

Attachment A

PacifiCorp
Draft RFP 2009
Responses due December 1, 2005



**2009 Request for Proposals
September 2005
Flexible Resource**

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SECTION 1. INTRODUCTION

A. Purpose and Scope

The purpose of this document is to prescribe the process by which PacifiCorp (“the Company”) will request and evaluate proposals from third parties to fulfill a portion of the supply-side resource need identified in the Company’s 2004 Integrated Resource Plan (“IRP”). The scope of this Request for Proposal (“RFP 2009”), subject to the limitations described herein, is focused on a supply-side resource capable of delivering energy and capacity in or to the Company’s network transmission system in the Company’s Eastern Controls Area (“PACE”), and that fulfills the requirements of being a network resource.

Potential Bidders should note that the Company’s affiliate, PPM Energy, will be eligible to respond to RFP 2009. As described in more detail below, the Company has put in place prudent safeguards to assure that no bias occurs. **Any Bidder who has a question with respect to such safeguards is instructed to contact the Independent Evaluator (the “IE”) described below.** The Company seeks proposals from all potential suppliers who are capable of meeting the conditions of RFP 2009.

The Company formally published the 2004 IRP on January 23, 2005. In Chapter 9 (pages 177-191) of the IRP there is a list of ten recommended actions to implement the plan. The purpose of RFP 2009 is to implement action item #7. Please refer to the Company’s web site at www.pacificorp.com to view the IRP. Bidders should note that the IRP uses asset-based resources as proxies for planning purposes and that the resource evaluated in the IRP (a flexible Combined Cycle Combustion Turbine Generator, or “CCCT”) should not be considered by Bidders to be the only resource type or technology that the Company is willing to consider. **Any Bidder who has a question with respect to any resource characteristic it is considering to bid is instructed to contact the IE.**

The Company may opt to contract for more or less power, depending among other things, on the quality of bids received in response to RFP 2009, updates to the Company’s forecasts, regional transmission availability and timing, and changes in the wholesale energy market conditions.

This introductory section describes the type, timing and amount of flexible resources sought in RFP 2009. Section 2 covers logistics such as where and when proposals must be submitted, Bidder fees and important policies and procedures. Section 3 provides information related to power delivery requirements, including RFP-related requirements for those proposals involving interconnection of new generation facilities directly to the transmission system. Section 4 outlines the requirements to be included within each proposal. Section 5 outlines the evaluation process. Section 6 outlines the awarding and rejecting of proposals. The Appendices include all the required Attachments and Forms for each of the Eligible Resources.

At the Company's discretion bids may be disqualified for failure to comply with any of the requirements outlined in this document. Furthermore, the Company may accept or reject any or all bids at its sole discretion at any time.

B. Eligible Resources

The Company is seeking one or more flexible resource(s) in quantities up to an aggregate of 525 MW. (See **Attachment 1** for minimum requirements consistent with the flexible resources used in the IRP planning assumptions). Unless a resource qualifies for one of the exceptions outlined below, the minimum bid that will be accepted is for 100 MW of dependable capacity or greater and a minimum term of ten years. Any flexible resource(s) bid must provide unit contingent or firm capacity and associated energy that are incremental to the Company's existing capacity and energy resources and are available for dispatch or scheduling by June 1, 2009. For the purpose of RFP 2009, a resource will be deemed a flexible resource if the resource can (a) be prescheduled the day before delivery (up to sixteen hours during HE 0700 through HE 2200, Pacific Prevailing Time ("PPT")) or within the day of delivery, (b) to a point of delivery as described in this RFP 2009.

Action Item	Additional Type	Delivery Start	Term	Size	Location	Action
#7	Supply-side	FY2010 (Summer CY2009)	Up to 35 years or the life of an Asset	525 MW	Utah	Procure one or more flexible resources in or delivered to Utah by the summer of CY2009.

For each proposal submitted by a Bidder, the Bidder **must** submit its individual proposal under only one of the eight Resource Alternatives or one of the two exceptions listed below. The Company will not consider a proposal unless the Bidder has selected one of the eight alternatives **or** one of the two exceptions of Eligible Resources listed in the Request for Qualifications (Appendix A and Appendix B). One Bidder may submit more than one proposal, but each proposal can be for only one Resource Alternative designated by the Bidder.

The Company will not accept proposals where the Bidder retains the option to displace any resource for economic reasons and/or where the Bidder holds the unilateral option to select one or more alternate Point(s) of Delivery. In addition, the Company will not accept any proposal that provides for planned maintenance or planned derates (as defined by NERC) during the months of June through September or December through February in any year.

If a Bidder is submitting a proposal under any of the Eligible Resources which require the engagement of one or more contractors (each a "Contractor") for purposes of constructing or modifying a physical facility, the Bidder shall, and shall cause the Contractor to award construction contracts and subcontracts of any tier for the Work (i) in compliance with the requirements of U.S. federal and Utah state laws and regulations and

(ii) on a "Merit Shop" basis or (iii) through a project labor agreement. Each Contractor shall, subject always to the requirements of law or regulation or applicable collective bargaining agreement, and to the fullest extent commercially reasonable, perform the Work using a majority of Utah labor. Each Contractor shall, and shall require each of its subcontractors to, refrain from any discrimination against any employee on the basis of that employee's membership or non-membership in any labor organization. Contractor shall, and shall require its subcontractors to, comply with all applicable requirements of law or regulation regarding labor relations and employment matters. Any administrative or civil proceedings related to labor relations or employment matters related to the Work and filed against the Contractor or any subcontractor shall be promptly reported to Company. Nothing in this provision shall affect any obligation of any Contractor or its subcontractors pursuant to a collective bargaining agreement applicable to some or all of its performance of the Work or obligations pursuant to the Contract.

Subject to the exception outlined below for distributed generation, Qualifying Facilities ("QFs"), as defined under the regulations implementing the Public Utility Regulatory Policies Act of 1978 ("PURPA"), with 100 MW or greater of capacity are eligible to participate in this RFP 2009. QFs with 100 MW or greater of capacity and a minimum term of ten years or longer that elect to pursue traditional PURPA contracts rather than to participate in this RFP 2009 will not be eligible for capacity payments under the traditional PURPA contract. Each QF Bidder must submit the required information in **Attachment 2** in order to be evaluated under this RFP 2009. Any QF Bidder that has a question regarding these provisions is instructed to contact the IE.

C. Resource Alternatives

The Company will consider bids that take one of the following forms: (1) Power Purchase Agreement; (2) Tolling Service Agreement; (3) Asset Purchase and Sale Agreement (PacifiCorp site); (4) Asset Purchase and Sale Agreement (Bidder Site); (5) Engineering, Procurement and Construction Contract (Currant Creek Site Only); (6) purchase of an existing facility; (7) purchase of a portion of a facility jointly owned or operated by the Company; or (8) restructuring of an existing Power Purchase Agreement or Exchange Agreement. Descriptions of each of these categories are set out below. Each bid must select one, and only one of the categories, although a Bidder may submit separate bids for energy and capacity from a single resource under each of two or more categories.

1. Power Purchase Bid

Power purchase bids must be for a fixed term at a stated price from a single resource located in or into PACE, and must be in the form of the Power Purchase Agreement ("PPA") attached as Attachment 3. The source of energy and capacity for the PPA should be (a) a generation facility located on a Bidder-supplied site, (b) a generation facility located on one of the PacifiCorp sites identified in this RFP (a "Bidder Site"), or (c) from the Bidder's electrical system. For purposes of this RFP 2009, the PacifiCorp

Sites consist of real property currently owned by the Company immediately adjacent to the Company's Currant Creek and Lake Side facilities.

In the event a Bidder proposes to locate a facility on a PacifiCorp Site, the Bidder must propose a PPA for quantity equal to no less than 85% of the facility's dependable generation capacity, with such amount being no less than 420 MW nominal generation capacity, and a minimum term equal to or greater than 20 years. Design evaluation criteria that the Company will use for bid screening and evaluation purposes can be located in Appendix C (tables C.27 and C.28) of the IRP.

The Bidder should assume that the Company will not own or operate any facility bid into this category. All Bidders in this category must complete the information requested in **Appendices C-1 and D.**

In the event a facility is proposed to be located on a PacifiCorp Site, the Bidder must negotiate and enter into a lease or land purchase agreement acceptable to the Company, together with a Construction Coordination Agreement Appendix H. **THIS RFP 2009 IS NOT AN OFFER TO SELL A PACIFICORP SITE TO ANY BIDDER, AND IN NO EVENT WILL PACIFICORP BE OBLIGATED TO SELL A PACIFICORP SITE TO ANY BIDDER. ANY SALE OF A PACIFICORP SITE WILL BE SUBJECT TO THE NEGOTIATION, EXECUTION AND DELIVERY OF ALL AGREEMENTS AND OTHER DOCUMENTS NECESSARY AND PROPER FOR THE SALE OF PROPERTY, AND TO PACIFICORP'S SATISFACTION, IN ITS SOLE DISCRETION, THAT SUCH TRANSACTION WILL BE IN THE BEST INTERESTS OF PACIFICORP'S CUSTOMERS AND WILL NOT IMPAIR IN ANY MANNER PACIFICORP'S OPERATION OF ITS FACILITIES THEN LOCATED ON OR ADJACENT TO THE PACIFICORP SITES.**

At the Bidder's request, the Company may agree to provide certain facility connection points at a PacifiCorp site for facilities located at a PacifiCorp Site. The estimated cost and description of these points are contained in Attachments 7 and 8; however, actual costs to the Bidder may vary.

Bidders should note that any proposal submitted in this category that proposes new construction of a generation facility must utilize the services of a single primary Contractor under a single engineer, procure, construct (EPC) contract. Any Contractor must be experienced with the type of facility being proposed and, in addition to any other credit provision described herein, this entity must have a Credit Rating that is BBB-/Baa3 or greater from S&P/Moody's or, if not publicly rated, an equivalent Credit Rating as determined by PacifiCorp Credit.

2. Tolling Service Agreement

Tolling Service Agreement bids must be for a fixed term at a stated price from a single resource located in or delivering to PACE, and must be in the form of the Tolling Service Agreement ("TSA") attached as Attachment 5. The facility from which the TSA is bid can be located on (a) a Bidder-supplied site, or (b) a PacifiCorp Site. In the event the

Bidder proposes to locate a facility on a PacifiCorp Site(s), the Bidder must propose a TSA for an amount equal to no less than 85% of the facility's dependable generating capacity, with such amount being no less than 420 MW nominal generating capacity, and a minimum term equal to or greater than 20 years. Design evaluation criteria that the Company will use for bid screening and evaluation purposes can be located in Appendix C (tables C.27 and C.28) of the IRP.

The TSA Bidder should assume that the Company will not own or operate any facility bid into this category. All Bidders in this category must complete the information requested in Appendices C-1 and D.

In the event a facility is proposed to be located on a PacifiCorp Site, the Bidder must negotiate and enter into a land purchase agreement acceptable to the Company, together with a Construction Coordination Agreement substantially in the form attached as Appendix H. **THIS RFP 2009 IS NOT AN OFFER TO SELL A PACIFICORP SITE TO ANY BIDDER, AND IN NO EVENT WILL THE COMPANY BE OBLIGATED TO SELL A PACIFICORP SITE TO ANY BIDDER. ANY SALE OF A PACIFICORP SITE WILL BE SUBJECT TO THE NEGOTIATION, EXECUTION AND DELIVERY OF ALL AGREEMENTS AND OTHER DOCUMENTS NECESSARY AND PROPER FOR THE SALE OF PROPERTY, AND TO THE COMPANY'S SATISFACTION, IN ITS SOLE DISCRETION, THAT SUCH TRANSACTION WILL BE IN THE BEST INTERESTS OF THE COMPANY'S CUSTOMERS AND WILL NOT IMPAIR IN ANY MANNER THE COMPANY'S OPERATION OF ITS FACILITIES THEN LOCATED ON OR ADJACENT TO PACIFICORP'S SITES.**

At the Bidder's request, the Company may agree to provide certain facility connection points at a PacifiCorp Site for facilities located at a PacifiCorp Site. The estimated cost and description of these points are contained in **Attachments 7 and 8**; however, actual costs to the Bidder may vary.

The Bidder must specify in its bid whether the TSA will take the form of a financial or physical TSA. Provided the TSA is (1) a financial tolling arrangement, the Bidder will be responsible to purchase the fuel, transportation, fuel-related O&M, and start-up charges, if any, or (2) a physical tolling arrangement, the Company will supply the fuel. In the case of physical tolling arrangements, the Bidder will be responsible for obtaining fuel transportation in quantities sufficient to operate the facility at its maximum capacity, and shall make all necessary assignment of such transportation rights to the Company for the term of the TSA.

If a TSA Bidder proposes to locate a facility on a PacifiCorp Site, and the Bidder proposes the utilization of the existing natural gas lateral to the site, then the Company will accept only a physical tolling arrangement that does not adversely impact the Company's existing fuel resources at a PacifiCorp Site. Bidders are not limited to a physical tolling arrangement on a PacifiCorp Site as the Bidder may make its own arrangements for delivery of natural gas to a PacifiCorp Site.

Bidders should note that any proposal submitted in this category that proposes new construction of a generation facility must utilize the services of a single primary Contractor under a single engineer, procure, construct (EPC) contract. Any Contractor must be experienced with the type of facility being proposed and, in addition to any other credit provision described herein, this entity must have a Credit Rating that is BBB-/Baa3 or greater from S&P/Moody's or, if not publicly rated, an equivalent Credit Rating as determined by PacifiCorp Credit.

3. Asset Purchase and Sale Agreement on a PacifiCorp Site

Asset Purchase and Sale Agreement ("APSA") bids for construction on a PacifiCorp Site must be in the form of the APSA attached as Attachment 6 and its Appendices which have the PacifiCorp Site specifications set forth therein. Any APSA proposal for development and construction on a PacifiCorp Site (Lake Side or Currant Creek), must be bid to result in the development and construction of a facility that complies with the specifications in **the APSA**. Pricing for the purchase and sale of the facility can be structured to include progress payments, or as a single lump sum payment due upon achievement of commercial operation. The Company will in no event make progress payments to a Bidder unless each such payment results in the transfer of a tangible asset or a percentage ownership of an asset at the time each payment is made. Bidders must bid one of these two payment structures. All Bidders in this category must complete the information requested in Appendix C-2.

The Bidder will be required to enter into an APSA Contract, and a Construction Coordination Agreement, which is attached to the APSA as Appendix S. The Bidder shall be responsible for all aspects of the development and construction of the facility, including, but not limited to, permitting, engineering, procurement, construction and all related costs up to achieving commercial operation, with the exception of those costs to be borne by the Company to support start-up, testing, commissioning, and acceptance that are explicitly defined in the Bidder's proposal. Without limiting the foregoing, the Bidder shall be responsible for obtaining all rights and resources required to construct and provide an operational generation resource consistent with the Bidder's proposal. Such rights and facilities may include without limitation water, emissions reduction credits, wells and pipelines.

The Company may, but will not be required to, make available for the successful Bidder's purchase those rights and facilities outlined in Attachment 7 for Lake Side and Attachment 8 for Currant Creek. Bidder costs related to such rights and facilities subsequent to commercial operation of the facility shall be as defined in the APSA Contract.

In the event a facility is proposed to be located on a PacifiCorp Site, the Bidder must negotiate and enter into a lease or land purchase agreement acceptable to the Company, together with a Construction Coordination Agreement substantially in the form attached as Appendix S to the APSA. **THIS RFP 2009 IS NOT AN OFFER TO SELL A PACIFICORP SITE TO ANY BIDDER, AND IN NO EVENT WILL THE COMPANY BE OBLIGATED TO SELL A**

PACIFICORP SITE TO ANY BIDDER. ANY SALE OF A PACIFICORP SITE WILL BE SUBJECT TO THE NEGOTIATION, EXECUTION AND DELIVERY OF ALL AGREEMENTS AND OTHER DOCUMENTS NECESSARY AND PROPER FOR THE SALE OF PROPERTY, AND TO THE COMPANY'S SATISFACTION, IN ITS SOLE DISCRETION, THAT SUCH TRANSACTION WILL BE IN THE BEST INTERESTS OF THE COMPANY'S CUSTOMERS AND WILL NOT IMPAIR IN ANY MANNER THE COMPANY'S OPERATION OF ITS FACILITIES THEN LOCATED ON OR ADJACENT TO THE PACIFICORP SITES.

Bidders should note that any proposal submitted in this category that proposes new construction of a generation facility must utilize the services of a single primary Contractor under a single engineer, procure, construct (EPC) contract. Any Contractor must be experienced with the type of facility being proposed and, in addition to any other credit provision described herein, this entity must have a Credit Rating that is BBB-/Baa3 or greater from S&P/Moody's or, if not publicly rated, an equivalent Credit Rating as determined by PacifiCorp Credit.

The aggregate of the "all-in" capital cost for the APSA resource shall not exceed \$750/kW (based on the facility's nominal rating). The "all-in" capital costs shall include all payments to be made to the Bidder under the APSA and all Company costs. A complete listing of categories of Company costs can be found in Attachment 10.

4. Asset Purchase and Sales Agreement on a Bidder's Site

APSA bids for construction on a Bidder-owned site must be in the form of the APSA attached as Attachment 7. A Bidder may propose an APSA for a facility located on a Bidder-owned site. Pursuant to the APSA Contract, the Company will own and operate the facility following commercial operation. All Bidders in this category must complete the information requested in Appendix C-2.

Pricing for the purchase and sale of the facility can be structured to include progress payments or as a single lump sum payment due upon achievement of commercial operation. The Company will in no event make progress payments to a Bidder unless each such payment results in the transfer of a tangible asset or percentage ownership of an asset at the time each payment is made according to a schedule set forth in the associated bid and acceptable to the Company.

