

**EXHIBIT NO. \_\_\_(RG-18C)  
DOCKET NO. UE-09\_\_\_/UG-09\_\_\_  
2009 PSE GENERAL RATE CASE  
WITNESS: ROGER GARRATT**

**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\_\_\_**

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

**REDACTED  
VERSION**

**MAY 8, 2009**

Power Purchase Agreement

between

Puget Sound Energy, Inc.

and

Puget Sound Hydro, LLC

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## POWER PURCHASE AGREEMENT

This Power Purchase Agreement (this "Agreement"), dated as of September 26, 2008, is made by and between Puget Sound Energy, Inc., a Washington corporation ("PSE"), and Puget Sound Hydro, LLC, a Washington limited liability company ("Customer-Generator"). Each of PSE and Customer-Generator is sometimes referred to herein in the singular as a "Party" and in the plural as the "Parties."

### RECITALS

A. PSE is an investor-owned electric utility company and is interested in acquiring a firm supply of electric power at a reasonable cost.

B. Customer-Generator owns and operates a hydroelectric generating facility at Nooksack Falls on the North Fork Nooksack River in Whatcom County, Washington. Customer-Generator intends to continue to own and operate such project and desires to sell to PSE the net electrical output generated from such project pursuant to the terms and conditions of this Agreement.

C. The nameplate capacity rating of such project's generator is 1.5 megawatts. Customer-Generator has elected not to participate in PSE's competitive bidding solicitation.

D. PSE considers the purchase of the output of such project to be the purchase of firm power, and, for purposes of the Pacific Northwest Coordination Agreement, PSE considers that the project meets the definition of a "Firm Resource."

### AGREEMENT

The Parties therefore agree as follows:

#### Section 1. Definitions

Whenever used in this Agreement, the following capitalized terms shall have the following respective meanings, unless the particular context clearly requires a different meaning:

**1.1 "Agreement," "PSE," "Customer-Generator," "Party" and "Parties"** have the respective meanings set forth above.

**1.2 "Commencement Date"** means 0000 hours on September 26, 2008.

**1.3 “Construction Activities”** means all design, engineering, procurement, construction and other activities related to the inspection, testing, repair, replacement, improvement, alteration, modification, licensing or permitting of, or addition to, the Project and to the acquisition or preservation of rights in the Project property, together with all activities to be performed by Customer-Generator for the continuation of interconnection of the Project with PSE’s electric system.

**1.4 “Date of Commercial Operation”** means December 1, 2008.

**1.5 “Environmental Attribute”** means any and all certificates, credits, benefits, emissions reductions, environmental air quality credits and emissions reduction credits, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance attributable to the generation of the specified energy by the specified resource and the delivery of the specified energy to the electricity grid, and include without limitation any of the same arising out of legislation or regulation concerned with oxides of nitrogen, sulfur, or carbon, with particulate matter, soot, or mercury, or implementing the United Nations Framework Convention on Climate Change (“UNFCCC”) or the Kyoto Protocol to the UNFCCC or crediting “early action” with a view thereto, or laws or regulations involving or administered by the Clean Air Markets Division of the Environmental Protection Agency or successor administrator (collectively with any state or federal entity given jurisdiction over a program involving transferability of Environmental Attributes, the “CAMD”), but specifically excluding only the wind production tax credits, if any.

**1.6 “Excusable Delay”** has the meaning set forth in paragraph 5.1.

**1.7 “FERC”** means the Federal Energy Regulatory Commission or any successor regulatory authority.

**1.8 “FERC Order”** means the Project's nonjurisdictional status under the Federal Power Act as determined by FERC.

**1.9 “Indemnitees”** means PSE, its successors and assigns, and the respective directors, officers, shareholders, employees, agents and representatives of PSE and its successors and assigns.

**1.10 “Member”** means any party to the WECC Agreement.

**1.11 “Monthly Energy”** means electrical output actually delivered from the Project to the Point of Delivery, adjusted for losses pursuant to paragraph 3.6, during any month during the Operating Period.

**1.12 “Operating Period”** means the period commencing at 0000 hours on the Date of Commercial Operation, and, unless sooner terminated pursuant to paragraph 7.1, ending at 0000 hours on January 1, 2014.

**1.13 “Point of Delivery”** means the point on PSE's electric distribution system where energy from the Project is to be delivered to PSE, as shown on the diagram attached hereto as Exhibit A.

**1.14 “Project”** means the hydroelectric generating facility having a nameplate hydroelectric generating capacity of 1.5 megawatts, all as located at the North Fork Nooksack River at Nooksack Falls in Whatcom County, Washington, near the town of Glacier, Washington, together with all equipment, facilities, structures, improvements, alterations, modifications, additions, betterments, property and property rights (e.g., for access to the Project) thereof or related thereto. An electrical diagram of the Project is set forth in the attached Exhibit B.

**1.15 “Prudent Electrical Practice”** means:

(a) those practices, methods and acts which when engaged in are commonly used in prudent electrical engineering and operations to operate electric equipment lawfully and with safety, reliability, efficiency and expedition; or

(b) if there are no practices, methods or acts referred to in paragraph 1.14(a), then those practices, methods and acts which in the exercise of reasonable judgment considering the facts known when engaged in, could have been expected to achieve the desired result consistent with applicable law, safety, reliability, efficiency and expedition.

Prudent Electrical Practice is not limited to the optimum practice, method or act, but rather is a spectrum of possible practices, methods or acts.

**1.16 “REC Reporting Rights”** means the right to report to any agency, authority or other party, including without limitation under Section 1605(b) of the Energy Policy Act of 1992, or under any present or future domestic, international or foreign emissions trading program, exclusive ownership of the Environmental Attributes.

**1.17 “Reliability Management System” or “RMS”** means the contractual reliability management program implemented through the WECC Reliability Criteria Agreement, Section 2 of the Reliability Management System Agreement and any similar contractual arrangement to which the Western Electricity Coordinating Council is a party.

**1.18 “Reliability Management System Agreement”** means the Reliability Management System Agreement dated April 26, 2004, between the WECC and PSE.

**1.19 “Transfer”** means any sale, assignment, encumbrance, disposition or other transfer, at any time, whether voluntary, involuntary, by operation of law or otherwise, of all or any portion of Customer-Generator’s rights, title or interests in or to the Project or the output of the Project or in, to or under this Agreement.

**1.20 “WECC”** means the Western Electricity Coordinating Council or any successor entity.

**1.21 “Western Interconnection”** means the area comprising those states and provinces, or portions thereof, in western Canada, northern Mexico and the western United States in which members of the WECC operate synchronously connected transmission systems.

