disclosing Party, but only to the extent of such authorization; or (d) is related to the transmission of power, including but not limited to, any information which must be disclosed to the transmission function of a Party as part of any transmission request or information exchange that is required to be made public pursuant to FERC rules and regulations. Notwithstanding anything to the contrary set forth in this Agreement, the Receiving Party shall not be obligated to keep confidential any Confidential Information that (A) is required by law or regulation to be disclosed (including, without limitation, any summary or ranking of any proposal by the Disclosing Party constituting Confidential Information that PSE is required by law to make available to the public), but only to the extent and for the purposes of such required disclosure or (B) is disclosed in response to a valid order or request of a court or other governmental authority having jurisdiction or in pursuance of any procedures for discovery or information gathering in any proceeding before any such court or governmental authority, but only to the extent of and for the purposes of such order, provided that the Receiving Party, who is subject to such order or discovery, give the Disclosing Party reasonable advance notice (e.g., so as to afford the Disclosing Party an opportunity to appear, object and obtain a protective order or other appropriate relief regarding such disclosure). The Receiving Party, who is subject to such order or discovery, shall, at the Disclosing Party's expense, use reasonable efforts to assist the Disclosing Party's efforts to obtain a protective order or other appropriate relief; provided, that the Disclosing Party acknowledges and agrees that the Receiving Party shall have no obligation or responsibility to appear before, or to make any showing to, any court or any other governmental authority in connection with protecting any Confidential Information from disclosure by such court or governmental authority, and such responsibility shall be solely that of the Disclosing Party.

## Exhibit E. Mutual Confidentiality Agreement

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3. The Parties acknowledge that PSE is a public utility regulated by the Washington Utilities and Transportation Commission ("Commission") and that its decisions regarding one or more potential transactions between the Parties involving the acquisition of electric energy efficiency resources or pilot projects, together with related Confidential Information, may be subject to review by the Commission. Notwithstanding the provisions of Section 2, in the event that such PSE decisions are at issue in a proceeding before the Commission, PSE will seek, at its own expense, a protective order from the Commission with "highly confidential provisions" to protect against the disclosure of Confidential Information to competitors and the public. Disclosure of Confidential Information by either of the Parties to the Commission, its staff or its advisors in connection with any such proceeding will not violate this Agreement.

4. The Parties further acknowledge that PSE has been assessing and developing conservation resource opportunities in consultation with PSE's Conservation Resource Advisory Group (CRAG), which was formally established as part of the settlement of PSE's 2001 general rate case that the Commission approved in its Twelfth Supplemental Order in Docket Nos. UE-11570 and UG-011571. The Parties acknowledge that PSE intends to share information with the CRAG about PSE's acquisition of electric energy efficiency resources or pilot projects, which information may include details about potential transactions between the Parties involving such acquisitions, together with related Confidential Information. Disclosure of Confidential Information by PSE to members of the CRAG will not violate this Agreement, provided that PSE first obtains the agreement of such CRAG members to maintain the confidentiality of that information.

5. Each party acknowledges and agrees that it has no proprietary or exclusive right to any tax matter, tax idea, tax structure or tax treatment related to any potential transaction or transaction between the Parties and that no such tax matter, tax idea, tax structure or tax treatment shall be deemed to be the Confidential Information of either Party.

6. The Receiving Party shall, subject to the other provisions of this Agreement, (a) use the Confidential Information only for purposes of evaluating one or more potential transactions between the Parties involving electric energy efficiency resources or pilot projects; (b) restrict disclosure of the Confidential Information to employees, advisors and active or potential investors or lenders of the Receiving Party and affiliates with a "need to know" and not disclose it to any other person or entity without prior written consent of the Disclosing Party; (c) advise such employees, advisors, investors and lenders who access the Confidential Information of their obligations with respect thereto; and (d) copy the Confidential Information only as necessary for those employees or advisors who are entitled to receive it, and ensure that all confidential notices are reproduced in full on such copies. A "need to know" means that the employee or advisors require the Confidential Information to perform their responsibilities in evaluating or pursuing one or more potential transactions between the Parties involving electric energy efficiency resources or pilot projects.