This bid category is only for facilities that have not reached commercial operation as of the bid response date. In the event the facility being proposed is existing and commercially operable as of the bid response date, then the Bidder should submit a bid pursuant to Resource Alternative #6. The Bidder shall be responsible for all aspects of the development and construction of the facility, including, but not limited to, permitting, engineering, procurement, construction and all related costs up to commercial operation with the exception of those costs to be borne by the Company to support start-up, testing, commissioning, and acceptance that shall be explicitly defined in the Bidder's proposal.

Bidders should note that any proposal submitted in this category that proposes new construction of a generation facility must utilize the services of a single primary Contractor under a single engineer, procure, construct (EPC) contract. Any Contractor must be experienced with the type of facility being proposed and, in addition to any other credit provision described herein, this entity must have a Credit Rating that is BBB-/Baa3 or greater from S&P/Moody's or, if not publicly rated, an equivalent Credit Rating as determined by PacifiCorp Credit.

The Company will own and operate the facility following commercial operation. Any existing power supply obligations (if any) associated with the facility shall not be assigned to the Company unless the Company, in its sole discretion, accepts.

The aggregate of the "all-in" capital cost for the APSA resource shall not exceed \$750/kW (based on the facility's nominal rating). The "all-in" capital costs shall include all payments to be made to the Bidder under the APSA and all Company costs. A complete listing of categories of Company costs can be found in Attachment 9.

5. Engineering, Procurement, and Construction Contract ("EPC Contract") for the Currant Creek Site (no proposals for an EPC contract at the Lake Side site will be accepted)

An EPC proposal can be bid at the Currant Creek PacifiCorp Site only. The EPC Contract must be in the form of a fixed price bid, and may be structured to include progress payments or a single lump sum payment due upon achievement of commercial operation. The Company will, in no event, make progress payments to the Bidder unless each such payment results in the simultaneous transfer of a tangible asset or a percentage ownership of an asset at the time each such payment is made. Bidders must bid one of these two payment structures and in accordance with the EPC Contract in **Attachment 19 and the specifications for Currant Creek contained therein**. All Bidders in this category must complete the information requested in Appendix C-3.

The Company will be responsible for the development and permitting of the proposed facility at the Currant Creek site. **The Company's assumptions for all aspects of development on each of the Currant Creek site are outlined in Attachment 8. The successful Bidder shall be responsible for all development and permitting and any other costs not identified in Attachment 8.**

The aggregate of the "all-in" capital cost for the EPC resource and Owner's Cost in Attachment 10 shall not exceed \$750/kW (based on the facility's nominal rating). The "all-in" capital costs shall include all payments to be made to the Bidder and all Company costs. A complete listing of categories of Company costs can be found in Attachment 10.

Bidders should note that any proposal submitted in this category shall result in the Bidder directly performing the EPC services, as opposed to utilizing a sub-EPC contractor. A Bidder in this category must be experienced with the type of facility

being proposed and, in addition to any other credit provision described herein, this entity must have a Credit Rating that is BBB-/Baa3 or greater from S&P/Moody's or, if not publicly rated, an equivalent Credit Rating as determined by PacifiCorp Credit.

6. Purchase of an Existing Facility

In the event sale of an existing facility is proposed by a Bidder, and if the facility is interconnected to PACE and commercially operable as of the bid response date, the Company will consider purchasing, owning and operating the facility. Any such purchase would be contingent on disclosure to the Company by the Bidder of all information regarding the facility that may be material to the Company's decision to make the purchase, including without limitation all potential or existing claims or liabilities, on the Company's completion of and satisfaction with the results of such due diligence inquiries that the Company may deem appropriate in its sole discretion, and on the transfer of good and marketable title to the Company by the Bidder, free and clear of any and all liens and encumbrances. Such inquiries may include, but will not be limited to, site inspections, interviews, audit of all applicable books, contracts, forecasts, and records, and/or an assessment of past, future, or potential environmental liabilities. In addition, any existing network or point-to-point transmission rights associated with the facility's output must be released and reassigned to the Company, at the Company's option.

Such due diligence will be performed by qualified generation experts, who may be third-party legal and environmental experts and consultants satisfactory to the Company in its sole discretion, in addition to Company personnel. The Company reserves the right to no longer consider the resource, if in its sole discretion; it determines that there are aspects of the resource not in the best interest of the Company and its customers. The Company will require the following information outlined in **Appendix C-4** to be provided by the Bidder in order to determine if the asset will be evaluated and the priorities of the evaluation.

The Company would own and operate the prospective facility following commercial operation but no later than June 2009. Existing power supply obligations associated with the facility, if any, shall not be assigned to the Company unless the Company, in its sole discretion, accepts such assignment.

The Company's aggregate "all-in" capital cost for the EPC resource shall not exceed \$750/kW (based on the facility's nominal rating). The "all-in" capital costs shall include all payments to be made to the Bidder.

7. Purchase of a Portion of a Facility Jointly Owned and/or Operated by PacifiCorp

A Bidder may propose that the Company purchase all or an additional portion of a facility in which the Company already has an existing ownership interest or one that the

Company currently operates. Any such purchase by the Company would be contingent upon disclosure to the Company by the Bidder of all information regarding the facility and the Bidder's interest that may be material to the Company's decision to make the purchase, including without limitation, potential or existing claims or liabilities, on the Company's completion of and satisfaction with the results of such due diligence inquiries that the Company may deem appropriate in its sole discretion, and on the transfer of good and marketable title to the Company by the Bidder of the Bidder's interest, free and clear of any and all liens, claims and encumbrances. The Company's due diligence inquiries may include, but will not be limited to, an audit of all applicable books and records, and/or an assessment of past, future, or potential environmental liabilities. In addition, any existing network or point-to-point transmission rights associated with the facility's output owned or controlled by the Bidder must be released and reassigned to the Company, at the Company's option.

Such due diligence will be performed by qualified generation experts, which may be third-party legal and environmental experts and consultants, in addition to Company personnel. The Company reserves the right to no longer consider the resource, if in its sole discretion it determines that there are aspects of the resource not in the best interest of the Company and its customers. The Company will require the following information outlined in **Appendix C-4** to be provided by the Bidder, in order to determine if the asset will be evaluated and the priorities of the evaluation.

The Company would own and operate the prospective facility following closing on the sale. Existing power supply obligations associated with the facility, if any, shall not be assigned to the Company unless the Company, in its sole discretion, accepts such assignment. The Company's aggregate "all-in" capital cost for a resource submitted under this bid category shall not exceed \$750/kW (based on that portion of the facility's nominal rating being offered).

8. Restructure of an Existing Power Purchase Agreement or an Exchange Agreement and/or Buyback of an Existing Sales Agreement.

The Company will accept proposals under this category of bids for one or more of (a) restructuring of an existing PPA between the Company and the Bidder; (b) an Exchange Agreement between the Company and the Bidder; and (c) the termination or buyback of an existing agreement for the sale of energy and capacity by the Company to the Bidder in the PACE.

If the bid calls for the restructuring of an existing PPA between the Company and the Bidder, such restructuring must result in the making available to the Company incremental dependable energy and capacity in an amount of not less than 100 MW within PACE during the summer season (June through September) for delivery as provided in this RFP 2009 starting June 1, 2009 for a minimum term of ten years. The Bidder would assign any and all existing network or point-to-point transmission rights associated with the incremental energy and capacity to the Company at the Company's request at no additional cost should the Company select this bid.

If the bid calls for an exchange agreement, such agreement would provide for the delivery by the Bidder to the Company of dependable energy and capacity in an amount of not less than 100 MW for delivery of a minimum of a ten-year term as described in this RFP, in exchange for power to be supplied by the Company to the Bidder at another location, other than PACE and/or during another time period.

9. Eligible Resources Exceptions

As noted above, all resources must be for 100 MW of dependable capacity and for a minimum period of 10 years, except to the extent that the resources qualify for one of the two exceptions set forth below:

a) Distributed Generation

Bids constituting "Distributed Generation" may be smaller than 100 MW; however, they must still meet the ten-year term flexibility resource requirement and Point(s) of Delivery. For the purpose of this RFP 2009, "Distributed Generation" means Combined Heat and Power (CHP) generation facilities with a nominal continuous generation capacity greater than 3 MW.

A bid that propose to consolidate end-use customer standby generation such that the combined dependable capacity of the generation qualifies as a flexible resource when dispatched and is greater than 3 MW will be deemed to satisfy this definition.

Nothing in this RFP 2009 is intended to prevent the ability of owners of facilities that qualify for QF status under PURPA and that are less than 100 MW in size from seeking contracts outside this RFP 2009 as provided under PURPA and the rules and regulations of the Utah PSC. Contracts entered into outside this RFP 2009 process may not qualify for capacity payments, however.

b) Load Curtailment

While this RFP 2009 is not intended to implement the Demand Side management (DSM) initiatives contained in its IRP, the Company does consider certain types of load-management measures to be appropriate for consideration under this RFP 2009. The Company has found that bilateral agreements with large end-use customers for the curtailment of load have proven to be effective in reducing the need for incremental energy and capacity at critical times. As a result, the Company invites end-use customers to bid load curtailment under this RFP 2009. Any such bid must meet the following requirements: (a) the Bidder must be an existing end-use customer of the Company; (b) the load to be curtailed must be not less than 25 MW; (c) the curtailment must be a physical curtailment of the load; (d) the load to be curtailed must respond to the curtailment order 30 minutes prior to the hour within and remain curtailed for one-hour blocks; (e) the Company must not have any residual delivery obligation upon exercising its curtailment rights hereunder under any other contract, law, regulation or order, and Bidder must waive any and all rights to assert any such contrary rights; and (f) the Bidder

must provide the Company with contractual surety and adequate credit assurances that such load curtailment will take place at times and in amounts required by this RFP 2009. The Company will not accept proposals for the financial curtailment of load nor will it accept physical load curtailment proposals that result in the Company having a residual delivery obligation via any other contract, law, or regulatory rule or order.

SECTION 2. LOGISTICS

A. Schedule of RFP 2009 Actions: RFP 2009 Is Being Issued as of September, 2005

The anticipated schedule will be:

Event	Anticipated Date
RFP 2009 issued	September 2005
RFP bid conference	October 2005
Intent to bid form	October 2005
Responses due	December 1, 2005
Evaluation complete	January 2006
Bidder negotiation	February-June 2006
PacifiCorp decision	July 2006
Utah Public Service Commission approval proceeding -180 days	August 2006- January 2007
Avoided cost filing ¹	2007

Bidders should note that the above schedule is an anticipated schedule only and is subject to change. The Company accepts no liability to the extent the actual schedule is different from the anticipated schedule.

B. Prebid Conference

- Time: tbd
- Date: tbd
- Location: tbd

Interested parties and Bidders may submit questions prior to the RFP bid conference, so that such questions may be addressed in a more timely fashion. All information, including the pre-bid conference materials, questions and answers will be posted by PacifiCorp on the PacifiCorp website at www.pacificorp.com. In addition, the same material may be posted by the IE on a website established by the IE.

¹ Updated avoided costs filing by state will be made to the extent required by law or regulatory order.

C. Request for Qualification (RFQ) in the Form of a Notice of Intent to Bid

Bidders who intend to be considered as part of this RFP 2009 process **must** return the “RFQ Bid Form” (**Appendix A and Appendix B**) to the IE no later than close of business on the date indicated in Section 2. The IE will provide each Bidder who has met the qualifications under the RFQ (which will include creditworthiness, demonstrated capability, experience, performance references and qualifications to deliver the indicated Eligible Resource option selected on the form) with a bid number. The Bidder will be required to submit its proposal(s) utilizing only the bid number, and with no other identifying information. **Each Bidder is expected to adequately blind its proposals such that the bid number is the only identifying aspect of the bid.**

D. Submission of Bids

Each Bidder must submit:

1. a signed original and 10 hard copies of each bid and any required forms, and
2. two electronic copies of the bid and any required forms (on two separate compact discs) that are in PDF format.

The IE will review all submissions, to ensure that only bid numbers are in the proposals and electronic submissions, prior to forwarding them to the RFP 2009 team. All bids must be submitted utilizing only the assigned bid number(s) and such must be transmitted by express, certified or registered mail or hand delivered to:

PacifiCorp RFP 2009
C/o: [reference IE]
Address: [IE address]
City, State, ZIP

Bids will be accepted until 5 p.m. PPT on December 1, 2005. Any bids received after this time, at the Company’s discretion, will be returned by the IE, unopened.

All bids will be reviewed by the IE to determine that they are adequately blinded and then provided to the RFP 2009 team for further analysis. The IE will provide an original copy (with a cross-reference table to Bidders) to the Company’s credit and legal departments. To the extent the IE determines that any proposal is not adequately blinded, the IE will determine if the IE can effectuate effective blinding itself or, as determined by the IE, may request that the Bidder undertake the appropriate blinding. If the Bidder is nonresponsive to the IE’s requests, then the bid will be rejected by the IE and returned to the Bidder.

E. 2009 RFP Team

A bid evaluation team, made up of various work groups within the Company, will evaluate and select bids. The composition of the bid evaluation team and the primary roles of each member are shown below:

Work Group	Roles
Independent Evaluator (IE)	The IE will be hired by the Utah Public Service Commission to ensure a fair and reasonable process is used in the RFP 2009. The IE will provide oversight of the RFP 2009 process and will validate, audit and review all aspects of all proposals, providing an oversight to the process and validation on the models, inputs, assumption(s), risk assessment, and generation specifications for the PacifiCorp Sites.
Origination	Overall coordinator of the process. Bid process management for all proposals and coordination with the IE and all of the work groups.
Structuring and Pricing, and Resource Planning	Economic analysis and modeling including the validation on the inputs to the risk assessment of the bid.
Credit	Credit screening, evaluation and monitoring throughout the process.
Environmental	Air, water and discharge, emission credits, site permits and facilities.
Legal	Confirming compliance of bids to requirements of RFP and its Forms, Attachments and Appendices; conduct of legal process; conducting due diligence inquiries; supervising any documentation entered into as part of the RFP process.
Generation and/or Third-Party Engineering Consultant (as needed)	Specifying, evaluating and confirming conformity with design specifications; conducting, as needed, technological and operational due diligence, generation expertise, environmental due diligence on all resources.
Commercial and Trading – Regulated Transmission Manager	Assist S&P and Origination with transmission requests and evaluations in determining the appropriate costs and/or agreements.
Risk Management	Validation of evaluations and modeling risk assessment on final short lists.

F. Bidder Evaluation Fees

To help defray the cost of the IE, each Bidder shall submit with each of its bid proposals a nonrefundable "Bid Fee" of \$10,000. Bidders submitting a bid in Resource Alternative category #9 (CHP and load curtailment) shall have a per-bid fee of \$1,000. A Bidder submitting more than one bid will be required to submit a bid fee for each bid.

Bidders may submit multiple bid proposals in response to this RFP 2009. The IE and the Company shall determine in their sole discretion whether a Bidder's submission constitutes one or more proposals, for purposes of assessing the foregoing fee.

Bid proposals for the same site and the same generation technology and size will be considered a single bid proposal; provided, that all such proposals are submitted under only one Resource Alternative. If a bid is submitted under more than one Resource Alternative then the bid will be considered as two separate proposals, and two separate bid fees will be required.

G. Effectiveness of Bids

Each bid proposal must remain open for acceptance by the Company from the date of submittal through March 27, 2007, unless earlier released in writing by the Company.

H. Procedural Items

1. Request for Qualification (RFQ)

Each Bidder must complete and submit to the IE the RFQ Bidders Form for each Resource Alternative it intends to submit in its proposal to participate in the RFP 2009 by the date called out in Section 2. The Company will require each Bidder to meet the specific credit requirements and capability requirements outlined below.

Credit Appendix B will be attached to the RFQ and must be completed to receive a bid number by the IE. The Bidder will be required to provide financial and credit information as outlined in Credit Appendix B. Each Bidder will then undergo a credit evaluation by the Company Credit department ("PacifiCorp Credit"). In the event that a Bidder is unable to provide the requested financial and credit information and indicate its ability to post any necessary credit assurances, the Bidder will be notified that it will not be eligible to submit a proposal. After PacifiCorp Credit has evaluated the information provided by the Bidder pursuant to Credit Appendix B, PacifiCorp Credit will notify the IE and the IE will notify the Bidder.

Eligible Bidders will then be permitted to submit proposal(s) into the RFP 2009 process. In the event that the Bidder's credit status changes at any time after submission of a bid into the RFP 2009 process, PacifiCorp Credit reserves the right to request updated information pursuant to the Credit Appendix B, to reevaluate the Bidder and to request further credit assurances. In the event that the Bidder does not provide evidence of its

ability to provide such further credit assurances, the Company reserves the right to reject the Bidder's proposal after consultation with the IE and return the bid fee.

The Bidder will be required to demonstrate its ability to post credit assurances in the amounts outlined in the Credit Matrix in Appendix B. The amount of any credit assurances to be provided will be determined based upon (a) the Credit Rating in the Credit Matrix of either the Bidder or the entity providing credit assurances on behalf of the Bidder, (b) the size of the project, and c) the type of Eligible Resource bid. The Credit Rating will be the lower of: (x) the most recently published senior, unsecured long-term debt rating (or corporate rating if a debt rating is not available) from Standard & Poor's ("S&P") or (y) the most recently published senior, unsecured debt rating (or corporate rating if a debt rating is not available) from Moody's Investor Services. If option (x) or (y) is not available, the Credit Rating will be determined by PacifiCorp Credit through an internal process review and utilizing a proprietary credit scoring model developed in conjunction with S&P. All Bidders will receive a Credit Rating which will determine the amount of credit assurances to be posted.

Please note that should a Bidder be an existing counterparty with PacifiCorp, PacifiCorp Credit reserves the right to protect itself from counterparty credit concentration risk and require credit assurance in addition to that outlined in the Credit Matrix.