**1.22 “WECC Agreement”** means the Western Systems Coordinating Council Agreement dated March 20, 1967, as such may be amended from time to time.

**1.23 “WECC Reliability Criteria Agreement”** means the Western Systems Coordinating Council Reliability Criteria Agreement dated November 1, 2000, among the WECC and certain of its member transmission operators, as such may be amended from time to time.

**1.24 “WECC Staff”** means those employees of the WECC, including personnel hired by the WECC on a contract basis, designated as responsible for the administration of the RMS.

**1.25 “WUTC”** means the Washington Utilities and Transportation Commission or any successor regulatory agency.

**Section 2. Purchase and Sale of Energy, Environmental Attributes and REC Reporting Rights**

**2.1 General**

Subject to the provisions of this Agreement, PSE purchases and shall take from Customer-Generator, and Customer-Generator sells and shall deliver to PSE, the entire net electrical output of the Project (i.e., the total output of the Project reduced by any amounts of electric power and energy used in connection with the operation of the Project and losses from the Project generator to the Point of Delivery) during the Operating Period.



## **2.2 Purchase Price for Energy**

## **2.3 Payment for Energy**

Any amount payable in accordance with paragraph 2.2 for Monthly Energy shall be paid by PSE on or before the last day of the next following calendar month.

## **2.4 Delivery of Energy**

Customer-Generator shall deliver the output of the Project to PSE at the Point of Delivery and in the form of three-phase, sixty hertz, alternating electric current at a voltage as specified from time to time by the PSE System Operator, and at all times at not less than five percent (5%) below and not more than five percent (5%) above the nominal volts provided by PSE (e.g., 2,300 V). The requirements of the preceding sentence shall be subject to adjustment by PSE from time to time to reflect changes in PSE's electric system pursuant to paragraph 3.3. Customer-Generator shall limit kilowatt flows through the Point of Delivery so that such flows shall not at any time exceed 3,500 kilowatts. These requirements shall be met at the Point of Delivery, during all hours of operation and in all operating conditions. Customer-Generator shall have full responsibility for such delivery of energy from the Project directly to PSE's electric system.

## **2.5 Purchase of Environmental Attributes and REC Reporting Rights**

Customer-Generator shall sell to PSE, and PSE shall purchase from Customer-Generator, all Environmental Attributes (e.g., "RECs" as defined by the Green-e Renewable Electric Certification Program National Standard, as administered by the Center for Resource Solutions) and REC Reporting Rights associated with the energy generated by the Project. Such purchase and sale shall be pursuant and subject to the terms and conditions set forth in the Green Tag Agreement of even date herewith between PSE and Customer-Generator (the "Green Tag Agreement"). Any purchase by PSE of any "green tag" or "renewable energy credit" pursuant to the Green Tag Agreement shall be deemed to constitute a contemporaneous purchase by PSE, at no additional charge, of all REC Reporting Rights for such "green tag" or "renewable energy credit."

### **Section 3. Operation of the Project**

#### **3.1 Permits and Other Rights**

Customer-Generator shall obtain, maintain and comply with all permits, licenses, authorizations and other rights required to perform the Construction Activities, to own, operate, use and maintain the Project (including, but not limited to, the FERC Order) and to sell and deliver the net electrical output of the Project. Customer-Generator shall furnish to PSE on request copies of all documents granting, evidencing or otherwise related to such permits, licenses, authorizations and rights. Customer-Generator hereby represents that the Project is not required to be licensed or exempted under the Federal Power Act.

#### **3.2 Performance**

Customer-Generator shall perform the Construction Activities and shall own, operate, use and maintain the Project:

- (a) at its own risk and expense;
- (b) in a safe, prudent, dependable, efficient, orderly, skillful and workmanlike manner;
- (c) in compliance with the permits, licenses, authorizations and rights described in paragraph 3.1;
- (d) in compliance with all applicable laws, ordinances, rules, regulations, orders and other requirements, now or hereafter in effect, of any governmental authority; and
- (e) in accordance with Prudent Electrical Practice.

#### **3.3 Interconnection**

**3.3.1** Interconnection shall comply with PSE's standards for interconnection.

**3.3.2** Customer-Generator shall not alter or modify the Customer-Generator interconnection of the Project with PSE's electric system without prior written authorization from PSE, which authorization shall not be unreasonably withheld or delayed. Customer-Generator shall make any such interconnection, alteration or modification only in accordance with detailed plans, drawings and specifications consented to by PSE. Such plans, drawings and specifications shall be

in conformance with Prudent Electrical Practice and with PSE's then-current standards and practices relating to the design and construction of electrical facilities.

**3.3.3** Customer-Generator shall pay to PSE the amount of all costs and expenses reasonably incurred or to be incurred by PSE to furnish any equipment and perform any work or otherwise in connection with the interconnection of the Project with PSE's electric system. Customer-Generator shall advance to PSE all funds required for PSE to pay such costs as they are incurred. Such advance shall be made within thirty (30) days after Customer-Generator's receipt of PSE's request therefor. PSE shall retain ownership of all equipment and other items furnished by PSE and such equipment and items shall constitute part of PSE's electric system for purposes of this Agreement. Customer-Generator shall (a) furnish PSE, or reimburse to PSE its costs to acquire, such additional rights (e.g., fee title or perpetual easements to the land on which such equipment and items are located or access to such items is provided) as PSE may reasonably require to own, operate, maintain, repair, replace, modify, improve and otherwise deal with such equipment and items as part of PSE's electric system, both during and after the Operating Period, and (b) provide PSE with such indemnifications, and make such representations and warranties for the benefit of PSE, with respect to such additional rights and the environmental condition of such land, and land surrounding such land, as PSE shall request.

**3.3.4** If PSE makes any alteration, modification or other change to its electric system that requires any alteration, modification or other change to the Project or interconnection (including, but not limited to, an upgrading of, or any voltage change with respect to, any of PSE's facilities), then the costs of such changes to the Project or interconnection shall be borne by Customer-Generator. PSE shall use its reasonable best efforts to provide Customer-Generator reasonable advance notice of any such required changes to the Project or interconnection. Upon expiration or termination of the Operating Period, PSE shall have the right to disconnect the Project and remove all equipment and other items, ownership of which is retained by PSE pursuant to subparagraph 3.3.3.