7. Confidential Information shall be deemed to be the property of the Disclosing Party. This Agreement shall not be interpreted or construed as granting any license or other right under or with respect to any patent, copyright, trademark, trade secret or other proprietary right. The Receiving Party shall, within 30 days of a written request therefor by the Disclosing Party, either return all of the Disclosing Party's Confidential Information (or any designated portion thereof) to the Disclosing Party or destroy all such Confidential Information (or any designated portion thereof) and provide an officer's certificate as to the destruction of such Confidential Information; provided, that PSE, as a Receiving Party, shall not be obligated to return to the Disclosing Party any proposal by the Disclosing Party, or any information related thereto, constituting Confidential

## Exhibit E. Mutual Confidentiality Agreement

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Information, and PSE may retain all such proposal and information for a period of at least 4 years or until PSE concludes its next general electric rate case, whichever is later.

8. Neither this Agreement nor any discussions or disclosure hereunder shall (a) be deemed a commitment to any business relationship or contract for future dealing with another Party or (b) prevent either Party from conducting similar discussions with any third party, so long as such discussions do not result in the use or disclosure by the Receiving Party of Confidential Information protected by this Agreement. If the Parties elect to proceed with any transaction, then all agreements, representations, warranties, covenants and conditions with respect thereto shall be only as set forth in a separate written agreement to be negotiated and executed by the Parties.

9. Each of the Parties acknowledges that the Confidential Information received from another Party constitutes valuable confidential, commercial, business and proprietary information of the Disclosing Party and serious commercial disadvantage or irreparable harm may result for the Disclosing Party if the Receiving Party breaches its nondisclosure obligations under this Agreement. In such event or the threat of such event, the Disclosing Party shall be entitled to injunctive relief, specific performance and other equitable relief without proof of monetary damages. In any action to enforce this Agreement or on account of any breach of this Agreement, the prevailing Party shall be entitled to recover, in addition to all other relief, its reasonable attorneys' fees and court costs associated with such action.

10. This Agreement may not be assigned by either Party without the prior written consent of the other Party. No permitted assignment shall relieve the Receiving Party of its obligations hereunder with respect to Confidential Information disclosed to it prior to such assignment. Any assignment in violation of this Paragraph 10 shall be void. This Agreement shall be binding upon the Parties' respective successors and assigns.

11. This Agreement shall be deemed to be effective as of the date first above written, and shall continue thereafter for a period of four (4) years or, if later, upon the conclusion of PSE's next general electric rate case.

12. No Party shall be liable to another Party for any consequential, indirect, incidental, special, exemplary or punitive damages arising out of or related to this Agreement.

13. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the state of Washington, without regard to such state's choice of law principles to the contrary. Each of the Parties irrevocably consents to the exclusive jurisdiction and venue of any state or federal court located in King County, Washington, with regard to any legal or equitable action or proceeding related to this Agreement.

14. This Agreement represents the entire understanding between the Parties with respect to the confidentiality, use, control and proprietary nature of any information disclosed by the Disclosing Party to the Receiving Party and the subject matter hereof and supersedes all prior communications, agreements and understandings relating thereto. The provisions of this Agreement shall not be modified, amended or waived, except by a written instrument duly executed by both of the Parties.



# Exhibit E. Mutual Confidentiality Agreement

IN WITNESS WHEREOF, the Parties have executed this Agreement as of

\_\_\_\_\_, 2008.

PUGET SOUND ENERGY, INC.

By \_\_\_\_\_

Its \_\_\_\_\_

[OTHER PARTY]

By \_\_\_\_\_

Its \_\_\_\_\_

## Exhibit F. Organizations Participating in the CRAG

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In addition to PSE representatives, the Conservation Resource Advisory Group (CRAG) consists of representatives from the following organizations:

- Washington Utilities and Transportation Commission (WUTC) staff\*
- Public Counsel, Attorney General's Office\*
- Industrial Customers of Northwest Utilities (ICNU)\*
- Northwest Industrial Gas Users (NWIGU)\*
- NW Energy Coalition and Natural Resources Defense Council\*
- Energy Project\* (representing Low Income Agencies)
- Washington State Department of Community, Trade and Economic Development (CTED)
- Northwest Power Planning Council
- Department of Energy (DOE) Weatherization Assistance Program
- Customer representatives from commercial, industrial and institutional sectors (Microsoft, Kemper Development, King County)

\* indicates representative of an organization that was signatory to the Conservation Agreement of the PSE 2001 General Rate Case (Docket Nos.UE-011570 and UG-011571).

# Glossary and Acronyms

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## *Administrative Costs*

The costs associated with planning, project management, program support, etc., such that the Implementation Cost, the Installed Measure Cost and the Administrative Cost combined represent the total costs of the proposal.

## *Annualized kWh Savings*

The sum of the one-year's kWh savings from all measures installed.