In the event that the Bidder posts a Letter of Credit as collateral it must be issued by a bank acceptable to the Company in the Company's reasonable discretion, and be in form and substance consistent with the form of the Letter of Credit set out in **Attachment 11**.

Bidders Qualification and Capability in the RFQ (Appendix A and Appendix B)

Each Bidder must be able to demonstrate its Credit Capability and its capability, experience and qualification under each Eligible Resource. This should include but not be limited to its ability to perform its obligations that would arise upon execution and delivery of the documents associated with the Company's acceptance of the Bidder's bid, and references to support its capability in each of the selected Eligible Resources options which it will be submitting in this 2009 RFP.

2. Submission of Proposals by Bidders

a) All bid proposals must be received by the IE no later than December 1, 2005. All bid proposals must be in the format set forth in the RFP 2009 Proposal Form, **Appendix A**, which must be completed in its entirety. The RFP 2009 Proposal Form identifies all the required Attachments and Forms for each Resource Alternative selection the Bidder intends to submit. Any bid proposal that does not contain all of the required information by **December 1, 2005**, will be subject to rejection as nonresponsive by the Company. It is each Bidder's responsibility to submit additional information related to its bid proposal if such information will materially improve the value of its bid proposal or the Company's understanding thereof.

b) Each bid proposal must be signed by an officer of the bidding company via an Officer Certification **found in Appendix E**.

c) Each bid must include a statement by the Bidder that the Terms and Conditions of the Attachment, selected as part of the Resource Alternatives submitted by Bidder, are acceptable to the Bidder.

d) All pricing must be in terms of nominal dollars. Prices and dollar figures quoted will be assumed to be in nominal terms for the year in which they occur unless clearly stated otherwise. The Form Pricing Input Sheet contains the applicable pricing inputs which will be required to be completed by the Bidder for the bid to be evaluated. This Form Pricing Input Sheet includes inputs such as start/end date, point of interconnection, resource type, variable and fixed O&M, start-up costs, capacity payment or capital expenditures, PPA or TSA escalation rates, heat rates and capacity levels adjusted for both expected temperature, degradation per the manufacturer's recommended maintenance schedule, start-up charges, and a variety of other inputs, including specific published indices if applicable.

Bidder will also complete SFAS No. 13 Form (**Appendix F**), which will require the Bidder to complete the inputs to support the Bidder's assertion regarding Capital Lease versus Operating Lease.

e) All bid proposals must be for a capacity greater than 100 MW EXCEPT FOR: (a) Distributed Generation which must be greater than 3 MW of installed capacity; and (b) end-use customers of the Company with load curtailment proposals for a minimum of 25 MW each.

f) Bid proposal prices must include all costs that the Bidder expects the Company to pay associated with any of the eligible resources, including but not limited to station service, test energy, fuel for testing, gas lateral construction, electrical interconnection, and all costs (including fuel) incurred as necessary to accomplish synchronization.

3. Company's Reservation of Rights and Disclaimer

The Company reserves the right, without qualification and in its sole discretion, to reject any or all bids, and to terminate this RFP 2009 in whole or in part at any time. Without limiting the foregoing, the Company reserves the right to reject as nonresponsive any or all bid proposals received for failure to meet any requirement of this RFP 2009. The Company also reserves the right to request that the IE contact any Bidder for additional information. The Company further reserves the right without qualification and in its sole discretion to decline to enter into any agreement with any Bidder for any reason. By way of example and not by limitation, the following shall constitute nonresponsive bids: a bid proposal offering capacity not committed to the Company; a curtailment bid proposal not qualifying as one of the exceptions outlined in the alternatives; and an incomplete or nonspecific bid proposal. The Bid Fees associated with a nonresponsive bid proposal will be refunded to the Bidder.

Bidders who submit bid proposals do so without recourse against the Company, its parent company, its affiliates and its subsidiaries, or against any director, officer, employee, agent or representative of any of them, for any modification or withdrawal of this RFP 2009, rejection of any bid proposal, failure to enter into an agreement, or any other reason. The Bid Fees submitted by any Bidder, once the bid is accepted, will not be refunded (unless otherwise determined in the sole discretion of the Company) in the event of any modification or withdrawal of this RFP 2009, rejection of any bid proposal, or failure to execute an agreement.

4. Accounting

All contracts proposed to be entered into as a result of this RFP 2009 will be assessed by the Company for appropriate accounting and/or tax treatment. Bidders shall be required to supply the Company with any and all information that the Company reasonably requires in order to make such assessments.

Specifically, given the term lengths that PPA, TSA, and/or exchange proposals may cover in response to RFP 2009, accounting and tax rules may require either: (i) a

contract be accounted for by PacifiCorp as a Capital Lease or Operating Lease² pursuant to SFAS No. 13, or (ii) the seller or assets owned by the seller, as a result of an applicable contract, be consolidated as a Variable Interest Entity³ onto PacifiCorp's balance sheet. To the extent a Bidder proposal results in an applicable contract, the following shall apply with respect to VIE treatment:

- The Company is unwilling to be subject to accounting or tax treatment that results from VIE treatment. As a result, all Bidders are required to certify, with supporting information sufficient to enable the Company to independently verify such certification, that none of their proposals will subject the Company to such VIE treatment. Bids that result in VIE treatment will be rejected.
- Further, any applicable contract that the Company executes will require that:
(i) the Seller covenant that the Company will not be subject to VIE treatment at any point during the term of the agreement, and (ii) in the event that the contract causes the Company to be subject to VIE treatment at any point during the term of the agreement, unless cured, such treatment will constitute a seller event of default.

Each Bidder must also declare, in each of its proposals, whether or not each such proposal will subject the Company to Capital Lease treatment or Operating Lease treatment pursuant to SFAS No. 13. In any case for which the Bidder declares that the proposal will subject the Company to lease treatment pursuant to SFAS No. 13, after application of Emerging Issues Task Force ("EITF") 01-08 ("Determining Whether an Arrangement Contains a Lease"), the Bidder is required to certify such declaration (Capital Lease or Operating Lease), with supporting information sufficient to enable the Company to independently verify the Bidder's opinion of how the Company will be required to account for the proposal.

Each Bidder must also agree to make available at any point in the bid evaluation process, any and all financial data associated with the Bidder, the Facility and/or the PPA, TSA or other contract that PacifiCorp requires to independently verify the Bidder's accounting declarations or certifications required above. Such information may include, but may not be limited to, data supporting the economic life (both initial and remaining), the fair market value, executory costs, nonexecutory costs, and investment tax credits or other costs (including debt specific to the asset being proposed) associated with the Bidder's

² "Capital Lease" and "Operating Lease" - shall have the meaning as set forth in the Statement of Financial Accounting Standards ("SFAS") No. 13 as issued and amended from time to time by the Financial Accounting Standards Board.

³ "Variable Interest Entity" or "VIE" - shall have the meaning as set forth in Financial Accounting Standards Board ("FASB") Interpretation No. 46 (Revised December 2003) as issued and amended from time to time by the FASB.

proposal. Financial data contained in the Bidder's financial statements (e.g., income statements, balance sheets, etc.) may also be required to provide additional information.

A SFAS No. 13 Form (Appendix F) must be completed to the extent the Bidder submits a proposal which results in either direct or inferred debt.

Cost Associated with Direct or Inferred Debt

PacifiCorp will take into account a cost associated with direct or inferred debt as part of its economic analysis in the initial screening.

- **Direct debt** results when a contract accounts to be a Capital Lease pursuant to EITF 01-08 and SFAS No. 13 and the lower of the present value of the nonexecutory minimum lease payments or 100% of the fair market value of the asset must be added to PacifiCorp's balance sheet.
- **Inferred debt** results when credit rating agencies infer an amount of debt associated with a power supply contract and, as a result, take the added debt into account when reviewing PacifiCorp's credit standing.

In both instances, PacifiCorp would need to inject equity to maintain the same debt/equity ratio as before the power supply contract. Since equity has a cost, this cost will be taken into account when evaluating the bids to determine the short list.

For the purposes of RFP 2009, PacifiCorp will determine the amount of debt associated with each bid that would result in an applicable contract, derive the associated equity infusion, then include in its analysis the cost associated with the equity amount multiplied by the pre-tax difference between Return on Equity ("ROE") and PacifiCorp's Weighted Average Cost of Capital ("WACC"). Pre-tax ROE will be assumed to be equal to 16.92% and pre-tax WACC will be assumed to be 11.48%. The amount of debt will be the higher of the direct or inferred debt. This will be updated prior to the issuance of the final RFP 2009.

Direct debt will be determined for each year as of the beginning of the contract as the amount PacifiCorp must place on its balance sheet as a result of a Capital Lease. If the bid does not result in a Capital Lease then the amount of direct debt will be zero.

Inferred debt will be determined by utilizing the methodology used by Standard & Poor's in the article attached as Attachment 12. At the beginning of the contract, the net present value of the remaining fixed payments will be calculated using a 10% discount rate and then multiplied by a "risk factor." The risk factor will be 50%.

5. Confidentiality

The Company will attempt to maintain the confidentiality of all bids submitted, to the extent allowed by law or regulatory order, as long as such confidentiality does not adversely impact a regulatory proceeding.

It is the Bidder's responsibility to clearly indicate in its proposal what information it deems to be confidential. Bidders may not mark their entire proposal as confidential, but must mark specific information on individual pages to be confidential in order to receive confidential treatment for that information.

All information supplied to the Company or generated internally by the Company shall remain the property of the Company. Bidder shall maintain the confidentiality of such information and shall not be available to any entity before, during or after this RFP 2009 process unless required by law or regulatory order. The Bidder expressly acknowledges that the Company may retain information submitted by the Bidder in connection with this RFP 2009.

Only those Company employees who are directly involved in this RFP 2009 process or with the need to know for business reasons will be afforded the opportunity to view submitted bids or Bidder information.

Bidders should be aware that the IE will release Bidder information to the Company's Legal and Credit departments. These functions are considered shared corporate functions as they provide services to both the Company and PPM Energy. **The Company's Legal and Credit departments will not share any information regarding bids with PPM.**

Bidders should be aware that information supplied by Bidders may be requested and supplied during docketed regulatory proceedings, subject to appropriate confidentiality provisions applicable to that particular proceeding. This means that parties to docketed proceedings may request to view confidential information. If such a request were to occur, the Company will attempt to prevent such confidential Bidder information from being supplied to intervening parties who are Bidders or who may be providing services to a Bidder, but the Company shall not be held liable for any information that it is ordered to be released or that is inadvertently released.

Lastly, the Company intends to utilize its internal, proprietary, forward price projections in its evaluation process. The resulting projections and evaluations will not be shared with entities external to the Company, including with Bidders, unless required by law or regulatory order.

6. Regulatory Process

Utah Code § 54-17-101, *et seq.* requires PacifiCorp to use a solicitation process to construct or acquire a significant energy resource, defined as 100 MW or more with a dependable life of ten years or more. This law requires the participation of an

independent evaluator, appointed by the Utah Public Service Commission, to actively monitor the solicitation process for fairness and compliance with state law. Prior to execution of any of the eight alternatives listed above, the Company will go through an up-front prudence review consistent with the law in the state of Utah.

That law may be viewed at:

<http://www.le.state.ut.us/~2005/htmdoc/sbillhtm/SB0026S01.htm>

7. Subsequent Regulatory Action

The Company does not intend to include a contractual clause whereby the Company is allowed to adjust contract prices in the event a regulatory agency exercises jurisdiction over the Company, and does not fully recognize the contract prices in determining the Company's revenue requirement. As of the issuance date of this solicitation, PacifiCorp is unaware of any such actual or proposed law or regulatory order.

8. Communications

ALL QUESTIONS OR RECOMMENDATIONS CONCERNING THIS RFP 2009, THE BID PROPOSALS, OR BID EVALUATIONS MUST BE SUBMITTED IN WRITING DIRECTLY AND EXCLUSIVELY **TO THE INDEPENDENT EVALUATOR (IE)**, BY POSTING ON THE IE'S WEBSITE. ALL BIDDERS' QUESTIONS AND THE IE'S RESPONSES THERETO AND RECOMMENDATIONS SHALL BE POSTED ON THE IE'S WEBSITE. NEITHER THE IE, THE COMPANY STAFF, NOR ANY REPRESENTATIVE OF THE COMPANY WILL PERMITTED TO HAVE ANY PRIVATE COMMUNICATION WITH ANY BIDDER REGARDING SUCH QUESTIONS OR RECOMMENDATIONS EXCEPT AS SET FORTH BELOW.

FOLLOWING THE SUBMISSION OF BIDS

PRIOR TO THE SELECTION OF THE SHORT LIST, ALL COMMUNICATIONS WITH BIDDERS SHALL BE CONDUCTED THROUGH THE IE AND SHALL BE CONFIDENTIAL. SUCH COMMUNICATIONS MAY INCLUDE ONE FACE-TO-FACE MEETING WITH EACH BIDDER, ATTENDED BY THE IE AND THE COMPANY, IN ORDER TO DISCUSS THE BIDDER'S PROPOSAL(S), UNLESS THE BIDDER DECLINES SUCH A MEETING.

IN THE CASE OF A DEFICIENCY NOTED UPON INITIAL SCREENING OF ANY BID, THE IE WILL NOTIFY THE BIDDER OF ANY CURE PERIOD THAT WILL BE GRANTED TO SUCH BIDDER, WITHIN WHICH PERIOD SUCH DEFICIENCY MUST BE CURED. DEFICIENT BIDS THAT ARE NOT GRANTED A CURE PERIOD BY THE IE WILL BE REJECTED AS NON-RESPONSIVE AND THE FEES SUBMITTED WITH SUCH BIDS SHALL BE RETURNED. THEREAFTER, THE COMPANY, THROUGH THE IE, MAY REQUEST THAT CERTAIN BIDDERS SUBMIT CORRECTIONS OF ANY

ERRORS OR OMISSIONS CONTAINED IN ANY PROPOSAL OR TO CLARIFY A PROPOSAL. FURTHER, THE COMPANY, THROUGH THE IE, MAY REQUEST CERTAIN BIDDERS TO REVISE THEIR PROPOSALS IN CERTAIN RESPECTS IN ORDER TO OBTAIN THE BEST VALUE FOR THE COMPANY RATEPAYERS. SUCH REQUESTS MAY OR MAY NOT AFFORD THE BIDDER A CORRESPONDING OPPORTUNITY TO CHANGE ITS PRICE. IN ANY EVENT, THERE WILL BE NO OPPORTUNITY AFFORDED BIDDERS TO REFRESH OR REVISE THEIR INITIAL PROPOSALS ON THEIR OWN INITIATIVE.

SECTION 3. RFP 2009 PROPOSAL CONTENT

This section outlines the content and format requirements for all proposals submitted in response to RFP 2009. Proposals that do not include the information requested in this form will be deemed ineligible for further evaluation unless the information is not relevant.

The Bidder is required to provide information in the following format to meet the criteria of the 2009 RFP. All sections must be completed and in compliance with the RFP in order for the bid to be accepted.

- 1) Executive summary
- 2) Appropriate bid fee
- 3) Complete set of applicable forms
- 4) Experience
- 5) Overall development

All proposals must describe the Bidder's qualifications and experience in selling and delivering energy and capacity (in the case of PPA bids), and in developing, constructing, commissioning and operating generation facilities similar to those proposed by the Bidder. The background on experience and qualifications of key personnel that will manage development must also be provided, in the case of development projects. If the Bidder is proposing an EPC or APSA then the Bidder must describe its capability to manage the arrangement and provide demonstrable evidence that the Bidder's personnel are qualified.

6) Project Development

All proposals for the development of generation facilities must include a detailed schedule of the project development activities and target completion dates for financing, engineering, permitting, equipment procurement, construction, start-up and commissioning. The schedule should list, in the form of key milestones, necessary order

dates for long lead-time equipment, and then describe the overall development strategy, which should include the assessment of permitting risk, to ensure that the project will be developed to meet the available date of June 1, 2009.

7) Contract Terms/Conditions (PPA/TSA/APSA/EPC/O&M)

To the extent that the Bidder's ability to execute a particular contract (PPA/TSA/APSA/EPC/O&M) is contingent upon changing language in the pro forma contracts, then the Bidder shall specifically identify the proposed changes in its bid(s), if any, that are required prior to executing the Pro Forma contract.

To the extent that a Bidder requests a change to the pro forma contract that will reduce Bidder-proposed pricing, the proposal must specifically identify such change, and the associated price reduction. The Company will not accept proposed changes to a pro forma contract unless such change(s) are benign to the Company and its customers in terms of effect.

The Bidder must describe how the facility will be financed, while also explaining in detail the plan for meeting the security requirements outlined in each of the PPA, TSA, and/or the APSA/EPC.