### **3.4 Responsibility**

Customer-Generator shall have full responsibility for the Construction Activities and for the ownership, operation, use and maintenance of the Project and for delivery of energy from the Project to PSE's electric system (whether by Customer-Generator, any of Customer-Generator's assignees, contractors or suppliers of any tier, or any other person or entity), notwithstanding any:

- (a) review, approval, consent, advice, recommendation, authorization, notice, inspection, test or other act by PSE;

(b) failure or delay by PSE to review, approve, consent, advise, recommend, authorize, notify, inspect, test, disconnect (as contemplated under paragraph 3.7) or perform any act; or

(c) knowledge or information of PSE.

No review, approval, consent, advice, recommendation, authorization, notice, inspection, test or other act by PSE regarding the Construction Activities or the ownership, operation, use or maintenance of the Project or the delivery of energy from the Project to PSE's electric system shall constitute or be interpreted or construed as, or be relied upon or held out by Customer-Generator or any other person or entity as, any warranty, representation or endorsement by PSE.

### **3.5 Coordination of Project Operation**

Customer-Generator shall operate the Project on a reliable and sustained basis until the end of the Operating Period, subject to forced outages and outages for scheduled maintenance, repairs, replacements, improvements, alterations and modifications of, and additions to, the Project. Customer-Generator shall give PSE reasonable advance notice of any scheduled outage of a duration of thirty-six (36) hours or more. Without limiting the generality of the foregoing, Customer-Generator shall confine all scheduled outages to the months of May through July or as otherwise requested by PSE. On or before July 1st of each year, Customer-Generator shall give PSE written notice of all outages scheduled for the remainder of the Operating Period. Customer-Generator shall give PSE notice of all other outages as soon as practicable.

### **3.6 Metering**

All energy delivered under this Agreement shall be measured by meters to be owned, installed, operated and maintained by PSE. Such meters shall be set to compensate for any real energy losses and reactive energy losses incurred between the meters and the point where the average circuit load is half the generator peak output. Customer-Generator shall reimburse PSE for all costs reasonably incurred by PSE in connection with such metering (including, but not limited to, all costs of metering, telemetering, communication lines for remote billing data retrieval and other equipment to be installed by PSE for the Project). Such reimbursement shall be made by Customer-Generator within thirty (30) days after Customer-Generator's receipt of PSE's invoice therefor. All metering, telemetering and other equipment installed by PSE shall be and remain PSE's property, notwithstanding such reimbursement. If, upon test, such meters are found to be inaccurate by more than two percent (2%) or if such meters are for any reason out of service or fail 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: (a) the amount of electrical energy credited to PSE is decreased, Customer-Generator shall reimburse PSE for any overpayment made by PSE, such reimbursement to be in the form of (i) a deduction from the next succeeding payment or payments by PSE for electrical energy due Customer-Generator pursuant to paragraph 2.2 or (ii) cash, if no such succeeding payments in an amount exceeding the amount of such overpayment are or shall be due; or (b) the amount of electrical energy credited to PSE is increased, PSE shall pay Customer-Generator for such increased credit for electrical energy, if any, at the purchase price set forth in paragraph 2.2. Notwithstanding the foregoing, if, upon test, PSE'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. PSE shall promptly cause meters found to be inaccurate to be adjusted to correct such inaccuracy to the extent practicable. Metering shall be at [secondary] voltage located at Project, and shall be adjusted for any applicable line and transformation losses.

### **3.7 Disconnection by PSE**

PSE shall have the right at any time during the Operating Period, without incurring any liability therefor to Customer-Generator, to interrupt, suspend or curtail delivery, receipt or acceptance of delivery of energy from the Project, if PSE determines (through manual operation, automatic operation or otherwise) in the exercise of its sole discretion that the failure to do so:

- (a) may endanger any person or property, or PSE's electric system, or any electric system with which PSE's system is interconnected;
- (b) may cause or contribute to an imminent significant disruption of electric service to PSE's customers;
- (c) may interfere with any construction, installation, inspection, testing, repair, replacement, improvement, alteration, modification, operation, use or maintenance of, or addition to, PSE's electric system or other property of PSE;
- (d) is contrary to Prudent Electrical Practice; or
- (e) may interfere with the performance, integrity, reliability or stability of PSE's electric system or any system with which PSE's electric system is interconnected.

PSE shall promptly notify Customer-Generator of the reasons for any such interruption, suspension or curtailment. PSE shall use reasonable efforts to mitigate and limit the duration of any such interruption, suspension or curtailment.

### **3.8 Protection of Persons and Property**

Customer-Generator shall use reasonable efforts to take all precautions that are necessary to prevent bodily harm to persons and damage to any property (including, but not limited to, the Project, PSE's electric system and any electric system with which PSE's electric system is interconnected) in connection with the Construction Activities or the interconnection of the Project with PSE's electric system. Customer-Generator shall use reasonable efforts to inspect all materials, tools, supplies, equipment, goods and other items used, consumed or incorporated in or during the Construction Activities or the interconnection of the Project to discover any conditions that involve a risk of bodily harm to persons or a risk of damage to any property and shall be fully responsible for the discovery and correction of, and protection against, such conditions.

### **3.9 Release and Indemnity**

Customer-Generator releases and shall defend, indemnify and hold harmless each of the Indemnitees 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 PSE on the amount of any indemnities paid by Customer-Generator to PSE pursuant to this paragraph 3.9) of whatsoever kind and nature (including, without limitation, relating to the injury to or death of any person, including employees of Customer-Generator) that may at any time or from time to time be imposed on, incurred by or asserted against any Indemnitee, arising out of or in connection with the Construction Activities, the interconnection of the Project with PSE's electric system, the delivery of energy from the Project to the Point of Delivery, the ownership, operation, use or maintenance of the Project, or the failure of Customer-Generator to have observed or performed any of Customer-Generator'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 Indemnitee and shall apply to any claim, action, suit or proceeding brought by any employee of Customer-Generator. However, Customer-Generator shall not be required to so defend, indemnify or hold harmless such Indemnitee from any claim, loss, harm, liability, damage, cost or expense to the extent caused by or resulting from the negligence of such Indemnitee or its directors, officers, employees, agents or representatives. Customer-Generator's indemnification liabilities pursuant to this Agreement shall not be limited to the extent of its insurance coverages.