## *Average Life of Savings*

The assigned life of the conservation measure or measures, based on documentation and/or field experience. Where multiple measures or measure types are involved, an average measure life value, derived by weighting each measure by the amount of savings it contributes to the total, is assumed for the program life.

## *Average Megawatt (aMW)*

A measure of energy – not capacity – that is calculated as the number of megawatt-hours divided by the total number of hours in a year (8,760).

## *C&RD*

Conservation and Renewables Discount

## *Conservation Cost Effectiveness Standard (CCES)*

The avoided cost of conserved energy, calculated as prescribed by the PSE Rate Case Conservation Agreement described in **Section 1.4** of the RFP. See **Exhibit D, Tables D-1 and D-2**.

## *Customer*

A residential or business entity that purchases (or, in the case of new construction, intends to purchase) electricity from Puget Sound Energy.

## *Customer Cost*

The best estimate of the installed measure cost paid by the customer. This may be less than the full measure cost where incentives are provided. Where available, copies of customer invoices collected to verify installation provide reliable information on measure total cost. Estimates may be based on historical program data, and trade ally information.

## *Demand Savings (kW)*

Where quantified, demand savings are only used to calculate customer payback; they are not used explicitly to calculate either utility cost or resource cost.

# Glossary and Acronyms

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## *EES*

Energy Efficiency Services Department at Puget Sound Energy

## *End-use*

The application for which electricity is used, e.g. heating vs. lighting. Each end use has a different load shape for the purposes of calculating the value of the energy savings.

## *Fee for Service Collected*

Any customer payment for services provided, as authorized for the program.

## *Implementation Cost*

The expected cost for all services delivered through the program, including the costs of staff, overheads, program materials, marketing and incentive payments, not including the Installed Measure Cost.

## *Installed Measure Cost*

The cost of the physical equipment measure, plus any labor, materials, and incidental costs associated with installing the measure at the customer's site.

## *Low Income*

Residential households served by the Company that meet income and other requirements, which are published in the current *U.S. Department of Energy – Washington State Low-Income Weatherization Assistance Plan* prepared by OCD.

## *Market Transformation*

Activities effecting permanent changes in the markets for targeted, cost-effective, energy efficiency products and services that will result in sustainable market penetration, without the need for long-term utility incentives. Market Transformation is a temporary market intervention with a clear expectation that involvement will end.

## *M&V*

Measurement and Verification

## *Measure*

Term used to denote a product, device, piece of equipment, system, building design feature or operational practice used to achieve greater energy efficiency.

## *Non-Quantified Benefits*

Non-energy, savings-related benefit(s) of the installed measure, without attempting to assign a dollar value, which are cited by participants. PSE requires a listing to document additional

# Glossary and Acronyms

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customer benefits. These are not quantified other than by the understanding that customers deem them sufficient to make their investment in the measure.

## *Operations and Maintenance (O&M) Measures*

Periodic ongoing tasks and activities that enables equipment (e.g. HVAC, Lighting, etc.) to function in accordance with occupants' needs and usage patterns at the facility throughout the equipment's useful life. It is recognized that O&M activities typically strive to insure occupants' comfort and convenience, and do not necessarily seek to optimize energy efficiency of the system(s).

## *Other Third-Party Contributions*

Costs covered by an entity other than the vendor, Puget Sound Energy and its ratepayers, or the participating customer. For example, low-income weatherization agencies may have matching funds from State or Federal funding sources for weatherization of low-income customer homes.

## *Quantified Non-Energy Savings Benefits*

Benefits based on information from customers where available and able to be generalized. Estimates are the annualized \$ value of other, non-energy benefits received by the customer (e.g., reduced maintenance costs). Like annual energy savings, these benefits may recur on an annual basis over the life of the measure or on a one-time basis. Quantified Non-Energy Savings must be clearly labeled and described. These are used in calculating the benefit/cost ratio for Puget Sound Energy's Total Resource Cost test.

## *RTF*

Regional Technical Forum

## *TRC*

Total Resource Cost, see **Exhibit D.1**.

## *Type of Savings*

Determines the appropriate Cost Effectiveness Standard for analyses, based on the load shape of the end use, and is required for Puget Sound Energy's Cost Effectiveness Standard. See **Exhibit D-3** and **Table D-1**.

## *Units*

The basis for reporting participation. In many cases, units equal the number of customers. In programs targeting a specific measure, units may equal the number of measures. The type of units must be specified.

## *UC*

Utility Cost, see **Exhibit D.1**.

# Glossary and Acronyms

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**WAC**

Washington Administrative Code

**WUTC**

Washington Utilities and Transportation Commission