8) Requested Electronic Requirement—Data or Maps (if applicable)

9) Complete Bid Packages Consistent with the Requirements Outlined in the Specifications for Either Lake Side or Currant Creek

10) All Proposals Will Require the Following Appendix, Attachments and Forms:

A) All Bids Except the Eligible Resource Exceptions Will Require:

- Appendix A to the RFQ Notice of Intent to Bid
- Appendix B - Request for Qualifications Bidder's Credit Information
- Appendix D - Natural Gas & Fuel Supply Form
- Appendix E - Officer Certification Form
- Attachment 13 - PacifiCorp Costs Associated with Integration that will be used in the analysis
- Form 1 - Pricing and Input Sheet
- Form 2 - Permitting and Construction Milestones

B) Power Purchase Bid (1):

- Attachment 3 - Power Purchase Contract
- Appendix C-1 - PPA and TSA Information Request
- Appendix D - Natural Gas & Fuel Supply Form
- Appendix G - Bidder Site Control Form
- Appendix H - Construction Coordination Agreement (if applicable)
- Attachment 16 - Site Purchase Agreement for Lake Side (if applicable)

- Attachment 17 - Site Purchase Agreement for Currant Creek (if applicable)
- Appendix F - SFAS No. 13 Form

C) Tolling Service Agreements Bids (2):

- Attachment 5 – Tolling Service Agreement Contract
- Appendix C-1 - PPA and TSA Information Request
- Appendix D - Natural Gas & Fuel Supply Form
- Appendix G - Bidder Site Control Form
- Appendix H - Construction Coordination Agreement (if applicable)
- Attachment 16 - Site Purchase Agreement for Lake Side (if applicable)
- Attachment 17 - Site Purchase Agreement for Currant Creek (if applicable)
- Appendix F - SFAS No. 13 Form

D) APSA Bids at PacifiCorp Sites (3):

- Attachment 6 - Asset Purchase and Sale Agreement (APSA) with Appendices
- Attachment 13 - PacifiCorp Costs Associated with Integration that will be used in the analysis
- Appendix C-2 - APSA Information Request
- Form 1 - Pricing Input Sheet
- Form 2 - Permitting and Construction Milestones

E) APSA Bids at Bidder Sites (4):

- Attachment 6 - Asset Purchase and Sale Agreement (APSA) with Appendices
- Attachment 13 - PacifiCorp Costs Associated with Integration that will be used in the analysis
- Appendix C-2 - APSA Information Request
- Appendix D - Natural Gas & Fuel Supply Form
- Appendix G - Bidder Site Control Form
- Form 2 - Permitting and Construction Milestones

F) EPC Bids at Currant Creek Site Only (5):

- Attachment 13 - PacifiCorp Costs Associated with Integration that will be used in the analysis
- Attachment 18 - Currant Creek Engineering, Procurement and Construction Contract (EPC)
- Appendix C-3 - EPC Information Request
- Form 2 - Permitting and Construction Milestone

G) Sale of Existing Facilities Bids (6):

- Attachment 13 - PacifiCorp Costs Associated with Integration that will be used in the analysis (if required)
- Attachment 19 – Due Diligence items for the Acquisition of an Existing Facility
- Appendix C-4 – Existing Asset Purchase Information Request

H) Sale of Portion of Jointly Owned or Operated Bids (7):

- Attachment 13 - PacifiCorp Costs Associated with Integration that will be used in the analysis (if required)
- Attachment 19 - Due Diligence Items for the Acquisition of an Existing Facility
- Appendix C-4 - Existing Asset Purchase Information Request
- Appendix F - SFAS No. 13 Form

I) Restructuring Bids of an Existing Power Purchase Agreement or an Exchange Agreement and/or Buyback of an Existing Sales Agreement (8):

- Attachment 13 - PacifiCorp Costs Associated with Integration that will be used in the analysis (if required)
- Any other form deemed to be required based on the restructuring.
- Appendix F - SFAS No. 13 Form

J) Distributed Generation (9.a):

- Attachment 13 - PacifiCorp Costs Associated with Integration that will be used in the analysis (if required)
- Appendix F - SFAS No. 13 Form

K) Load Curtailment (9.b)

SECTION 4. RESOURCE INFORMATION

A. Price and Nonprice Information

The Company's IRP incorporated numerous price and nonprice resource cost(s) and assumptions which resulted in the IRP Action Plan. Bidders should refer directly to the IRP for the Company's estimated cost and availability of new resource alternatives. Bidders are reminded that the IRP is a planning document and certain resource assumptions were used as a proxy for planning purposes. As such, the Company shall rely on the outcome from this RFP to ascertain the most prudent resource decision. Bidders should note that the IRP is a useful document for information purposes and **Bidders should not infer in any way that the IRP should prescriptively guide their specific proposal.** The Company intends to use then-current assumptions in its evaluation of bids. These assumptions may be different than the assumptions contained in the IRP.

With respect to air quality standards, it is PacifiCorp's intent to incorporate cost assumptions into all bids that are consistent with the "then current assumptions." The base case assumptions can be located in the 2004 IRP in Appendix C. This represents the best information currently available at this point in time to the Company via the IRP

public input process and other information sources. The base case will be updated through the RFP process only if any new assumptions become available to the Company.

This RFP will incorporate assumptions regarding the future cost, if any, associated with future tax assessment(s) or other impositions based on the quantity of carbon dioxide (CO₂) emissions produced from the combustion of fuel by a facility selected and contracted through this RFP. If a Bidder proposes an arrangement wherein a specific facility is not identified (such as may be the case with a PPA), the resulting contract shall explicitly state that the buyer (PacifiCorp) shall not be liable for any CO₂-related expenses, and the Bidder will be required to enter into a CO₂ Indemnity Agreement. For bids with a specified facility, the potential CO₂-related expenses will be included in the Company's evaluation. The CO₂-related expenses will be consistent with the reference case assumptions utilized in the 2004 IRP or the then current assumptions if applicable. The bid evaluation process will incorporate the assumption that the Bidder does not contractually absorb the liability associated with potential future CO₂ expenses.

As such, Bidders are directed to submit bids that incorporate the assumption that Bidders will pass through any costs associated with meeting future air quality requirements.

B. Price Information

Cost to the Company's customers for capacity and energy: Fixed & Variable

1. Fixed Costs

The fixed resource costs will include, but are not limited to, the following components:

1. The Bidder-specified capacity cost payment (\$/kw-mo) or equivalent capital cost purchase price (including Owner's cost) plus ongoing capital estimates for the term of the resource. The Bidder-specified fixed O&M payment (\$/kw-mo).
2. The Bidder-specified property tax and insurance payment, if not included in capacity cost or fixed O&M payment (\$/kw-mo).
3. The cost associated with direct or inferred debt.
4. Fuel pipeline costs which include the estimated costs for adequate firm natural gas capacity. Interconnection, integration and any other cost necessary to deliver the energy to load. Proposed fixed cost adjustment factor for availability.

2. Variable Costs

The variable generation costs will include, but are not limited to, the following components:

1. The variable energy commodity price, which, depending on structure, will likely be variable, tied to a natural gas price (including variable gas transportation costs) and a contractual or manufacturer recommended heat rate and capacity at the time

of delivery (adjusted for temperature). In certain structures, the variable energy commodity price will be fixed, or potentially fixed with an annual escalation.

2. Variable O&M (\$/MWh).
3. Potential CO2 costs (\$/ton) (\$/MWh based on a \$/ton CO2 basis).
4. Transmission losses in those cases where the Company will incur third-party transmission losses (if applicable).
5. Start costs (if applicable) per plant and per machine (if applicable). Bidders must define if this start cost is from initiation of start to minimum sustainable load or to full load. Start costs and variable O&M must be clearly separated. Cost to be provide by Bidder in \$/MWh terms, assuming both eight- and sixteen- hour run periods, for up to 365 starts per year at 100% availability.⁴

3. Operating Flexibility

Bidders shall clearly describe the operational flexibility of the proposed resource. For example, if the proposed resource is a 2X1 combined-cycle facility, the Bidder must make clear whether the facility is capable of operation in a 1X1 configuration without duct firing, and provide the operating performance characteristics for the facility in each of its operating modes. Similarly, if a Bidder proposes a resource with other operational capabilities, such as power augmentation, duct firing, etc., the Company's modeling will be able to capture the value associated with such operational flexibility if it is proposed to be available to the Company. The Company's bid analysis will reflect the value of such operational flexibility.

C. Nonprice Information

1. Point(s) of Delivery

RFP 2009 is requesting resources that are capable for delivery into or in the Company's network transmission system⁵ in PACE. All proposals will be contingent on the Company Merchant function's ability to designate the proposed resource (new, existing, imported, etc.) as a Network Resource under the network service contract between PacifiCorp Transmission and PacifiCorp Merchant.

⁴ The number of starts assumed per year should be adjusted down for expected mechanical availability. For example, if a resource has an expected mechanical availability of 90%, the number of assumed starts per year should equal $365 \times 90\% = 328$.

⁵ Any costs required to upgrade PacifiCorp's electrical infrastructure (integration costs) will be considered in the overall economics of the resource. See Attachment 13 for cost assumptions for Integration costs. If the Bidder is proposing another site that is not stated in Attachment 13, PacifiCorp will use the best available information at the time of evaluation to determine the integration costs for the analysis.

Specifically, the point(s) of delivery of primary interest to PacifiCorp are:

- Within the Eastern Control Area—the point of interconnection between the resources, or electrical system to which the resource is connected, and PacifiCorp’s Utah network transmission system
- Mona⁶ 345 kV
- Nevada/Utah Border on Gonder 230 kV Gonder-Pavant 230 kV line known as “Gonder 230 KV” – Glen Canyon 230 kV
- Nevada/ Utah border on the Sigurd-Harry Allen 345 kV know as “NUB” or Red Butte 345 kV
- Crystal 500 kV⁷
- Located in Nevada—PacifiCorp is willing to purchase capacity and associated energy that is sourced from Nevada; provided, the selling entity is able to purchase firm transmission from the resource to either Gonder or NUB.

The Company is not interested in resources delivered to Four Corners. The Company is also generally not interested in resources located in Wyoming, unless the resource(s) electrically resides south of the Naughton-Monument 230 kV line and the cost to upgrade the needed transmission is included in the economic evaluation. Lastly, the Company is not interested in resources delivered to Borah, Brady or Kinport unless such resource is interconnected to the Company’s the Southeast Idaho electrical system near the Goshen area. The cost to upgrade the adequate transfer capability, and or to accommodate times when economic resources exceed loads within the Southeast Idaho area would be taken into account within the Bidder’s economic evaluation.

2. Proposals Requiring Third-Party Point-to-Point Transmission Service

For proposals that will require third-party transmission service to provide delivery of capacity and associated energy to the bid-specified Point of Delivery on PacifiCorp’s system, Bidders are responsible for any interconnection, electric losses, transmission and ancillary service arrangements required to deliver the proposed capacity and associated energy to the bid specified Point(s) of Delivery. Such proposals must identify all third-

⁶ PacifiCorp’s transmission function has broken Mona into three distinct delivery points. These three points are “MDWP” (IPP-Mona from LADWP control area), “MDGT” (Bonanza-Mona within the PACE control area), and “MPAC” (all other lines into Mona with the PACE control areas). **In order for PacifiCorp to properly incorporate deliveries at Mona as a network generation resource, the respondent should indicate which point at Mona the deliveries will be made from. PacifiCorp requested a system impact study (SIS) from PacifiCorp Transmission, which will be available in September and will update the timing and costs to integrate resources at Mona, Nevada Utah Border, Gonder, Glen Canyon 230kV and Currant Creek.**

⁷ Crystal substation is currently not a valid network point of delivery on PacifiCorp’s system. PacifiCorp is studying the expansion of facilities to Crystal 500 kV. Bidders are warned that the ability to accept proposals delivered to Crystal is highly contingent on the expansion of such facilities.

party interconnection, electric losses, transmission and ancillary service products, provide a complete description of those service agreements, and provide documentation that such service(s) will be available to Bidder during the full term of offer(s) proposed. Bidders who propose unit contingent arrangements or system portfolio bids and rely on third-party transmission should be aware that the use of nonfirm transmission in any segments of the schedule from the source to the Point(s) of Delivery will result in the Company's evaluating the need to carry 100% reserves against the import schedule. The third-party transmission service is NOT a transmission service agreement with the Company Merchant function; rather it is with the Company's Transmission function, which must maintain strict functional and informational separation.

3. Interpretation with Interconnection Agreement

Each Bidder responding to RFP 2009 must conduct its operations in compliance with FERC Order No. 2004, Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions. This RFP requires that all Bidders responding to RFP 2009 must enter into a separate Interconnection Agreement or Transmission Service Agreement (TSA), in accordance with the PacifiCorp Open Access Transmission Tariff, with the PacifiCorp Transmission function if such an agreement is necessary.

4. PacifiCorp Transmission Interconnection Service

Bidders requiring interconnection service from PacifiCorp Transmission must specify in their proposal if they have requested transmission service or not, and if so, what type of service (Energy Resource Interconnection Service (ER) or Network Resources Interconnection Service (NR)). Bidders must advise PacifiCorp Transmission that they are requesting the service as part of this 2009 RFP.

All Proposals that will require a new electrical interconnection to the PacifiCorp Transmission system or an upgrade to an existing electrical interconnection to the PacifiCorp Transmission system must include (a) a statement of the cost of interconnection, together with a diagram of the interconnection facilities. The Bidder will be responsible for, and is required to include in its bid, all costs to interconnect to the Company's Transmission system. The Bidder will be responsible for applying to the Company Transmission for a Large Generator Interconnection Agreement ("LGIA"), except in connection with the EPC Contract, in which case PacifiCorp Generation will apply for the LGIA. However, the interconnection costs will be included in the bid evaluation. PacifiCorp's Transmission function has the option of funding the interconnection upgrades or requiring the Bidder to fund such upgrades and then receive revenue credits. Any such refunds shall be assigned to PacifiCorp's Merchant function by the Bidder.

5. PacifiCorp Transmission Integration Service

PacifiCorp has preliminarily identified the potential costs to integrate resources in **Attachment 13**.

These costs will be used in the evaluation analysis. In the event that a Bidder proposes a facility, PPA or TSA that is not at one of the locations identified in **Attachment 13**, PacifiCorp will utilize the best information reasonably available at the time of evaluation to estimate the cost to integrate the resource. Both the cost to integrate and interconnection upgrades will be utilized in the economic evaluation to determine the least-cost resource. **Bidders are reminded that they shall bear 100% of the costs to interconnect to PacifiCorp's Transmission system.** Bidders are encouraged to contact PacifiCorp's Transmission function (at www.pacificorp.com) for information related to system interconnection.

6. Use of PacifiCorp's Sites

In the event a facility is proposed to be located on a PacifiCorp Site, the Bidder must negotiate and enter into a land purchase agreement acceptable to the Company (Attachment 16 and/or 17), together with a Construction Coordination Agreement substantially in the form attached as Appendix S to Attachment 7 or Appendix H. **THIS RFP 2009 IS NOT AN OFFER TO SELL PACIFICORP'S SITE TO ANY BIDDER, AND IN NO EVENT WILL THE COMPANY BE OBLIGATED TO SELL A PACIFICORP SITE TO ANY BIDDER. ANY SALE OF A PACIFICORP SITE WILL BE SUBJECT TO THE NEGOTIATION, EXECUTION AND DELIVERY OF ALL AGREEMENTS AND OTHER DOCUMENTS NECESSARY AND PROPER FOR THE LEASE OF PROPERTY, AND TO THE COMPANY'S SATISFACTION, IN ITS SOLE DISCRETION, THAT SUCH TRANSACTION WILL BE IN THE BEST INTERESTS OF THE COMPANY'S CUSTOMERS AND WILL NOT IMPAIR IN ANY MANNER THE COMPANY'S OPERATION OF ITS FACILITIES THEN LOCATED ON OR ADJACENT TO THE COMPANY SITES.**

SECTION 5. BID EVALUATION PROCESS OF THE PROPOSALS

The Bidders must submit their proposals on or before December 1, 2005. The RFP 2009 Team and the IE will adhere to the following bid evaluation process:

A. Step 1—Screening “First Price Sealed Bid Format” – Initial Short List

The Company intends to utilize a “first price sealed bid format” in order to determine an initial short list of those proposals in each of the Resource Alternatives, which will derive a final short list which will be run through a production cost model to establish a preferred portfolio which will establish a final short list, and then post-bid negotiations will take place. Under this format, contract payments are based on the price contained in each winning bid proposal. The “first price sealed bid format” initial short list means that the Company will utilize the initial prices and/or pricing structure submitted by the Bidders in order to determine the initial short-listed entities and the final short-listed

entities. The Company will not ask for, or accept, updated pricing from Bidders during this evaluation period. It is the Company's intent to negotiate both price and nonprice issues during the post-bid negotiations. Selection for the short list, final short list and/or post-bid negotiation does not constitute a "winning bid proposal." For the purpose of RFP 2009, only execution of the definitive agreement by both the Company and the Bidder that is specific to the Bidder's proposal, as the same may be amended pursuant to any post-bid negotiations, will constitute a "winning bid proposal."

Bidders should also be aware that operational separation exists, pursuant to FERC order, between the merchant and transmission functions of PacifiCorp. As a result, it is PacifiCorp's requirement that the Bidder is responsible for the negotiation, execution and cost of interconnection and integration with the interconnection control area. The Bidder will be responsible for all incremental transmission expense associated with delivery to the PacifiCorp network transmission system (inclusive of any needed third-party system upgrade in order to deliver such energy to PACE). Any anticipated transmission cost which is not included in **Attachment 13** or otherwise that is not disclosed in the Bidder's response will be added by PacifiCorp using information reasonable and readily available, during the economic evaluation phase.

The price and nonprice factors described below will be added together. The highest scoring proposals in each resource category will be selected to be run through a production cost model to establish the preferred portfolio. No proposal will receive a total weighting in excess of 100%.

B. Price and Nonprice Evaluation to Determine the Initial Short List

The Company intends to evaluate each bid received in a consistent manner by breaking the resource and price characteristics of the structure into individual components. Each component will be evaluated separately and recombined to determine the bundled price and nonprice score. The price factor will be weighted up to 60% in the determination of which proposals will be chosen for post-bid negotiation, while the nonprice factor will be weighted up to 40%.

1. Price Factor Evaluation (Up to 60%)

The Company will utilize a spreadsheet model ("RFP Base Model") to screen the proposals and to evaluate and determine a short list, and then use a production cost model to determine the final short list and the least-cost/risk resource. A description of the RFP Base Model is outlined **below**. The Company is evaluating whether the Global Energy Capacity Expansion Model (CEM) is suitable for use as a screening tool instead of the RFP Base Model. However, as of the time this RFP was drafted, the CEM was not deemed appropriate as a screening tool. In the event that the Company and the IE, prior to formally issuing RFP 2009, deem the CEM to be a more accurate and prudent tool for screening the initial bids, then the CEM will be utilized. The following sections are meant to provide a general description of the Company's RFP Base Model.