### **3.10 Insurance**

During the period commencing with the Commencement Date and ending, with respect to insurance coverage described in subparagraphs 3.10.1 and 3.10.2, one

(1) year following the earlier of the expiration or termination of the Operating Period, and otherwise ending with the expiration or termination of the Operating Period, Customer-Generator shall maintain continuously in effect insurance coverage which meets or exceeds the following requirements:

### **3.10.1 Liability**

Commercial general liability insurance on an occurrence form and providing coverage for bodily injury (including death), personal and advertising injury, and property damage arising out of or in connection with the Construction Activities, the interconnection of the Project with PSE's electric system, the delivery of the net electrical output from the Project to the Point of Delivery, or the ownership, operation, use or maintenance of the Project. Such insurance coverages shall include the following: Premises/Operations Liability, Products/Completed Operations Liability, Contractual Liability, Owners and Contractors Protective coverage (in all cases where subcontractors are retained to perform the work), and Broad Form Property Damage coverage). Such insurance coverages shall provide, at a minimum, the following limits (or such higher limits as may be customary in the electric generation industry): bodily Injury (including death), \$2,000,000 per person, per occurrence; property damage, \$2,000,000 per occurrence; personal and advertising injury, \$2,000,000 per occurrence.

### **3.10.2 Employers' Liability**

If at any time following the Commencement Date Customer-Generator has one or more employees, Customer-Generator shall obtain and maintain Workers' Compensation and Employers' Liability (Stop Gap) Insurance in accordance with the applicable laws the State of Washington (including, but not limited to, the Washington Industrial Insurance Act), regardless of whether such coverage or insurance is mandatory or elective under the law.

### **3.10.3 General**

Customer-Generator shall furnish PSE with certificates of insurance, broker's reports of insurance, copies of insurance policies and such other evidence of the insurance required by this paragraph 3.10, in form and substance reasonably satisfactory to PSE, as PSE may from time to time reasonably request.

Without limiting any of the foregoing, any policy of insurance carried in accordance with this paragraph 3.10 and any insurance policy procured or maintained in substitution or replacement therefor shall

(i) with the exception of Workers' Compensation and Employers' Liability coverage, name the Indemnitees ("Additional Insureds") as additional insureds,

(ii) provide that, with respect to the interests of the Additional Insureds, such insurance shall apply in favor of each Additional Insured whether the property covered thereby is within or outside the control of Customer-Generator, shall remain valid and shall not be impaired or invalidated by any action or inaction of Customer-Generator or any other person or entity and shall insure the interests of each of the Additional Insureds as they appear, notwithstanding any breach or violation of any representation, warranty, declaration, covenant or condition contained in such policy by Customer-Generator or any other person or entity,

(iii) provide that if such policy is materially amended or canceled, or the coverage thereof is materially changed, for any reason whatsoever, or if such policy is allowed to lapse for nonpayment of premiums, or if such policy is not renewed for any reason whatsoever, such cancellation, termination, amendment, change, lapse or nonrenewal shall not be effective as to any Additional Insured until the date which is thirty (30) days following receipt by PSE of written notice from the insurer thereof of such cancellation, termination, amendment, change, lapse or nonrenewal,

(iv) be primary to and without any right of contribution from any other insurance or self-insurance which may be available to, or maintained by, any Additional Insured,

(v) expressly provide that all of the provisions thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured,

(vi) provide that the issuer of such policy shall waive any rights of setoff, counterclaim or other deduction, whether by attachment or otherwise, which it may have against any Additional Insured, including, without limitation, any claim for unpaid premiums,

(vii) provide that the issuer of such policy shall waive any right of subrogation against any Additional Insured; provided, however, that the existence or nonexistence of such subrogation rights shall not in any way delay payment of any claim that would otherwise be payable by such insurers but for the existence of such rights of subrogation or entitle such insurers to exercise or to assert any setoff, recoupment, counterclaim or any other deduction in respect of any amounts payable under such policies,



(viii) provide that none of the Additional Insureds shall be liable for any insurance premium, commission, assessment or call payable thereon; provided however, that each such policy shall provide that, in the event of cancellation thereof due to the nonpayment of any premium, PSE shall have the option to pay such premium that is due and maintain such coverage under such policy as PSE may require until the originally scheduled expiration date thereof, and

(ix) otherwise provide coverage at least equivalent to the standardized occurrence forms filed by the Insurance Service Office.

Any policy of insurance carried by Customer-Generator in addition to the policies of insurance required under this paragraph 3.10 shall provide that the insurer of such policy shall waive any right of subrogation against any Additional Insured.

The Additional Insureds shall have the rights, but not the obligations, of additional insureds.

#### **Section 4. Access and Information**

##### **4.1 Access**

Customer-Generator shall provide PSE, and PSE shall have the right of, such access as PSE may reasonably require, by personnel and for equipment, to and from the Project for the following purposes:

(a) installation, inspection, testing, repair, replacement, improvement, alteration, modification, operation, use, maintenance, reading and removal of the meters, equipment and other property described in paragraph 3.6 or otherwise owned by PSE;

(b) any disconnection, interruption, suspension or curtailment described in paragraph 3.7; and

(c) inspection and testing described in paragraph 4.2.

Customer-Generator may make such access subject to limitations required by Prudent Electrical Practice. Customer-Generator shall and hereby does grant to PSE all necessary licenses, permits, easements and rights-of-way for the access and purposes described in this paragraph 4.1 and shall execute, acknowledge and deliver to PSE such additional documents as PSE may reasonably request to effectuate, evidence, vest, record or give notice of such licenses, rights-of-way and easements. In the event that Customer-Generator is not owner of the property on which Project is located or of property necessary for access to and from the Project, Customer-Generator shall cause

all such licenses, permits, easements and rights-of-way to be granted to PSE by the owner thereof.

#### **4.2 Inspections**

Customer-Generator shall permit PSE to inspect (and to be present at all tests of) the Project, the Construction Activities and the operation, use or maintenance of the Project. Customer-Generator shall provide PSE with reasonable advance notice of any such test or inspection by or at the direction of Customer-Generator.

#### **4.3 Information**

Customer-Generator shall promptly furnish PSE with copies of such plans, specifications, records and other information relating to the Project, the Construction Activities, the arrangements between Customer-Generator and any other person or entity for transmission or delivery of energy from the Project to PSE's electric system, or the ownership, operation, use or maintenance of the Project, as may be reasonably requested by PSE from time to time. Without limiting the generality of the foregoing, Customer-Generator shall provide to PSE, upon PSE's request, such financial and other information that may be reasonably necessary for PSE to satisfy any obligations it may have under Financial Accounting Standards Board Interpretation No. 46 with respect to its purchase of energy and environmental attributes under this Agreement. All such information, together with all other documents and information furnished to PSE under this Agreement, shall be given to PSE on a non-confidential basis.