The Company will not make the RFP Base Model, the CEM, or the production cost model available to Bidders.

RFP Base Model Inputs:

The General Inputs include:

- Market Quote Date: The model will pull corresponding forward price volatility, and correlation projections for electricity and gas commodities, and for Treasury and LIBOR discount curves. The model will also pull the corresponding correlations in the “Correlation Curves” tab. The same Market Quote Date will be used for each bid during each evaluation phase.
- Term: Start and End date Transmission Cost assumptions
- Emission Inputs, Lease Accounting Inputs, Rate Base Inputs: if applicable
- Point of Delivery (POD) and Point of Receipt (POR)
- Dispatch Pattern
- Limitation of Duct Firing or Power Augmentation Capability (hours per day, hours per year, etc.)
- Firm/Unit Contingent
- Resource Type
- Product Source
- Temperature-adjusted undergradated (new and clean) Capacity Curve for Simple Cycle, Combined Cycle, Duct Firing, and Power Augmentation if applicable. Temperature – adjusted undergradated (new and clean) Heat rate Curve for Simple Cycle, Combined Cycle, Duct Firing, and Power Augmentation, if applicable.
- MW Degradation Schedule: Simple Cycle, Combined Cycle, Duct Firing, and Power Augmentation, if applicable (Expected and/or Guaranteed), Heat Rate Degradation Schedule: Simple Cycle, Combined Cycle, Duct Firing, and Power Augmentation, if applicable (Expected and/or Guaranteed), Turbine Type: Combined Cycle or Simple Cycle
- Variable O&M Payment (\$/MWh)
 - VOM costs (\$/MWh)
 - Start-Up Costs (\$/MWh)
- Fixed O&M Payment (\$/KW-mo)
- Gas Capacity (MMBtus/day)
- Gas Demand Charge (\$MMBtu-mo)
- Gas Transportation/Delivery Adder (\$/MMBtu)
- Fixed Energy Payment (\$/MWh, if applicable)
- Capacity Charge (\$/KW-mo)
- Number of simulations
- Number of Days in Intra-Month Period
- POD Availability by Month
- Forward Price Curve Multiplier by Month

- Forward Inflation Curves by Month

Comparison Metric

The benchmark comparison metric will be the projected net present value revenue requirement (Net PVRR) per kilowatt Month (Net PVRR/kW-mo). The Net PVRR component views the value of the energy and capacity as a positive, and the offsetting costs as negative. The larger the Net PVRR, the more valuable a given resource is to the Company's customers. The Net PVRR/kW-mo metric is the annuity value which, when applied to the nominal kilowatts on a monthly basis and present-valued, will result in the same Net PVRR as a straight NPV calculation.⁸

Bid Cost relative adjusted price curves	Price Factor Weighting
Less than or equal to 80% of adjusted price projections	60%
Greater than 80% of adjusted price projections but less than 120% of adjusted price curves	Linearly interpolated
Equal to or greater than 120% of the adjusted price projection	0%

2. Nonprice Factors

Nonprice factors will consist of:

- 1) Flexibility of resources (level of dispatch) (up to 20%)
- 2) Exceptions to any of the pro forma agreements (10%); and
- 3) Environmental attributes relative to the resource, if applicable (up to 10%).

Bidders are encouraged to clearly identify any limitation associated with their proposals, including but not limited to operational flexibility of the resources, reliability, fuel type and supply, interconnection or wheeling issues, or the existence of any pending legal action. Nonprice Factors will be weighted up to 40% in the determination of which proposals will be chosen for short listing.

⁸ The term "straight NPV calculation" refers to the act of present-valuing the net of the nominal capacity and energy value, and costs, to derive a net present value of the net margin between value and costs.

The Nonprice Factor weighting for operation issues shall consist of the following:

Flexibility of Resource Nonprice Weighting Factors (20%)

Dispatchability – Flexibility of the Resource	Nonprice Weighting Factor Total of 20%
PacifiCorp has the option to dispatch the resource the day prior to delivery (i.e., day ahead) and PacifiCorp has the option to adjust resource output, including the ability to dispatch the resource from zero, throughout the delivery day and within the delivery hour.	20%
PacifiCorp has the option to dispatch the resource the day prior to delivery (i.e., day ahead).	10%

Changes to the Pro Forma Agreements Nonprice Weighting Factor (10%)

The Nonprice weighting factors are binary (either the criteria are met or they are not met). If the proposal satisfies the requirement it is awarded the full percentage, if it does not it receives none.

Experience	Nonprice Weighting Factor
Exception to any of the Pro Forma Agreements that are submitted with the Proposal.	10%

Environmental Nonprice Weighting Factors (10%)

Environmental Nonprice Weighting Factors

Resource Type	Adjustment Factor ⁹	Nonprice Weighting Factor
Coal	+/-0.15	10% (1-.85-adjustment factor)
Nuclear	+/-0.10	10% (1-.70-adjustment factor)
Oil	+/-0.10	10% (1-.65-adjustment factor)
Natural Gas	+/-0.05	10% (1-.50-adjustment factor)
Biomass	+/-0.15	10% (1-.50-adjustment factor)
Geothermal	+/-0.15	10% (1-.50-adjustment factor)
Solid Waste	+/-0.10	10% (1-.60-adjustment factor)
Hydro within protected areas	N/A	Bids not accepted
Hydro outside protected areas	+/-0.10	10% (1-.30-adjustment factor)

The combination of the Price and Nonprice scoring will determine the short list through the initial Screening “first price sealed bid format.” The top bids in each resource category, up to approximately 525¹⁰ in each category, will make up the initial short list. This short list of bids will then be utilized to create portfolios that would then be input into the Company’s production cost model to determine the least-cost/risk resource(s).

C. Step 2—Final Short List—Production Cost Run

The Final Short List will be derived utilizing a Production Cost evaluation in combination with the portfolios that were established, which will be completed on a series of individual proposals as a result of the Initial Short List. In the portfolio phase, a production-cost simulation and a transmission cost assessment are required to evaluate the cost impacts resulting from any interaction that may result from packaging several proposals into a portfolio.

⁹ An adjustment factor may be assigned to specific bids based on information specific to that particular asset site or project design. For example, a coal plant with state-of-the-art emission control technology may have an adjustment factor of 0.150.15, whereas a coal plant with high air emissions could have an adjustment factor of +0.15. Unless specific information is available to indicate that a particular bid or project design will result in incrementally more or less environmental impact, as compared to typical projects for that resource type, the adjustment factor will be set to zero.

¹⁰ Except in the case of distributed generation or load curtailment, where bids with pricing scores greater than 0% will be short-listed, with the total in each exception category not to exceed 525 MWs.

A production-cost computer simulation of each proposal is required to estimate the operational savings associated with operating each proposal with the system dispatch. Each proposal's contribution to reducing the aggregate annual system generation costs—both variable costs and fixed costs—can be calculated by comparing a cost simulation of the bid against other portfolios.

The operational/variable cost components of each proposal will be modeled within the production-cost simulation. The production-cost model simulation will provide a breakdown of the variable costs and emission levels for each bid analyzed in addition to existing resources. The operating cost results of the production-cost model will be combined with the revenue requirements of any new incremental investments required by the bid, investment in new resources and/or transmission. The present value revenue requirement (PVRR) is the combination of the system wide variable operating expense and the revenue requirement costs associated with incremental capital investments. The projected annual cost savings will be calculated by taking the PVRR difference between each of the portfolio and comparing them against one another.

Operational Costs

For each portfolio, the operational information for each added proposal will be entered into the production-cost computer simulation, in addition to any necessary changes to the system topology, to reflect transmission upgrades required by the added proposals. The following operational information includes:

1. Maximum capacity of each unit
2. Minimum capacity of each unit
3. Dependable per-unit capacity
4. Peaking capacity, for use under specified conditions
5. Actual pre-specified commitment and/or unit dispatch
6. Daily charge for operating a unit for at least one hour in the day
7. Variable O&M cost of each unit
8. The heat rate curve for a unit
9. Pre-scheduled maintenance, number of units and duration
10. Maintenance rate, for distributed maintenance/unit
11. Mean, maximum, and minimum time to repair, for outages scheduled by Convergent Monte Carlo
12. Minimum up- and downtimes of a unit
13. Per-hour operating cost, exclusive of fuel and variable O&M costs
14. Pumped storage pumping capacity and pumping minimum
15. Unit ramp and run-up rates
16. Unit start-up O&M and fuel costs and corresponding hours
17. Emission rates/costs

The production-cost model simulation will provide information on system costs for fuel, variable plant O&M, unit start-up, market contracts and spot market purchases and sales.

Fixed Costs

As mentioned above, the revenue requirement costs associated with additional investments required by the bid—investment in new resources and/or transmission—will be added to the variable/operating costs. The information required for new resources required to calculate the Fixed Costs include:

1. Capital Costs—generation and transmission
2. Fixed O&M
3. Incremental Transmission Asset Life
4. Incremental Resource Asset Life

SECTION 6. AWARDING OF CONTRACTS

A. Invitation

RFP 2009 is merely an invitation to make proposals to the Company. No proposal in and of itself is a binding contract. The Company may, in its sole and absolute discretion, perform any one or more of the following:

- i. Determine which proposals are eligible for consideration as proposals in response to this RFP 2009.
- ii. Issue additional subsequent solicitations for information and conduct investigations with respect to the qualifications of each respondent.
- iii. Disqualify proposals contemplating resources that do not meet this RFP 2009's definition of flexible resources.
- iv. Supplement, amend, or otherwise modify this RFP 2009, or cancel this RFP 2009 with or without the substitution of another RFP.
- v. Negotiate and respond to Bidders to amend any proposals.
- vi. Select and enter into agreements with the respondents who, in the Company's sole judgment, are most responsive to the RFP 2009 and whose proposals best satisfy the interest of the Company and its customers, and not necessarily on the basis of any single factor alone.
- vii. Issue additional subsequent solicitations for proposals.
- viii. Reject any or all proposals in whole or in part.
- ix. Vary any timetable.
- x. Conduct any briefing session or further RFP 2009 process on any terms and conditions.
- xi. Withdraw any invitation to submit a response.

B. Rejection

Without limiting the foregoing, proposals may be rejected for any of the following reasons, including without limitation:

- i. Receipt after the response deadline.
- ii. Failure to meet the requirements described in this RFP 2009.
- iii. Failure to have submitted a complete proposal with pertinent information necessary for evaluation.
- iv. Failure of the respondent's authorized officer to sign the Certification Form.
- v. Inability or unwillingness of the respondent to provide the required security or surety required for performance.
- vi. Failure to permit disclosure of information contained in the proposal to PacifiCorp agents, contractors or regulators.
- vii. Any attempt to influence PacifiCorp or the IE in the evaluation of the proposals, outside the solicitation process.
- viii. Any change in regulation or regulatory requirements.
- ix. Any collusive bidding or other anticompetitive conduct.
Any failure to disclose the real parties in interest in the proposal submitted.
- x. The Bidder is in current litigation or has threatened litigation against PacifiCorp.

C. Post-Bid Negotiation

The Company will further negotiate both price and nonprice factors during post-bid negotiations. The Company will continually update its economic and risk evaluation until a definitive agreement acceptable to the Company in its sole and absolute discretion is executed by both parties. **The Company shall have no obligation to enter into any agreement with any Bidder to this RFP 2009 and the Company may terminate or modify this RFP 2009 at any time without liability or obligation to any Bidder.**

D. Confidentiality Agreement

All parties will be required to sign Confidentiality Agreements if they are short-listed (**Attachment 14**) prior to entering into negotiations with the Company.

E. Nonreliance Letter

All parties will be required to sign a nonreliance letter if they are short-listed (**Attachment 15**) prior to entering into negotiations with PacifiCorp.

**Request for Qualification
for 2009 Request for
Proposal
Due October 21, 2005**

RFQ 2009
APPENDIX A
Qualification, Capability and
Experience

Appendix A

Request for Qualification (RFQ) RFP 2009

This RFQ must be fully completed and submitted by October 21, 2005 to the Independent Evaluator (IE) in order to participate in PacifiCorp's 2009 RFP.

This is to declare that the undersigned intends to respond to PacifiCorp's:

Request for Proposals, Electric Resources (RFP 2009)

Please include:

Company _____

Mailing Address/Phone/Fax/Email _____

Contact Person _____

Authorized Signature and Date _____

Return by mail or fax by October, 2005 to:

Consulting

Attention: PacifiCorp RFP 2009

Address

City, State Zip

Phone:

Fax:

E-mail:

The RFQ consists of Appendix A and Appendix B. Both Appendices **must be completed in their entirety.** Bidders must be able to demonstrate their credit, capability, experience and qualification to deliver, along with specific references for each and every selected Eligible Reference resource option being submitted in response to the RFP.

PacifiCorp reserves the right, without qualification and in their sole discretion, to reject as non-responsive any, all, or portions of bid proposals received for failure to meet any requirement of this RFP 2009. PacifiCorp also reserves the right to request that the IE contact any Bidder for additional information. PacifiCorp further reserves the right without qualification and in their sole discretion to decline to enter into any Agreement with any Bidder for any reason.

PacifiCorp Draft 2009 RFP
September 2005

1. ELIGIBLE RESOURCES

Bidder must submit a separate form for each Eligible Resource it is going to submit. Each Eligible Resource will have a separate Bid number. Bidder must select by marking with an "X" only one of the following Eligible Resources which is described in Section C.1 of the RFP 2009. To the extent the Bidder submits a proposal that is different than the one checked, in the RFQ, PacifiCorp reserves the right not to accept the RFP Proposal.

- Power Purchase

- Tolling Agreement

- Asset Purchase and Sale Agreement on Bidder's Site

- Asset Purchase and Sales Agreement on PacifiCorp Site
- Current Creek Lake Side

- Engineering, Procurement and Construction Contract (EPC) (Currant Creek site only)

- Purchase of an existing Facility

- Purchase of a portion of a facility, jointly owned or operated by PacifiCorp

- Restructure of an existing Power Purchase Agreement (PPA)

- Restructure of an existing Exchange Agreement

- Distributed Generation

- Load Curtailment

RFQ Draft RFP
Due October 21, 2005

Full Legal Name of Seller:	
Full Legal Name of Guarantor:	
Commercial Contact:	
Title:	
Office Phone:	
Cell Phone:	
Email Address:	
Credit Contact:	
Title:	
Office Phone:	
Cell Phone:	
Email Address:	
Legal Contact:	
Title:	
Office Phone:	
Cell Phone:	
Email Address:	
Proposed Project (Describe all that apply)	<ul style="list-style-type: none"> • Commercial Operation Date (earliest June 1, 2006) - _____ • Size (100 MW minimum) - _____ • Location and Delivery Point _____ • Technology (e.g. LM 6000, CT, CCGT, etc.) _____ • New, Repowered or Relocated _____ • Status of Project development and engineering _____ • Status of Construction and Air Applications and Permits _____ • Status of Electric Interconnection Request and Studies _____ • Status of Gas System Interconnection Agreements _____ • Other Information - _____

6. Description of any current or previous contract dispute(s) involving similar projects in which the Bidder is or was involved during the last five years.

7. Provide separate descriptions, as appropriate, for each member of a consortium or partnership of two or more firms and the relationship between the firms for this Proposal.

3. Bidder Experience

In the case where a bid contains a proposal to develop a new project or an existing project please describe the status of all activities necessary to either fully develop and/or implement the project, such as negotiations for partnership agreements, equipment supplier agreements, and EPC agreements, fuel supply agreements, if applicable, permitting, financing etc. **Any and all contingencies must be described in detail.** If the Bidder cannot demonstrate to the Company's reasonable satisfaction that the Bidder possesses the requisite expertise and experience in providing or operating the Eligible Resources, proposed by the Bidder, the company, after consulting with the IE, reserves the right to exclude the Bidder from the RFP process.

4. Bidder Capability

Site Description and Control

Provide the following information:

- (i) Address the site where the Project will be located (the "Project Site").
- (ii) Name of existing facility at the Project Site, if any.
- (iii) True and correct copies of maps showing the boundaries of the Project Site and key facilities, including any off-sites (fuel, water, wastewater and electrical interconnections).
- (iv) List and provide a copy of documentation establishing that the Seller has and /or will have site control for the entire Term of the Definitive Agreements.
- (v) If Seller does not have site control as of the date of this Offer Sheet, Seller must describe in detail how it plans to obtain site control by the first date of the Term of the Definitive Agreements, including a description of the current status of any negotiations regarding the Project Site and a timeline of when Seller will have site control.
- (vi) Status of permits or process applicable to the Project
- (vii) Emissions offsets and credits required and how these will be obtained.
- (viii) Source of water – if the Bidder has control and if not, how will it be obtained.
- (ix) Proposed Project Construction schedule to be updated with the proposal.

If the Bidder cannot demonstrate to the Company's reasonable satisfaction that the Bidder possesses the capability to provide the Eligible Resources, proposed by the Bidder, the Company, after consulting with the IE, reserves the right to exclude the Bidder from the RFP process.

RFQ 2009
APPENDIX B
Credit and Credit Matrix

BIDDER'S CREDIT INFORMATION AND CREDIT MATRIX

Please provide the following information so PacifiCorp can evaluate the financial viability of the Bidder or any entity providing credit assurances on behalf of the Bidder.

Bidder's Credit Information

1. Credit information for Bidder

A. Exact, legal name and address of Bidder:

B. Debt Ratings from S&P and/or Moody's (please provide senior unsecured long term debt rating (or corporate rating if a debt rating is unavailable). Please indicate type of rating, rating, and source:

C. Please attach copies of audited financial statements (including balance sheet, income statement, and cash flow statement) for the three most recent fiscal years.
Fiscal Year End:

D. Identify pending legal disputes (describe):

E. Please state whether Bidder is or has within the past five (5) years been the debtor in any bankruptcy proceeding.

F. If Bidder is unable to provide audited financial statements or is relying upon another entity to provide credit assurances on its behalf, Bidder must indicate so here and complete the following section.

Is Bidder unable to provide audited financial statements?

Is Bidder relying upon another entity to provide credit assurances on Bidder's behalf?

2. Credit information for entity providing credit assurances on behalf of Bidder (if applicable)

A. Exact, legal name and address of entity providing credit assurances on behalf of Bidder:

B. Describe relationship to Bidder and describe type of credit assurances to be provided (e.g. parental guaranty, letter of credit, etc.). Bidder must provide a letter of commitment from the entity providing the credit assurances on behalf of the Bidder executed by an authorized signatory and indicating the amount and form of credit assurances it will provide.

C. Debt Ratings from S&P and/or Moody's (please provide senior unsecured long term debt rating (or corporate rating if a debt rating is unavailable). Please indicate type of rating, rating, and source:

D. Please attach copies of audited financial statements (including balance sheet, income statement, and cash flow statement) for the three most recent fiscal years.
Fiscal Year End:

E. Pending legal disputes (describe):

F. Please state whether entity providing credit assurances on behalf of the Bidder is or has within the past five (5) years been the debtor in any bankruptcy proceeding.

CREDIT MATRIX

The Bidder should utilize the Credit Matrix below to determine the maximum credit assurance requirements based on its' credit rating and the size and type of Eligible Resource bid. The Bidder will be required to demonstrate their ability to post credit assurances in the amounts outlined in the Credit Matrix below.

The amount of any credit assurances to be provided will be determined based upon the a) the Credit Rating in the Credit Matrix of either the Bidder or the entity providing credit assurances on behalf of the Bidder, b) the size of the project, and c) the type of Eligible Resource. The Credit Rating will be the lower of: x) the most recently published senior, unsecured long term debt rating (or corporate rating if a debt rating is unavailable) from Standard & Poor's (S&P) or y) the most recently published senior, unsecured debt rating (or corporate rating if a debt rating is unavailable) Moody's Investor Services.

If option x) or y) is not available, the Credit Rating will be determined by PacifiCorp Credit through an internal process review utilizing a proprietary credit scoring model developed in conjunction with S&P. All Bidders will receive a Credit Rating which will determine the amount of credit assurances to be posted.

Please note that should a Bidder be an existing counterparty with PacifiCorp, PacifiCorp reserves the right to protect itself from counterparty credit concentration risk and require credit assurance in addition to those outlined in the Credit Matrix.

CREDIT MATRIX

For Eligible Resources C3, C4, C5, C6 and C7

Size of Nameplate bid in MW ==>	125	150	175	200	225	250	275	300	325	350	375	400	425	450	475	500	525
AAA/Aaa and above	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA+/Aa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA/Aa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA-/Aa3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A+/A1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A/A2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A-/A3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BBB+/Baa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BBB/Baa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BBB-/Baa3 and below	\$38,631,875	\$46,358,250	\$54,084,625	\$61,811,000	\$69,537,375	\$77,263,750	\$84,990,125	\$92,716,500	\$100,442,875	\$108,169,250	\$115,895,625	\$123,622,000	\$131,348,375	\$139,074,750	\$146,801,125	\$154,527,500	\$162,253,875

For Eligible Resources C1, C2 and C8

Size of Nameplate bid in MW ==>	100-125	126-150	151-175	176-200	201-225	226-250	251-275	276-300	301-325	326-350	351-375	376-400	401-425	426-450	451-475	476-500	501-525
AAA/Aaa and above	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA+/Aa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA/Aa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA-/Aa3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A+/A1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A/A2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A-/A3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BBB+/Baa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BBB/Baa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BBB-/Baa3 and below	\$77,263,750	\$92,716,500	\$108,169,250	\$123,622,000	\$139,074,750	\$154,527,500	\$169,980,250	\$185,433,000	\$200,885,750	\$216,338,500	\$231,791,250	\$247,244,000	\$262,696,750	\$278,149,500	\$293,602,250	\$309,055,000	\$324,507,750

For Eligible Resource C9 a)

Size of Nameplate bid in MW ==>	For a term of up to and including 10 years				For a term of greater than 10 years			
	Up to 25	26 to 50	51 to 75	76 to 100	Up to 25	26 to 50	51 to 75	76 to 100
AAA/Aaa and above	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA+/Aa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA/Aa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
AA-/Aa3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A+/A1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A/A2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
A-/A3	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BBB+/Baa1	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BBB/Baa2	\$0	\$0	\$0	\$0	\$0	\$0	\$0	\$0
BBB-/Baa3 and below	\$7,726,375	\$15,452,750	\$23,179,125	\$30,905,500	\$15,452,750	\$30,905,500	\$46,358,250	\$61,811,000

RFP 2009
Appendix C
Information Required in Bid
Proposals
September 2005

Appendix C-1

Power Purchase Agreements and Tolling Agreements

Information Required in Bid Proposals

In general, PacifiCorp expects Bidders to provide any information that could impact the cost, reliability, dispatch frequency, or output capability of a resource. In the event a Bidder is proposing a transaction that does not require the construction of a resource, much of the following information may not apply. PacifiCorp believes these resources attributes largely consist, but may not be limited to, the following information categories:

Impact of Temperature on Output – If Project output will vary with ambient conditions, capacity, and any associated performance impact, should be stated in terms of conditions expected during a summer day, with ambient air conditions of 95°F and 20% relative humidity, and a winter day with ambient conditions of 20°F and 75% relative humidity. The Bidder will complete Table C-1.1 showing output at specific ambient conditions, with and without duct firing and/or power augmentation, if applicable. To the extent pricing, capacity and/or availability vary based on specific characteristics of the facility, the Bidder shall clearly identify those relationships in tabular form.

Impact of Other Factors on Output – PacifiCorp prefers generation facilities designed, permitted, and operated so that, to the extent practicable, the proposed capacity and any related energy provided to PacifiCorp is not restricted by:

- Environmental permits or other environmental limitation or environmental forfeitures
- Hours of operation
- Sales of capacity or energy to other parties
- Interruption of primary fuel supply
- Sale of thermal energy
- Any other factor relevant to the technology (noise, agreements with neighbors, etc.
- Bidders shall describe in detail any such limitations in their Proposal
- Ability to provide additional capacity over the net capable rating
- Non-environmental or technology factors that could encumber the facility
- Water availability

Siting – Bidders are responsible for all construction and coordination with the applicable service provider(s) for any new electrical transmission and fuel transportation facilities

required in response to this RFP. Bidders are responsible for satisfying all zoning and environmental requirements.

Facility Information – To the extent applicable, the Bidder should clarify the following information with respect to any proposed facility:

- Proposed air emissions (all criteria pollutants and air toxics), description of emission controls, description of plan to acquire any required emission offsets, and description of criteria used to determine requirement.
- List of required environmental, construction, and other regulatory permits and timeline for acquisition.
- Proposed water usage quantity, quality and source.
- Proposed water discharge quantity and quality, plus description of water discharge plan.
- Receiving water body identity and description
- Description of local groundwater quality, quantity, uses, and potential impacts.
- Prevailing noise ordinance at the site and expected sound level (A-weighted) at full load at the site boundary.
- Proposed noise levels and description of noise baffles and stack silencing equipment.
- Proposed site plans, layouts, elevations and other aspects of the facility.
- Types of transportation access required.
- Characterization of the area surrounding the site, including a description of local zoning, flood plain information (100 yr. & 500 yr.), existing land use and setting (woodlands, grasslands, agriculture, etc.).
- Information of fish, wildlife and vegetation inhabiting the area of the Project.
- Proximity to nearest endangered or threatened species which could be potentially impacted.
- Proximity to nearest historical or archaeological resources and all nearby historical or archaeological resources which could potentially be impacted.
- Location and distance to population centers which could be impacted.
- Expected site ambient temperature extremes and verification that freeze protection will be provided as necessary.

Fuel Transportation Route Information – To the extent applicable, the Bidder should clarify any relevant information with respect to fuel transportation route information for any proposed site:

- Proposed new fuel transportation route(s).
- Estimated impact on wetlands (e.g., length of route through wetland).

- Describe land use impacts.
- Descriptions of stream crossings.
- Characterization of the area encompassing the fuel transportation route, including a description of existing land use and setting.

Proposal Format – As mentioned above, Bidders are being asked to submit a “blinded” bid in such a format that the identity of the Bidder is not apparent. In doing so, PacifiCorp is requesting that Bidders confirm to the following format for presenting their bid information:

Section 1 – Executive Summary of Proposal – The Executive Summary section should provide an overall description of the proposal and its key benefits and advantages to PacifiCorp. It should include a general description of the technology, location, and business arrangement for the bid. Bidder shall state the period under which the terms and conditions of their Proposal will remain effective.

Section 2 – Resource Description – This section should include a description of the resource, including:

- Type of generation equipment and description
- Manufacturers of major equipment
- Model number, serial number and age of any previously owned/operated, or “grey market” equipment
- Type of heat rejection equipment (cooling towers, ponds, Air-Cooled Condenser, etc.)
- Source of process and/or cooling water
- Wastewater disposal plan
- Water Balance
- Description of financing plan
- Description of operation and maintenance plan
- Plan for site control
- Site layout description
- Description of technology and configuration
- Net Capacity ratings and net heat rates at ambient conditions as specified in Table C-1.1.
- Primary fuel supply and backup alternatives
- Electrical interconnection (location, transmission provider, and control area)
- Description of emission control technology, including manufacturer
- Any limits on hours of operation in a particular mode (i.e., combined cycle, duct firing, power augmentation, or combination thereof)
- Any limits on emissions

- Project schedule, listing tasks and milestones with estimated completion dates. Bidders shall also complete Exhibit 1 to document technical aspects of their Proposal
- Startup Time for Cold, Warm and Hot Starts. A Cold Start is defined as a shutdown of the generating equipment for 48 hours or longer. A Warm Start is defined as a startup within 48 hours of a shutdown. A Hot Start is defined as a start within 8 hours of a shutdown. Bidder should provide its own definitions if different. For this information Startup Times requested may be for the time to minimum sustainable load and time to full load, without duct firing or power augmentation.
- Guarantee and expected degradation curves (kW and heat rate)
- Guaranteed availability and reliability
- Long Term Outage Plan
- Anticipated on-site gas compression, if applicable.

Section 3 – Pricing Proposal – Describe in detail the pricing proposal, including the use of any index, escalation factors, or other costs to PacifiCorp. Proposed dates, amounts, and detailed milestone descriptions justifying payments are required.

Section 4 – Transmission – Each Proposal must include a description of the location of its proposed transmission facilities, including proposed delivery points, and must specify the transmission provider and all applicable costs.

Section 5 – Environmental and Siting – The Bidder is exclusively and entirely responsible for meeting and satisfying all federal, state, and local permits, licenses, approvals and/or variances that are required to assure physical delivery of capacity and associated energy in accordance with any PPA or Tolling transaction. Bidder must furnish applicable detailed project site, electric transmission, and fuel transportation information, a description of all required permits, and a project timeline so PacifiCorp can assess site suitability, schedule risk and project viability. The proposed site(s) shall clearly be shown on a United States Geological Survey (USGS) 7.5-minute series map.

Section 6 – Other Information

Fuel – Bidders should describe their fuel supply plan and the extent to which they desire to provide fuel and transportation and other fuel-related services, including fuel price management (hedging) or a tolling fee in which PacifiCorp will be responsible for all the fuel and fuel-related costs. PacifiCorp's preference is for proposals that address its need for reliability, management of price risk, and meeting the flexibility of completely dispatchable operations. If the energy cost portion of the Bidder's terms includes a fuel cost component, the Bidder shall explain its proposed fuel supply program.

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Dispatchability – Describe any constraints and/or limitations on PacifiCorp’s ability to dispatch the generation and any ability of PacifiCorp to utilize the resource for operating reserves.

Technical Data – Technical data as requested in Exhibit 1 of this Appendix.

Section 7 – Contract Terms – Bidder shall provide a comprehensive listing/description of all contract terms in the PacifiCorp PPA or TSA, including appendices, that the Bidder would seek to modify during contract negotiations. Bidder to identify any and all PacifiCorp obligations not specifically outlined in the referenced agreements.

EXHIBIT 1
TECHNICAL DATA

Site Location _____

Net Capacity at 95°F, 20% Relative Humidity, and at Site Conditions is _____ MW

Site Elevation: _____ Feet

Maximum water consumption is _____ gallons per minute.

Expected water consumption is _____ acre-feet per year.

Minimum Sustainable Load at above conditions _____ MW

Automatic Generation Control (AGC) capable Yes _____ No _____. If yes than the AGC range at above conditions is _____ MW to _____ MW.

Maximum number of starts per day is _____, per month _____, per year _____.

Maximum continuous period that the facility can operate steam-for-power-augmentation at full load without depleting the demineralized water system is _____ hours. This assumes the demineralized water system is operating at rated capacity.

Weighted Average Raw Water Consumption is _____ gallons per minute.

Time to bring the facility on line, in minutes (specify if this is to synchronization or sustainable minimum load) (Bidder to define "cold", "warm", and "hot starts", if not as stated above)

	Min/Sust.	Full Load
For Cold Start:	_____	_____
For Warm Start:	_____	_____
For Hot Start:	_____	_____

Minimum time on-line (hours from start initiation to stop initiation) _____

Minimum time off-line (hours from stop initiation to start initiation) _____

Normal Ramp Rate within operating range: (MW/Min.) Increase: _____ Decrease: _____

Emergency Ramp Rate: (MW/Minute) Increase: _____ Decrease: _____

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Time to transfer from combined cycle to duct firing _____ min.

Duct Firing Ramp Rate: (MW/Min.) Increase: _____ Decrease: _____

Time to transfer from combined cycle to power augmentation _____ min.

Power Augmentation Ramp Rate: (MW/Min.) Increase: _____ Decrease: _____

Anticipates Number of Starts per CT to reach Commercial Operation (CO): _____

Anticipated quantity of natural gas consumed through CO: _____ dth.

Additional Information

Bidder to provide partial load performance curves, including minimum load, showing heat rate and load at varying temperatures.

To the extent that pricing and/or availability vary based on specific characteristics of the facility and/or ambient conditions, the Bidder shall clearly identify that relationship in tabular form, including the relationship between temperature and capacity over the local ambient range inclusive of -10°F to 105°F. Bidder to fill out Table C-1.1 below:

Table C-1.1

Temp in °F	% RH	Evap or Chiller	Duct Burners	Power Aug.	Heat Rate	Net Output	Min. Load
-10	100						
-10	100		On				NA
0	100						
10	100						
15	84						
20	86						
20	86		On				NA
20	86			On			NA
20	86		On	On			NA
30	75						
40	55						
50	49						
52	46						
52	46	On					
60	40	On					
60	40		On				NA
60	40			On			NA
60	40		On	On			NA
70	33	On					
75	29	On					
75	29		On				NA
75	29			On			NA
75	29		On	On			NA
80	25	On					
90	16	On					
95	15	On					
95	15		On				NA
95	15			On			NA
95	15		On	On			NA
105	11						
105	11	On	On	On			NA

Appendix C-2, BOT Contract (APSA) Bids

Information Required in Bid Proposals

In general, PacifiCorp expects Bidders to provide any information that could impact the cost, reliability, dispatch frequency, or output capability of a resource. PacifiCorp believes these resources attributes largely consist, but may not be limited to, the following information categories:

Impact of Temperature on Output – If Project output will vary with ambient conditions, capacity, and any associated performance impact, should be stated in terms of conditions expected during a summer day, with ambient air conditions of 95°F and 20% relative humidity, and a winter day with ambient conditions of 20°F and 75% relative humidity. The Bidder will complete Table C-2.1 showing output at specific ambient conditions, with and without duct firing and/or power augmentation. To the extent pricing, capacity and/or availability vary based on specific characteristics of the facility, the Bidder shall clearly identify those relationships in tabular form.

Impact of Other Factors on Output – PacifiCorp prefers generation facilities designed, permitted, and operated so that, to the extent practicable, the proposed capacity and any related energy provided to PacifiCorp is not restricted by:

- Environmental permits or other environmental limitation or environmental forfeitures
- Hours of operation
- Any other factor relevant to the technology (noise, agreements with neighbors, etc.
- Bidders shall describe in detail any such limitations in their Proposal
- Ability to provide additional capacity over the net capable rating
- Non-environmental or technology factors that could encumber the facility
- Water availability

Build Own Transfer (BOT) Option – Bidders may propose a fixed-price, lump-sum sale of new generation assets to PacifiCorp, either at an existing PacifiCorp site or propose other sites. Such proposals must include the following information in addition to any technical information:

- Markup of Asset Purchase and Sale Agreement (APSA), including appendices. Quantity and impact of proposed changes are a nonprice factor in selecting Bidders for further discussions.
- Amounts and dates of **milestone-based** payments, including descriptions, required of PacifiCorp.

- Information regarding location and transmission availability.
- Information regarding fuel and transportation availability.
- Capacity on summer design day in compliance with all regulatory requirements.
- Efficiency (Heat Rate) in compliance with all regulatory requirements.
- Proposed facilities will only contain “OEM-certified new major equipment”. This being defined as OEM equipment that has not been previously installed or operated and has the same warranties and guarantees as equipment delivered directly from the OEM’s production line, and all reliability and design TILS and/or Service Bulletins have been implemented.

Siting – Bidders are responsible for all construction and coordination with the applicable service provider(s) for any new electrical transmission and fuel transportation facilities required in response to this RFP. Bidders are responsible for satisfying all zoning and environmental requirements.