### **Section 5. Limitations of Liability**

#### **5.1 Excusable Delay**

Neither Party shall be liable under this Agreement for, or be considered to be in breach of or default under this Agreement on account of, any delay in or failure of performance, or any delay or failure to deliver, receive or accept delivery of energy, due to any of the following events:

- (a) any cause or condition beyond such Party's reasonable control which such Party is unable to overcome, or to have avoided or overcome, by the exercise of reasonable diligence (such causes or conditions may include but are not limited to: fire, flood, earthquake, volcanic activity, wind, drought and other acts of the elements; court order and act of civil, military or governmental authority (excluding, however, any denial of or delay in granting (i) any license, permit, authorization or other right required to perform the Construction Activities and to own, operate, use and maintain the Project or (ii) any licenses, permits, easements and rights-of-way to be granted pursuant to Section 4.1); strike, lockout and other labor dispute; riot, insurrection,

sabotage and war; breakdown of or damage to facilities or equipment; electrical disturbance originating in or transmitted through such Party's electric system or any electric system with which such Party's system is interconnected; and, act or omission of any person or entity other than such Party and such Party's contractors or suppliers of any tier or anyone acting on behalf of such Party); or

(b) any action taken by such Party which is, in the sole judgment of such Party, necessary or prudent to protect the operation, performance, integrity, reliability or stability of such Party's electric system or any electric system with which such Party's electric system is interconnected, whether such action occurs automatically or manually.

Any such delay or failure is referred to in this Agreement as an "Excusable Delay"; provided, however, that "Excusable Delay" shall specifically exclude any such delay or failure resulting from any of the following conditions, causes or events:

- (i) any change in the ownership, occupancy or operation of the Project for any reason, including, without limitation, any downturn in the economy, recession, bankruptcy, foreclosure, change in tax law, change in production levels, and inter-corporate transfer or consolidation;
- (ii) any full or partial curtailment of the electrical output of the Project arising from any mechanical or equipment breakdown, except to the extent that such breakdown is directly caused by an Excusable Delay; and
- (iii) any change in market conditions or any governmental action that affects the cost or availability of Customer-Generator's supply of fuel or stock (whether primary or alternative) required for the operation of the Project.

In the event of any Excusable Delay, the time for performance thereby delayed shall, subject to the terms of subparagraph 7.1.2, be extended by a period of time reasonably necessary to compensate for such delay. Nothing contained in this paragraph 5.1 shall require any Party to settle any strike, lockout or other labor dispute. Each Party shall give the other Party prompt written notice of any delay which the Party giving notice considers to be an Excusable Delay of its performance. Such notice shall include a particular description of the event, cause or condition giving rise to the purported Excusable Delay, the projected duration of the Excusable Delay and assurances that suspension of performance is of no greater scope and of no longer duration than is required by such event, cause or condition and that reasonable best efforts are being used to remedy or overcome such event, cause or condition. Notwithstanding any of the foregoing, neither Party shall, on account of any event, cause or condition that otherwise gives rise to a delay or failure of performance by such Party that constitutes

an Excusable Delay, be excused for any amount of time from any of its payment obligations under this Agreement, including, without limitation, the obligations of Customer-Generator under paragraph 3.3.

## **5.2 Release by PSE**

PSE hereby releases Customer-Generator, its successors and assigns and the respective directors, officers, employees, agents and representatives of Customer-Generator and its successors and assigns from any and all claims, losses, harm, liabilities, damages, costs and expenses to the extent resulting from any:

- (a) Excusable Delay;
- (b) operation of the Project in parallel with PSE's electric system; or
- (c) transfer, transmission, use or disposition of energy produced by the Project after it is delivered to PSE at the Point of Delivery.

## **5.3 Release by Customer-Generator**

Customer-Generator hereby releases each of the Indemnitees from any and all claims, losses, harm, liabilities, damages, costs and expenses to the extent resulting from any:

- (a) Excusable Delay;
- (b) operation of the Project in parallel with PSE's electric system;
- (c) transfer, transmission, use or disposition of energy produced by the Project prior to its delivery to PSE at the Point of Delivery;
- (d) electric disturbance or fluctuation that migrates, directly or indirectly, from or through PSE's electric system to the Project;
- (e) interruption, suspension or curtailment of electric service to the Project or any other premises owned, possessed, controlled or served by Customer-Generator, which interruption, suspension or curtailment is caused or contributed to by the Project or the interconnection of the Project with PSE's electric system; or
- (f) disconnection, interruption, suspension or curtailment by PSE pursuant to paragraph 3.7 or 5.1.

## **Section 6. Transfer**

Customer-Generator shall not make or permit any Transfer, except as follows:

(a) to any person or entity that directly or indirectly controls, is controlled by or under common control with Customer-Generator, provided that such other person or entity assumes, or is otherwise bound to perform, all of Customer-Generator's obligations under this Agreement, as if such other person or entity were an original party to this Agreement, and provided, further, that such other person or entity shall be financially responsible and shall be skilled and experienced in the operation of a generating facility of the type that is part of the Project;

(b) to PSE;

(c) as security for any indebtedness incurred by Customer-Generator to finance the Project, provided that upon any Transfer, the person or entity acquiring the interests subject to any such Transfer agrees, upon exercising any rights in or to the Project or in or under this Agreement, to assume, or to be otherwise bound to perform and, if such transferee subsequently sells, assigns or transfers any of its rights in or to the Project or in or under this Agreement, to cause to be assumed and performed by any subsequent transferee, on a recourse basis, all of Customer-Generator's obligations under this Agreement, and provided, further, that such person or entity and such subsequent transferee, if any, shall be financially responsible and shall be skilled and experienced in the operation of a generating facility of the type that is part of the Project; or

(d) to any other person or entity with the written consent of PSE, which consent shall not be unreasonably withheld or delayed, provided that such other person or entity assumes, or is otherwise bound to perform or to cause to be performed, all of Customer-Generator's obligations under this Agreement, as if such other person or entity were an original party to this Agreement, and provided, further, that such other person or entity shall be financially responsible and shall be skilled and experienced in the operation of a generating facility of the type that is part of the Project.