Facility Information – To the extent applicable, the Bidder should clarify the following information with respect to any proposed facility:

- Proposed air emissions (all criteria pollutants and air toxics), description of emission controls, description of plan to acquire any required emission offsets, and description of criteria used to determine requirement.
- List of required environmental, construction, and other regulatory permits and timeline for acquisition.
- Proposed water usage quantity, quality and source.
- Proposed water discharge quantity and quality, plus description of water discharge plan.
- Receiving water body identity and description
- Description of local groundwater quality, quantity, uses, and potential impacts.
- Prevailing noise ordinance at the site and expected sound level (A-weighted) at full load at the site boundary.
- Proposed noise levels and description of noise baffles and stack silencing equipment.
- Proposed site plans, layouts, elevations and other aspects of the facility.
- Types of transportation access required.
- Characterization of the area surrounding the site, including a description of local zoning, flood plain information (100 yr. & 500 yr.), existing land use and setting (woodlands, grasslands, agriculture, etc.).
- Information of fish, wildlife and vegetation inhabiting the area of the Project.

- Proximity to nearest endangered or threatened species which could be potentially impacted.
- Proximity to nearest historical or archaeological resources and all nearby historical or archaeological resources which could potentially be impacted.
- Location and distance to population centers which could be impacted.
- Expected site ambient temperature extremes and verification that freeze protection will be provided as necessary.

Fuel Transportation Route Information – To the extent applicable, the Bidder should clarify any relevant information with respect to fuel transportation route information for any proposed site:

- Proposed new fuel transportation route(s).
- Estimated impact on any wetlands (e.g., length of route through wetlands or other sensitive lands).
- Describe land use impacts.
- Descriptions of stream crossings.
- Characterization of the area encompassing the fuel transportation route, including a description of existing land use and setting.

Proposal Format – As mentioned above, Bidders are being asked to submit a “blinded” bid in such a format that the identity of the Bidder is not apparent. In doing so, PacifiCorp is requesting that Bidders confirm to the following format for presenting their bid information:

Section 1 – Executive Summary of Proposal – The Executive Summary section should provide an overall description of the proposal and its key benefits and advantages to PacifiCorp. It should include a general description of the technology, location, and business arrangement for the bid. Bidder shall state the period under which the terms and conditions of their Proposal will remain effective.

Section 2 – Resource Description – This section should include a description of the resource, including:

- Type of generation equipment and description
- Manufacturers of major equipment
- Type of heat rejection equipment (cooling towers, ponds, ACC, etc.)
- Source of process and/or cooling water
- Wastewater disposal plan
- Description of financing plan
- Description of operation and maintenance plan
- Plan for site control

- Site layout description
- Description of technology and configuration
- Net Capacity ratings and net heat rates at ambient conditions as specified in Table C-2.1.
- Primary fuel supply and backup alternatives
- Electrical interconnection (location, transmission provider, and control area)
- Description of emission control technology, including manufacturer
- Project schedule, listing tasks and milestones with estimated completion dates. Bidders shall also complete Exhibit 1 to document some of the technical aspects of their Proposal
- Startup Time for Cold, Warm and Hot Starts. A Cold Start is defined as a shutdown of the generating equipment for 48 hours or longer. A Warm Start is defined as a startup within 48 hours of a shutdown. A Hot Start is defined as a start within 8 hours of a shutdown. Bidder should provide its own definitions if different. For this information Startup Times requested may be for the time to minimum sustainable load and time to full load, without duct firing or power augmentation.

Section 3 – Pricing Proposal – Describe in detail the pricing proposal, including the use of any index, escalation factors, or other costs to PacifiCorp. Proposed dates, amounts, and detailed milestone descriptions justifying payments are required.

Section 4 – Transmission – Each Proposal must include a description of the location of its proposed transmission facilities, including proposed delivery points, and must specify the transmission provider and all applicable costs.

Section 5 – Environmental and Siting – The Bidder is exclusively and entirely responsible for meeting and satisfying all federal, state, and local permits, licenses, approvals and/or variances that are required to assure physical delivery of capacity and associated energy in accordance with any BOT transaction. Bidder must furnish applicable detailed project site, electric transmission, and fuel transportation information, a description of all required permits, and a project timeline so PacifiCorp can assess site suitability, schedule risk and project viability. The proposed site(s) shall clearly be shown on a United States Geological Survey (USGS) 7.5-minute series map.

Section 6 – Other Information –

Fuel – Bidders should describe their fuel supply plan and the extent to which they desire to provide fuel and transportation and other fuel-related services, including fuel price management (hedging) or a tolling fee in which PacifiCorp will be responsible for all the fuel and fuel-related costs. PacifiCorp's preference is for proposals that address its need for reliability, management of price risk, and meeting the flexibility of completely

dispatchable operations. If the energy cost portion of the Bidder's terms includes a fuel cost component, the Bidder shall explain its proposed fuel supply program.

Dispatchability – Describe any constraints and/or limitations on PacifiCorp's ability to dispatch the generation and any ability of PacifiCorp to utilize the resource for operating reserves.

Technical Data – Technical data as requested in Exhibit 1 of this Appendix.

Section 7 – Contract Terms – The Bidder will provide a comprehensive listing/description of all modifications to the APSA terms and conditions, including the appendices, which the Bidder would seek during contract negotiations.

These may include, but are not limited to:

- Items to be provided by the Owner, including a schedule of timing for the provision of these items and impact on Bidder of any delays.
- Land requirements for construction of the facility, including laydown areas
- Laydown plan for construction.
- Commissioning & Startup Plan with Owner's requirements.

EXHIBIT 1
TECHNICAL DATA

Site Location _____

Net Capacity at 95°F, 20% Relative Humidity, and at Site Conditions is _____ MW

Site Elevation: _____ Feet

Maximum water consumption is _____ gallons per minute.

Expected water consumption is _____ acre-feet per year.

Minimum Sustainable Load at above conditions _____ MW

Automatic Generation Control (AGC) capable Yes ____ No _____. If yes than the AGC range at above conditions is _____ MW to _____ MW.

Maximum number of starts per day is _____, per month _____, per year _____.

Maximum continuous period that the facility can operate steam-for-power-augmentation at full load without depleting the demineralized water system is _____ hours. This assumes the demineralized water system is operating at rated capacity.

Weighted Average Raw Water Consumption is _____ gallons per minute.

Time to bring the facility on line, in minutes (specify if this is to synchronization or sustainable minimum load) (Bidder to define "cold", "warm", and "hot starts", if not as stated above)

	Min/Sust.	Full Load
For Cold Start:	_____	_____
For Warm Start:	_____	_____
For Hot Start:	_____	_____

Minimum time on-line (hours from start initiation to stop initiation) _____

Minimum time off-line (hours from stop initiation to start initiation) _____

Normal Ramp Rate within operating range: (MW/Min.) Increase: _____ Decrease: _____

Emergency Ramp Rate: (MW/Minute) Increase: _____ Decrease: _____

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Time to transfer from combined cycle to duct firing _____ min.

Duct Firing Ramp Rate: (MW/Min.) Increase: _____ Decrease: _____

Time to transfer from combined cycle to power augmentation _____ min.

Power Augmentation Ramp Rate: (MW/Min.) Increase: _____ Decrease: _____

Anticipates Number of Starts per CT to reach Commercial Operation (CO): _____

Anticipated quantity of natural gas consumed through CO: _____ dth.

Additional Information

Bidder to provide partial load performance curves, including minimum load, showing heat rate and load at varying temperatures.

To the extent that pricing and/or availability vary based on specific characteristics of the facility and/or ambient conditions, the Bidder shall clearly identify that relationship in tabular form, including the relationship between temperature and capacity over the local ambient range inclusive of -10°F to 105°F. Bidder to fill out Table C-2.1 below:

Table C-2.1

Temp in °F	% RH	Evap or Chiller	Duct Burners	Power Aug.	Heat Rate	Net Output	Min. Load
-10	100						
-10	100		On				NA
0	100						
10	100						
15	84						
20*	86						
20	86		On				NA
20	86			On			NA
20*	86		On	On			NA
30	75						
40	55						
50	49						
52	46						
52	46	On					
60	40	On					
60	40		On				NA
60	40			On			NA
60	40		On	On			NA
70	33	On					
75*	29	On					
75	29		On				NA
75	29			On			NA
75*	29		On	On			NA
80	25	On					
90	16	On					
95*	15	On					
95	15		On				NA
95	15			On			NA
95*	15		On	On			NA
105	11						
105	11	On	On	On			NA

* Indicates Water Balance Sheet Required

Appendix C-3, Engineer Procure Construct (EPC) Contract Bids

Information Required in Bid Proposals

PacifiCorp will only entertain EPC contract bids on the two sites being offered as part of the RFP. In general, PacifiCorp expects Bidders to provide any information that could impact the cost, reliability, dispatch frequency, or output capability of a resource. PacifiCorp believes these resources attributes largely consist, but may not be limited to, the following information categories:

Impact of Temperature on Output – If Project output will vary with ambient conditions, capacity, and any associated performance impact, should be stated in terms of conditions expected during a summer day, with ambient air conditions of 95°F and 20% relative humidity, and a winter day with ambient conditions of 20°F and 75% relative humidity. The Bidder will complete Table C-3.1 showing output at specific ambient conditions, with and without duct firing and/or power augmentation. To the extent pricing, capacity and/or availability vary based on specific characteristics of the facility, the Bidder shall clearly identify those relationships in tabular form.

Impact of Other Factors on Output – PacifiCorp prefers generation facilities designed, permitted, and operated so that, to the extent practicable, the proposed capacity and any related energy provided to PacifiCorp is not restricted by:

- Environmental permits or other environmental limitation or environmental forfeitures
- Hours of operation
- Any other factor relevant to the technology (noise, agreements with neighbors, etc.
- Bidders shall describe in detail any such limitations in their Proposal
- Ability to provide additional capacity over the net capable rating
- Non-environmental or technology factors that could encumber the facility
- Water availability

Engineer Procure Construct (EPC) Contract Option – Bidders may propose a fixed-price, lump-sum EPC contract option, but only for the two PacifiCorp sites currently being offered. Such proposals must include the following information in addition to any technical information:

- Markup of Asset Purchase and Sale Agreement (APSA), including appendices. Quantity and impact of proposed changes are a nonprice factor in selecting Bidders for further discussions.

- Amounts and dates of **milestone-based** payments, including milestone descriptions, required of PacifiCorp.
- Proposed facilities will only contain OEM-certified “OEM-certified new major equipment”. This being defined as OEM equipment that has not been previously installed or operated and has the same warranties and guarantees as equipment delivered directly from the OEM’s production line, and all reliability and design TILS and/or Service Bulletins have been implemented.

Siting – Bidders are responsible for all construction and coordination with the applicable service provider(s) for any new electrical transmission and fuel transportation facilities required in response to this RFP.

Facility Information – To the extent applicable, the Bidder should clarify the following information with respect to any proposed facility:

- Proposed air emissions (all criteria pollutants and air toxics), description of emission controls, description of plan to acquire any required emission offsets, and description of criteria used to determine requirement.
- Proposed site plans, layouts, elevations and other aspects of the facility.
- Types of transportation access required.

Proposal Format – As mentioned above, Bidders are being asked to submit a “blinded” bid in such a format that the identity of the Bidder is not apparent. In doing so, PacifiCorp is requesting that Bidders confirm to the following format for presenting their bid information:

Section 1 – Executive Summary of Proposal – The Executive Summary section should provide an overall description of the proposal and its key benefits and advantages to PacifiCorp. It should include a general description of the technology, location, and business arrangement for the bid. Bidder shall state the period under which the terms and conditions of their Proposal will remain effective.

Section 2 – Resource Description – This section should include a description of the resource, including:

- Type of generation equipment and description
- Manufacturers of major equipment
- Type of heat rejection equipment (cooling towers, ponds, ACC, etc.)
- Source of process and/or cooling water
- Wastewater disposal plan
- Description of financing plan

- Plan for site control
- Site layout description
- Description of technology and configuration
- Net Capacity ratings and net heat rates at ambient conditions as specified in Table C-3.1.
- Description of emission control technology, including manufacturer
- Project schedule based on latest Notice to Proceed Date necessary for a June 1, 2009 Substantial Completion Date, listing latest, tasks and milestones with estimated completion dates. Bidders shall also complete Exhibit 1 to document some of the technical aspects of their Proposal.
- Startup Time for Cold, Warm and Hot Starts. A Cold Start is defined as a shutdown of the generating equipment for 48 hours or longer. A Warm Start is defined as a startup within 48 hours of a shutdown. A Hot Start is defined as a start within 8 hours of a shutdown. Bidder should provide its own definitions if different. For this information Startup Times requested may be for the time to minimum sustainable load and time to full load, without duct firing or power augmentation.

Section 3 – Pricing Proposal – Describe in detail the pricing proposal, including the use of any index, escalation factors, or other costs to PacifiCorp. Proposed dates, amounts, and detailed milestone descriptions justifying payments are required.

Section 4 – Transmission – Not Applicable to this Appendix.

Section 5 – Environmental and Siting – Under the EPC proposal, PacifiCorp is exclusively and entirely responsible for meeting and satisfying all federal, state, and local permits, licenses, approvals and/or variances that are required to physical construction and operation of the Facility in accordance with any EPC transaction.

Section 6 – Other Information –

Fuel – Not Applicable to this Appendix

Dispatchability – Not Applicable to this Appendix.

Technical Data – Technical data as requested Exhibit 1 of this Appendix.

Section 7 – Contract Terms – Bidder shall provide a comprehensive listing/description of all modifications to the APSA terms and conditions, including the appendices, which the Bidder would seek during contract negotiations.

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These may include, but are not limited to:

- Descriptions of items to be provided by the Owner, including a schedule of timing for the provision of these items and impact on Bidder of any delays.
- Land requirements for construction of the facility, including laydown areas
- Laydown plan for construction.
- Commissioning & Startup Plan with Owner's requirements.

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EXHIBIT 1
TECHNICAL DATA

Site Location _____

Net Capacity at 95°F, 20% Relative Humidity, and at Site Conditions is _____ MW

Site Elevation: _____ Feet

Maximum water consumption is _____ gallons per minute.

Expected water consumption is _____ acre-feet per year.

Minimum Sustainable Load at above conditions _____ MW

Automatic Generation Control (AGC) capable Yes _____ No _____. If yes than the AGC range at above conditions is _____ MW to _____ MW.

Maximum number of starts per day is _____, per month _____, per year _____.

Maximum continuous period that the facility can operate steam-for-power-augmentation at full load without depleting the demineralized water system is _____ hours. This assumes the demineralized water system is operating at rated capacity.

Weighted Average Raw Water Consumption is _____ gallons per minute.

Time to bring the facility on line, in minutes (specify if this is to synchronization or sustainable minimum load) (Bidder to define "cold", "warm", and "hot starts", if not as stated above)

	Min/Sust.	Full Load
For Cold Start:	_____	_____
For Warm Start:	_____	_____
For Hot Start:	_____	_____

Minimum time on-line (hours from start initiation to stop initiation) _____

Minimum time off-line (hours from stop initiation to start initiation) _____

Normal Ramp Rate within operating range: (MW/Min.) Increase: _____ Decrease: _____

Emergency Ramp Rate: (MW/Minute) Increase: _____ Decrease: _____

Time to transfer from combined cycle to duct firing _____ min.

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Duct Firing Ramp Rate: (MW/Min.) Increase: _____ Decrease: _____

Time to transfer from combined cycle to power augmentation _____ min.

Power Augmentation Ramp Rate: (MW/Min.) Increase: _____ Decrease: _____

Anticipates Number of Starts per CT to reach Commercial Operation (CO): _____

Anticipated quantity of natural gas consumed through CO: _____ dth.

Additional Information

Bidder to provide partial load performance curves, including minimum load, showing heat rate and load at varying temperatures.

To the extent that pricing and/or availability vary based on specific characteristics of the facility and/or ambient conditions, the Bidder shall clearly identify that relationship in tabular form, including the relationship between temperature and capacity over the local ambient range inclusive of -10°F to 105°F. Bidder to fill out Table B-3.1 below:

Table C-3.1

Temp in °F	% RH	Evap or Chiller	Duct Burners	Power Aug.	Heat Rate	Net Output	Min. Load
-10	100						
-10	100		On				NA
0	100						
10	100						
15	84						
20*	86						
20	86		On				NA
20	86			On			NA
20*	86		On	On			NA
30	75						
40	55						
50	49						
52	46						
52	46	On					
60	40	On					
60	40		On				NA
60	40			On			NA
60	40		On	On			NA
70	33	On					
75*	29	On					
75	29		On				NA
75	29			On			NA
75*	29		On	On			NA
80	25	On					
90	16	On					
95*	15	On					
95	15		On				NA
95	15			On			NA
95*	15		On	On			NA
105	11						
105	11	On	On	On			NA

* Indicates Water Balance Sheet Required

Appendix C-4, Existing Asset Purchase (in whole or in part)

Information Required in Bid Proposals

If the Bidder's Proposal is for an interest in an existing facility where PacifiCorp holds an interest, or operates the facility, any information requested under this RFP that would reasonably be expected to already be in the possession of PacifiCorp, may be so stated in the Bidder's response package. If the Bidder's asset is not currently involved with PacifiCorp, the below requirements are to be met as outlined.

In general, PacifiCorp expects Bidders to provide any information that could impact the cost, reliability, dispatch frequency, output capability or performance of a resource. PacifiCorp believes these resources attributes largely consist, but may not be limited to, the following information categories:

Impact of Temperature on Output – If Project output will vary with ambient conditions, capacity, and any associated performance impact, should be stated in terms of conditions expected during a summer day, with ambient air conditions of 95°F and 20% relative humidity, and a winter day with ambient conditions of 20°F and 75% relative humidity. The Bidder will complete Table C-4.1 showing output at specific ambient conditions, with and without duct firing and/or power augmentation. To the extent pricing, capacity and/or availability vary based on specific characteristics of the facility, the Bidder shall clearly identify those relationships in tabular form.