## **Section 7. Termination**

### **7.1 Termination; Cancellation**

**7.1.1** If either Party is at any time in material breach of or default under this Agreement (the "Defaulting Party"), the other Party (the "Terminating Party") shall have the right to terminate this Agreement by giving the Defaulting

Party written notice of such termination. Such termination of this Agreement shall be effective upon the Defaulting Party's receipt of such notice of such termination pursuant to this subparagraph 7.1.1. For purposes of this subparagraph 7.1.1, a Party shall be deemed to be in material breach of or default under this Agreement if such Party:

(a) fails to cure any material breach of or default under this Agreement by such Party prior to the later of (i) the expiration of sixty (60) days after the Terminating Party gives the Defaulting Party written notice of the breach or default and (ii) the date upon which the Terminating Party gives the Defaulting Party written notice of termination; provided that, without limiting the generality of paragraph 7.2, either Party's right to terminate this Agreement pursuant to this subparagraph 7.1.1(a) is in addition to, and shall not preclude the exercise of, any other rights and remedies provided under this Agreement or at law or in equity;

(b) is unable to meet its obligations as they become due or such Party's liabilities exceed its assets;

(c) makes a general assignment of all or substantially all of its assets for the benefit of its creditors, files a petition for bankruptcy or reorganization or seeks other relief under any applicable insolvency laws; or

(d) has filed against it a petition for bankruptcy, reorganization or other relief under any applicable insolvency laws and such petition is not dismissed within sixty (60) days after it is filed.

**7.1.2** PSE shall have the right to terminate this Agreement by giving Customer-Generator written notice of such termination (and such termination shall be effective upon Customer-Generator's receipt of such notice of such termination) following the occurrence of any of the following events:

(a) Customer-Generator fails to overcome or remedy within one (1) year following the commencement of any Excusable Delay occurring on or after the Commencement Date the event, cause or condition that gave rise to such Excusable Delay; or

(b) Customer-Generator's business is suspended, dissolved or wound up.

In no event shall PSE incur any liability (whether for lost revenues or lost profits or otherwise) as a result of any termination of this Agreement pursuant to this paragraph 7.1.

## **7.2 Rights and Remedies Cumulative**

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.

## **Section 8. Miscellaneous**

### **8.1 Qualifying Facility Status**

Customer-Generator represents and warrants, on a continuing basis, that:

(a) the Project is a “qualifying small power production facility” within the meaning of subsection 3(17)(C) of the Federal Power Act, as amended; and

(b) pursuant to notice filed with FERC under 18 C.F.R. Section 292.207(a), Customer-Generator has received from FERC a certification 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 of the date of the certification; and such certification has not been revoked, terminated or cancelled and is in full force and effect from and after the time at which the Project is or becomes a “qualifying facility”; and

(c) from and after the time at which the Project is or becomes a “qualifying facility,” Customer-Generator is requiring PSE to purchase the output of the Project under this Agreement pursuant to the provisions of Section 210 of the Public Utility Regulatory Policies Act of 1978 (PURPA), Public Law 95-617.

Customer-Generator shall, from and after the time at which the Project is or becomes a “qualifying facility,” furnish PSE with such documentation and information as PSE may request to verify Customer-Generator’s representations and warranties set forth in this paragraph 8.1 (including, but not limited to, copies of the application and certification referred to in (b) above, together with copies of any correspondence or other communication to or from FERC).

## 8.2 Notices

Except as may be expressly provided otherwise in this Agreement, any notice, request, authorization, direction, or other communication under this Agreement shall be given in writing and shall be delivered in person or by first-class U.S. mail (stamped with the required postage), properly addressed to the intended recipient as follows:

If to PSE:

In-Person Delivery:

Puget Sound Energy, Inc.  
Attn: Vice President, Project  
Development and Contract  
Management  
10885 N.E. Fourth Street  
Bellevue, WA 98004

Mail Delivery:

Puget Sound Energy, Inc.  
Attn: Vice President, Project  
Development and Contract  
Management  
P.O. Box 97034  
Bellevue, WA 98009-9734

If to Customer-Generator:

Puget Sound Hydro, LLC  
P.O. Box 1432  
Lewiston, Idaho 83501  
Attn: Arch Ford, Manager

Either Party may change its address specified above by giving the other Party notice of such change in accordance with this paragraph 8.2.

## 8.3 Governmental Authority

This Agreement is subject to the rules, regulations, orders and other requirements, now or hereafter in effect, of all governmental authorities (including, without limitation, the WUTC) having jurisdiction over the Project, this Agreement, the Parties or either of them. 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.

## 8.4 No Partnership

This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between the Parties or to impose any partnership obligations or liability upon either Party. Further, neither Party shall have any right,



power or 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.

#### **8.5 Nonwaiver**

No failure or delay of either Party to insist upon or enforce strict performance by the other Party of any provision of this Agreement or to exercise any other right under this Agreement, and no course of dealing or performance with respect thereto, shall 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 that or any other instance; rather, the same shall be and remain in full force and effect. The express waiver by either Party of any right or remedy under this Agreement in a particular instance or circumstance shall not constitute a waiver thereof in any other instance or circumstance.

#### **8.6 Survival**

Paragraphs 3.4, 3.9 and 4.1 and Sections 5 and 8, and all other provisions of this Agreement which 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.

#### **8.7 Entire Agreement**

This Agreement sets forth the entire agreement, and supersedes any and all prior agreements of the Parties, whether written or oral, with respect to the subject matters hereof.

#### **8.8 Successors and Assigns**

Except as otherwise provided in Section 6, Customer-Generator shall not make any Transfer without the prior written consent of PSE, which consent shall not be unreasonably withheld or delayed. Further, no Transfer by Customer-Generator shall to any extent relieve it of, or release it from, any of its obligations under this Agreement. Subject to the foregoing restrictions, this Agreement shall be fully binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors, assigns and legal representatives.

#### **8.9 No Unspecified Third-Party Beneficiaries**

Except as specifically provided in this Agreement (e.g., in paragraphs 3.9, 5.2 and 5.3 and Section 9), there are no third-party beneficiaries of this Agreement. Nothing contained in this Agreement is intended to confer any right or interest on anyone other than the Parties, their respective successors, assigns and legal

representatives permitted under paragraph 8.8, and the third-party beneficiaries specifically identified in this Agreement.

#### **8.10 Amendment**

No change, amendment or modification of any provision of this Agreement or of any exhibit to this Agreement shall be valid unless set forth hereafter in a written amendment to this Agreement or such exhibit signed by both Parties.

#### **8.11 Implementation**

Each Party shall take such action (including, but not limited to, the execution, acknowledgment and delivery of documents) as may reasonably be requested by the other Party for the implementation or continuing performance of this Agreement.

#### **8.12 Invalid Provision**

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.

#### **8.13 Applicable Law**

This Agreement shall in all respects be interpreted, construed and enforced in accordance with the laws of the State of Washington (without reference to rules governing conflicts of law), except to the extent such laws may be preempted by the laws of the United States of America.

### **Section 9. Reliability Management System**

#### **9.1 Purpose.**

In order to maintain the reliable operation of the transmission grid, the WECC Reliability Criteria Agreement sets forth reliability criteria adopted by the WECC to which Customer-Generator and PSE shall be required to comply. PSE will provide to Customer Generator a copy of the WECC Reliability Criteria Agreement upon request.

#### **9.2 Compliance.**

Customer-Generator shall comply with the requirements of the WECC Reliability Criteria Agreement, including the applicable WECC reliability criteria set forth in Section IV of Annex A thereof, and, in the event of failure to comply, agrees to be subject to the sanctions applicable to such failure. Such sanctions shall be assessed pursuant to the procedures contained in the WECC Reliability Criteria

Agreement. Each and all of the provisions of the WECC Reliability Criteria Agreement are hereby incorporated by reference into this Section 9 as though set forth fully herein, and Customer-Generator shall for all purposes be considered a Participant, and shall be entitled to all of the rights and privileges and be subject to all of the obligations of a Participant, under and in connection with the WECC Reliability Criteria Agreement, including, but not limited to, the rights, privileges and obligations set forth in Sections 5, 6 and 10 of the WECC Reliability Criteria Agreement.

### **9.3 Payment of Sanctions.**

Customer-Generator shall be responsible for payment of any monetary sanction assessed against Customer-Generator by WECC pursuant to the WECC Reliability Criteria Agreement. Any such payment shall be made pursuant to the procedures specified in the WECC Reliability Criteria Agreement.

### **9.4 Transfer of Control or Sale of Project.**

In any sale or transfer of control of the Project, Customer-Generator shall as a condition of such sale or transfer require the acquiring party or transferee with respect to the transferred facilities either to assume the obligations of Customer-Generator with respect to this Agreement or to enter into an agreement with PSE imposing on the acquiring party or transferee the same obligations applicable to Customer-Generator pursuant to this Section 9.

### **9.5 Publication.**

Customer-Generator consents to the release by the WECC of information related to Customer-Generator's compliance with this Agreement only in accordance with the WECC Reliability Criteria Agreement.

### **9.6 Third Parties.**

Except for the rights and obligations between the WECC and Customer-Generator specified in this Section 9, this Agreement creates contractual rights and obligations solely between the Parties. Nothing in this Agreement shall create, as between the Parties or with respect to the WECC: (1) any obligation or liability whatsoever (other than as expressly provided in this Agreement) or (2) any duty or standard of care whatsoever. In addition, nothing in this Agreement shall create any duty, liability or standard of care whatsoever as to any other party. Except for any rights, as a third-party beneficiary under this Section 9, of the WECC against Customer-Generator, no third party shall have any rights whatsoever with respect to enforcement of any provision of this Agreement. PSE and Customer-Generator expressly intend that the WECC is a third-party beneficiary of this Section 9, and the WECC shall have the right to seek to enforce against Customer-Generator any

provision of this Section 9, provided, that specific performance shall be the sole remedy available to the WECC pursuant to this Section 9, and Customer-Generator shall not be liable to the WECC pursuant to this Agreement for damages of any kind whatsoever (other than the payment of sanctions to the WECC, if so construed), whether direct, compensatory, special, indirect, consequential or punitive.

**9.7 Reserved Rights.**

Nothing in the RMS or the WECC Reliability Criteria Agreement shall affect the right of PSE, subject to any necessary regulatory approval, to take such other measures to maintain reliability, including disconnection, which PSE may otherwise be entitled to take.

**9.8 Severability.**

If one or more provisions of this Section 9 shall be invalid, illegal or unenforceable in any respect, it shall be given effect to the extent permitted by applicable law, and such invalidity, illegality or unenforceability shall not affect the validity of the other provisions of this Agreement.

**9.9 Termination.**

Customer-Generator may terminate its obligations pursuant to this Section 9:

(a) if after the effective date of this Section 9, the requirements of the WECC Reliability Criteria Agreement applicable to Customer-Generator are amended so as to adversely affect Customer-Generator, provided that Customer-Generator gives fifteen (15) days' notice of such termination to PSE and the WECC within forty-five (45) days of the date of issuance of a FERC order accepting such amendment for filing, provided, further, that the forty-five (45) day period within which notice of termination is required may be extended by Customer-Generator for an additional forty-five (45) days if Customer-Generator gives written notice to PSE of such requested extension within the initial forty-five (45) day period; or

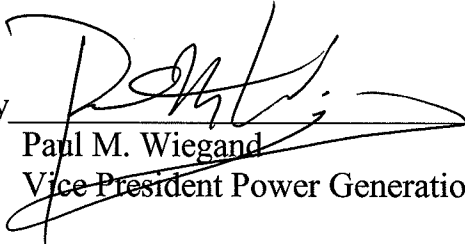
(b) for any reason on one year's written notice to PSE and the WECC.

**9.10 Mutual Agreement.**

This Section 9 may be terminated at any time by mutual agreement of PSE and Customer-Generator.

IN WITNESS WHEREOF each of the Parties has caused this Agreement to be executed by its duly authorized representative as of the date first set forth above.

**Puget Sound Energy, Inc.**

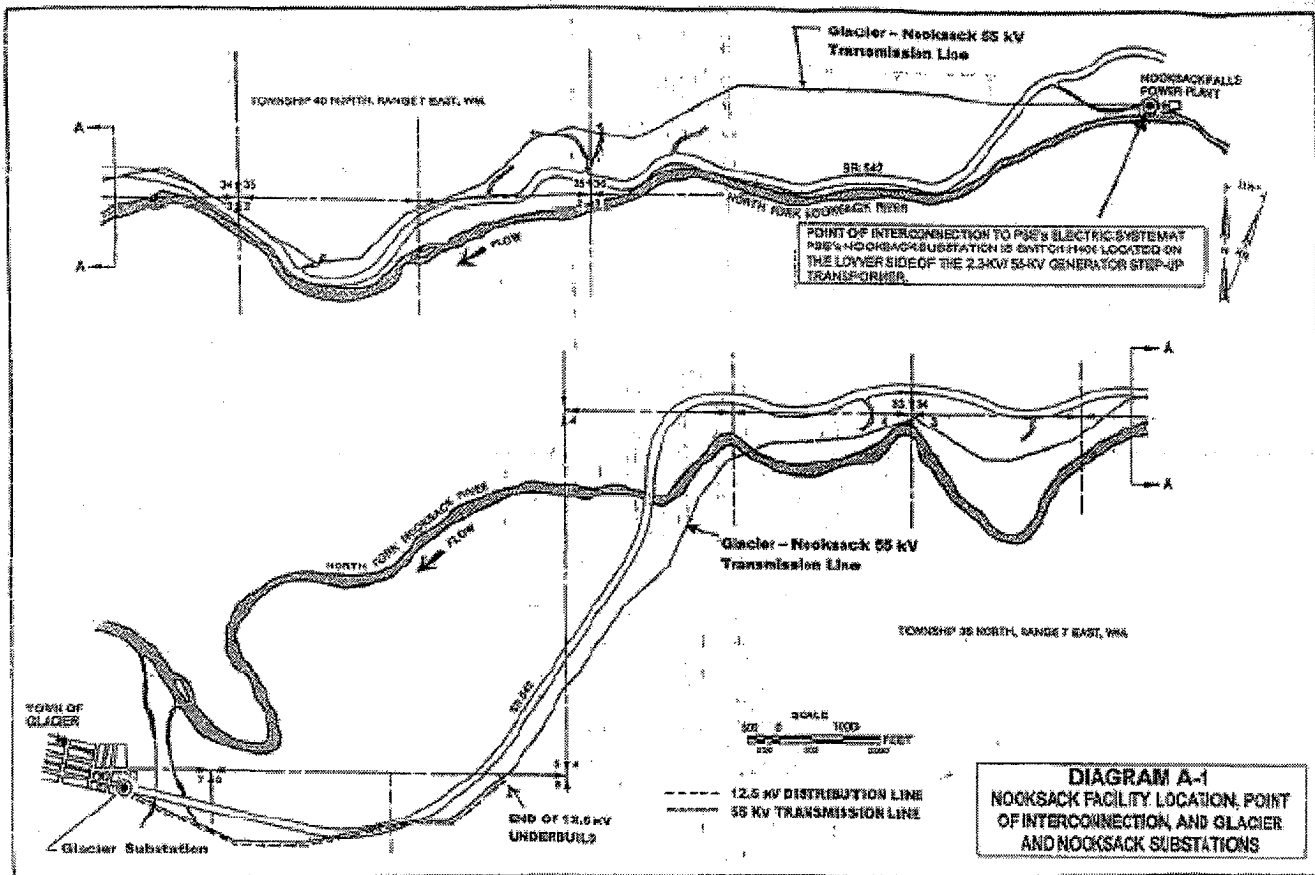
By   
\_\_\_\_\_  
Paul M. Wiegand  
Vice President Power Generation

**Puget Sound Hydro, LLC**

By   
\_\_\_\_\_  
Arch Ford  
Manager

### Exhibit A

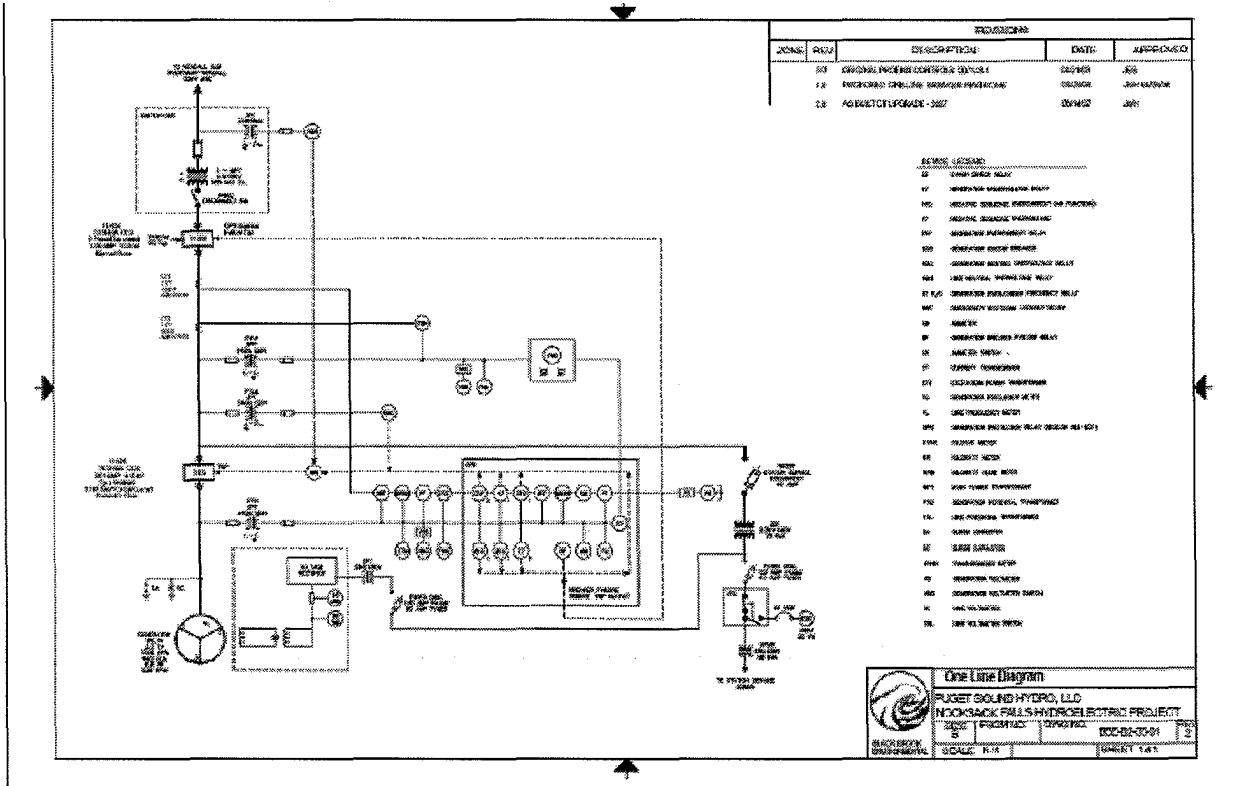
### Diagram – Point of Delivery



Source: Customer's SGIA

## Exhibit B

### Electrical Diagram of the Project



Source: Customer's SGIA

#### Point of Interconnection

Connection to Transmission Provider's Electric System is at Nooksack Substation located within Small Generating Facility property near the power house. The Point of Interconnection is on the low-side of 2.3-kV 55-kV transformer at switch H400 and shown in Figure 1