Impact of Other Factors on Output – PacifiCorp prefers generation facilities designed, permitted, and operated so that, to the extent practicable, the proposed capacity and any related energy provided to PacifiCorp is not restricted by:

- Environmental permits or other environmental limitation or environmental forfeitures
- Hours of operation
- Sales of capacity or energy to other parties
- Interruption of primary fuel supply
- Sale of thermal energy
- Any other factor relevant to the technology (noise, agreements with neighbors, etc.
- Bidders shall describe in detail any such limitations in their Proposal
- Ability to provide additional capacity over the net capable rating
- Non-environmental or technology factors that could encumber the facility
- Water availability

Ownership Purchase Option – Bidders may propose a sale, either whole or in part, of existing generation assets to PacifiCorp. Such proposals must include the following information in addition to any technical information:

- Ownership percentage and whether a divided or undivided interest
- Amounts and dates of payments required of PacifiCorp.
- Current and projected annual fixed and variable O&M costs associated with the generation facility.
- Any long term service or maintenance agreements, including scope and costs that are in excess of \$25,000 in annual costs. (i.e. CTs, water, O&M, parts, inspections, ash disposal, CEMs)
- Startup costs (i.e., the period of time from when a start is initiated to the time the unit reaches minimum sustainable load)
- Operating Limits – 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 per operated per year or per unit of time. Any annual limits on the number of hours of duct firing or power augmentation.
- Emissions (air, liquid and solid wastes) in pounds per hour per pollutant and/or waste product at 100% load and tons per year of pollutant and/or waste product at a specified capacity factor as selected by the Bidder.
- Annual unit availability and any guaranteed minimum annual availability.
- Information regarding location and transmission.
- Information regarding fuel and transportation.
- Capacity on summer design day in compliance with all regulatory requirements.
- Efficiency (Heat Rate) in compliance with all regulatory requirements.
- Terms of remaining warranties and/or guarantees on major equipment.
- Costs to incorporate into PacifiCorp Fleet (Future capital or maintenance).

Significant due diligence may be necessary prior to finalizing any acquisition by PacifiCorp. A list of due diligence items will be provided to a Bidder should they be short-listed.

Siting – Not Applicable to this Appendix.

Facility Information – To the extent applicable, the Bidder should clarify the following information with respect to the facility:

- Air emissions (all criteria pollutants and air toxics), description of emission controls and existing emission offsets
- List of environmental and other regulatory permits
- Water usage quantity, quality and source(s).
- Water discharge quantity and quality, plus water discharge plan.
- Receiving water body identity and description
- Description of local groundwater quality, quantity and uses.
- Site plans, layouts, elevations and other aspects of the facility.

Fuel Transportation Route Information – To the extent applicable, the Bidder should clarify any relevant information with respect to fuel transportation route information for the site.

Proposal Format – As mentioned above, Bidders are being asked to submit a “blinded” bid in such a format that the identity of the Bidder is not apparent. In doing so, PacifiCorp is requesting that Bidders confirm to the following format for presenting their bid information:

Section 1 – Executive Summary of Proposal – The Executive Summary section should provide an overall description of the proposal and its key benefits and advantages to PacifiCorp. It should include a general description of the technology, location, and business arrangement for the bid. Bidder shall state the period under which the terms and conditions of their Proposal will remain effective.

Section 2 – Resource Description – This section should include a description of the resource, including:

- Type of generation equipment and description
- Manufacturers of major equipment
- Model number, serial number and age of any previously owned/operated equipment
- Type of heat rejection equipment (cooling towers, ponds, ACC, etc.)
- Source of process and/or cooling water
- Wastewater disposal plan
- Description of financing plan
- Description of operation and maintenance plan
- Plan for site control
- Site layout description
- Description of technology and configuration
- Net Capacity ratings and net heat rates at ambient conditions as specified in Table C-4.1.
- Primary fuel supply and backup alternatives
- Electrical interconnection (location, transmission provider, and control area)
- Description of emission control technology, including manufacturer
- Any limits on hours of operation in a particular mode (i.e., combined cycle, duct firing, power augmentation, or combination thereof)
- Any limits on emissions
- Project schedule, listing tasks and milestones with estimated completion dates. Bidders shall also complete Exhibit 1 to document some of the technical aspects of their Proposal.
- Startup Time for Cold, Warm and Hot Starts. A Cold Start is defined as a shutdown of the generating equipment for 48 hours or longer. A Warm Start is defined as a startup within 48 hours of a shutdown. A Hot Start is defined as a start within 8 hours of a shutdown. Bidder should provide its own definitions if different. For this information Startup Times requested may be for the time to minimum sustainable load and time to full load, without duct firing or power augmentation.

Section 3 – Pricing Proposal – Describe in detail the pricing proposal, including the use of any index, escalation factors, or other costs to PacifiCorp. Also required is a detailed accounting of ownership interest, whether divided or undivided, in the facility, inventory, spare parts, ongoing agreements, or any continuing obligations resulting from PacifiCorp’s ownership, or acquisition of an interest in the asset. Proposed dates, amounts, and detailed milestone descriptions justifying payments are required.

Section 4 – Transmission – Each Proposal must include a description of the location of its transmission facilities, including delivery points, and must specify the transmission provider and all applicable costs.

Section 5 – Environmental and Siting –Bidder must furnish applicable detailed project site, electric transmission, and fuel transportation information, and a description of all permits, so PacifiCorp can assess site suitability and project viability. The site shall clearly be shown on a United States Geological Survey (USGS) 7.5-minute series map.

Section 6 – Other Information –

Dispatchability – Describe any constraints and/or limitations on PacifiCorp’s ability to dispatch the generation and any ability of PacifiCorp to utilize the resource for operating reserves.

Technical Data – Technical data as requested Exhibit 1 of this Appendix.

Section 7 – Contract Terms – Bidder shall provide a sample purchase and sale agreement outlining the terms and conditions of the proposed acquisition.

EXHIBIT 1

TECHNICAL DATA

Site Location _____

Net Capacity at 95°F, 20% Relative Humidity, and at Site Conditions is _____ MW

Site Elevation: _____ Feet

Maximum water consumption is _____ gallons per minute.

Expected water consumption is _____ acre-feet per year.

Minimum Sustainable Load at above conditions _____ MW

Automatic Generation Control (AGC) capable Yes _____ No _____. If yes than the AGC range at above conditions is _____ MW to _____ MW.

Maximum number of starts per day is _____, per month _____, per year _____.

Maximum continuous period that the facility can operate steam-for-power-augmentation at full load without depleting the demineralized water system is _____ hours. This assumes the demineralized water system is operating at rated capacity.

Weighted Average Raw Water Consumption is _____ gallons per minute.

Time to bring the facility on line, in minutes (specify if this is to synchronization or sustainable minimum load) (Bidder to define "cold", "warm", and "hot starts", if not as stated above)

	Min/Sust.	Full Load
For Cold Start:	_____	_____
For Warm Start:	_____	_____
For Hot Start:	_____	_____

Minimum time on-line (hours from start initiation to stop initiation) _____

Minimum time off-line (hours from stop initiation to start initiation) _____

Normal Ramp Rate within operating range: (MW/Min.) Increase: _____ Decrease: _____

Emergency Ramp Rate: (MW/Minute) Increase: _____ Decrease: _____

Time to transfer from combined cycle to duct firing _____ min.

Duct Firing Ramp Rate: (MW/Min.) Increase: _____ Decrease: _____

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Time to transfer from combined cycle to power augmentation _____ min.

Power Augmentation Ramp Rate: (MW/Min.) Increase: _____ Decrease: _____

Anticipates Number of Starts per CT to reach Commercial Operation (CO): _____

Anticipated quantity of natural gas consumed through CO: _____ dth.

Additional Information

Bidder to provide partial load performance curves, including minimum load, showing heat rate and load at varying temperatures.

To the extent that pricing and/or availability vary based on specific characteristics of the facility and/or ambient conditions, the Bidder shall clearly identify that relationship in tabular form, including the relationship between temperature and capacity over the local ambient range inclusive of -10°F to 105°F. Bidder to fill out Table B-4.1 below:

Table C-4.1

Temp in °F	% RH	Evap or Chiller	Duct Burners	Power Aug.	Heat Rate	Net Output	Min. Load
-10	100						
-10	100		On				NA
0	100						
10	100						
15	84						
20*	86						
20	86		On				NA
20	86			On			NA
20*	86		On	On			NA
30	75						
40	55						
50	49						
52	46						
52	46	On					
60	40	On					
60	40		On				NA
60	40			On			NA
60	40		On	On			NA
70	33	On					
75*	29	On					
75	29		On				NA
75	29			On			NA
75*	29		On	On			NA
80	25	On					
90	16	On					
95*	15	On					
95	15		On				NA
95	15			On			NA
95*	15		On	On			NA
105	11						
105	11	On	On	On			NA

* Indicates Water Balance Sheet Required

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**2009 RFP
Appendix D
Natural Gas & Fuel Supply Form
September 2005**

Appendix D
RFP 2009
Natural Gas and Fuel Supply Form

Site Location _____

Primary Source of Fuel _____

Secondary Source of Fuel (if any) _____

Supplier of Primary Fuel _____

Firm Supply Contract Anticipated? (Yes) (No) Term _____ years

Supplier of Secondary Fuel (if any) _____

Supply Contract Anticipated? (Yes) (No) Term _____ years

Contemplated Natural Gas Transportation:

LDC (if necessary) _____ Firm Transport? (Yes) (No)
Quantity _____ dekatherms (mmBtu) Term _____

Pipeline 1 _____ Firm Transport? (Yes) (No)
Quantity _____ dekatherms (mmBtu) Term _____

Pipeline 2 _____ Firm Transport? (Yes) (No)
Quantity _____ dekatherms (mmBtu) Term _____

If transportation is not firm, please clarify the contemplated terms for transport.

Rail/Truck Transport Coal/Oil

Firm 1 _____
Firm 2 _____

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RFP 2009
APPENDIX E
Officer Certification Form
September 2005

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Officer Certification Form- Appendix E

The undersigned Bidder executes and submits this form with each Proposal it submits in PacifiCorp's RFP 2009, and hereby certifies in each instance that all of the statements and representations made by it in its proposal are true to the best of the Bidder's knowledge, and agrees to be bound by the representations, terms, and conditions contained in the 2009 RFP. The Bidder accepts the contract attached to the 2009 RFP and indicated therein as applicable to its Proposal, except as specifically noted in writing by Bidder. This proposal is firm and will remain in effect until the later of March 27, 2006, or that date which is 300 days after the proposal due date provided in the RFP, as such due date may be extended from time to time by PacifiCorp.

Submitted by: _____
(Exact legal name of the entity submitting Proposal)

Signature of an authorized officer: _____

Print or type name of officer: _____

Title: _____

Date signed: _____

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**RFP 2009
APPENDIX F
SFAS No. 13 Form
September 2005**

This is an example of the SFAS No. 13 Form.

Each Bidder is required to fill in **only** the cells that are highlighted in yellow for each Eligible Resource. When you type in the yellow cells it will prompt you for a password, the password is RFP2009. Each Bidder is required to copy the excel spreadsheet and resave it with their bid number and submit it on a CD or Diskette. Appendix F can be downloaded from either PacifiCorp website and or the IE website for Bidders to save on a CD or Diskette. (www.pacificorp.com)

*YELLOW CELLS REQUIRE USER INPUT.

**Please note, the conclusion in cell B28 assumes that the contract has been deemed a lease by EITF 01-08.

***Protected cell(s) password: RFP2009

CAPITAL LEASE IF:							
FAIL	The lease transfers ownership to the lessee by the end of the lease term. "Fail" equates to "No". "Pass" equates to "Yes".						
FAIL	The lease contains a bargain purchase option. "Fail" equates to "No". "Pass" equates to "Yes".						
FAIL	The lease term is equal to 75% or more of the estimated economic life of the leased property, and the beginning of the lease term does not fall within the last 25% of the total economic life of the leased property.						
	Original Economic Plant Life (yrs)	Years into Economic Plant Life	Remaining Economic Plant Life (yrs)	Term of Deal (yrs)	% of Life	Trigger	Test
	35	0	35	20	57%	75%	FAIL
	Beginning of Plant	Ending of Plant	Life (yrs)	Last 25% Date	Beginning of Lease	Test	
	6/1/2009	5/31/2044	35	9/1/2035	6/1/2009	FAIL	
FAIL	The present value of the minimum lease payments at the beginning of the lease term is 90% or more of the fair value to the lessor less any investment credit retained by the lessor. This requirement cannot be used if the lease's inception is in the last 25% of the useful economic life of the leased asset. The interest rate, used to compute the PV, is the incremental borrowing rate of the lessee unless the implicit rate is available and lower.						
	Percentage of Capacity PMT that is Executory Costs (%)	Cost to Build \$/KW	MW	FMV	\$ PV Minimum Lease Pmts (Non-Executory Costs)	Trigger (90% of FMV)	Test
	25%	\$700	420	\$294,000,000	\$209,583,165	\$264,600,000	FAIL
Designation:							
OPERATING LEASE							

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RFP2009
APPENDIX G
Bidder Site Control Form
September 2005

Appendix G
RFP 2009
Bidder Site Control Form

Project Name: _____

Site Location: _____

Street Address or Nearest Intersection: _____

Acres: _____

Distance to Natural Gas Supply: _____

Distance to Water Supply (if not using ACC): _____

Check items that are applicable:

Property is owned by Bidder.

Property is leased by Bidder, with an Option to buy.

▪ Lease/Option Expires: _____

Property is Optioned by Bidder through (date): _____

▪ Option is Exclusive _____ or Non-Exclusive _____

▪ Option is to Purchase _____ or Lease _____

Site is selected, but not formally secured.

Site will require zoning change as part of permitting process.

APPENDIX G

Bidder Site Control Form Submittals

Bidder shall submit to Buyer drawings, plans, specifications, and other documents necessary to document the design engineering and construction of the Plant and the content of the Work, including but not limited to those items herein listed below. Additionally, Bidder shall submit to the Buyer those drawings, plans, specifications, and other documents as required by the State of Utah or any other regulatory body or agency having authority over the Plant.

Ninety (90) days after the Notice To Proceed, the Bidder shall provide to Buyer a schedule for submittal of such documents, which schedule shall (1) be consistent with the schedule for the Project and (2) provide Buyer with the greatest practicable opportunity to review such documents and make comments thereon within fourteen (14) days from the transmittal date or as mutually agreed upon provided that the comment period does not unduly affect the progress of the Work. Submittals shall be in duplicate.

Engineering Lists

- Equipment List

Engineering Specifications and Drawings

- Plot/Site Plan
- Switchyard Single Line, Three Line and Metering and Protection Design

Construction

- Site Utilization Plan, including laydown,

Commissioning and Startup

- System Descriptions
- Performance and Emissions Test Procedures
- Performance Test Results
- Reports Required for Regulatory Compliance

Plans, Manuals, & Reports

- Level 2 Schedule
- Commissioning Schedule
- Monthly Progress Reports

All specifications and drawings for the Project and submitted by Bidder or Subcontractor to Bidder hereunder shall include the following data:

Name:	PacifiCorp
Project Name:	Buyer's Power Plant
Spec. or drawing number, if applicable:	Bidder or Subcontractor to Provide
Bidder or Subcontractor's name:	Bidder or Subcontractor
Revision Number and Date	Bidder or Subcontractor to Provide

Buyer shall have the right to reasonably request other information and Bidder shall use reasonable efforts to supply this information.

Documents submitted to Buyer are provided for information only. However, if Buyer identifies discrepancies or areas of non-conformance with the Agreement requirements, Buyer has the right to notify Bidder of the discrepancy/non-conformance and require that the document be revised and resubmitted.

Monthly Progress Report

The Monthly Progress Report shall address all aspects of the Plant through the Commercial Operation and shall include, but not be limited to the following:

- (a) An "Executive Summary" containing:
 - A written summary of events and progress accomplished during the previous reporting period.
 - Unresolved Changes.
 - Critical Concerns and Intended Actions.

- (b) A "Schedule Section":
 - Will be updated on a monthly basis and will consider the aforementioned item b. An updated Level 2-time schedule will be provided (paper/electronic). Critical path analysis will also be provided.

- (c) A list of the status of Bidder permits

RFP 2009
APPENDIX H
Construction Coordination Agreement
September 2005

PacifiCorp
Draft RFP 2009
Responses due December 1, 2005

**CONSTRUCTION COORDINATION AGREEMENT
BETWEEN
PACIFICORP
AND**

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EXHIBIT A TO CONSTRUCTION COORDINATION AGREEMENT Glossary of

Defined Terms	1
(1) “Action” shall mean any lawsuit, action, proceeding, investigation or complaint before any Governmental Authority, mediator or arbitrator.....	1
(2) “Agreement” shall have the meaning given to it in the Recitals of this Agreement.....	1
(3) “Air Permit” shall mean the _____ Operating Permit and the Acid Rain Permit issued by the _____ for the Facility (Permit No. _____).	1
(4) “[PPA/TSA]” shall have the meaning set forth in the Recitals.	1
(5) “PacifiCorp’s Area” means the entirety of the Site that is not included in the Construction Area, as the same may exist from time to time.	1
(6) “Common Facilities” means those tangible assets, contracts, and permits owned by PacifiCorp in connection with Unit 1 and utilized in common by PacifiCorp and [NAME] for the construction, startup, commissioning and operation of Unit 2, identified on Exhibit “B”	1
(7) “Construction Area” shall have the meaning given to it in Section 3.2 of this Agreement.....	1
(8) “Construction Damage” shall have the meaning given to it in Section 4.1 of this Agreement.....	1
(9) “Construction Fence” shall have the meaning given to it in Section 3.2 of this Agreement.	1
(10) “Effective Date” has the meaning set forth in the [APSA / EPC Contract]1	
(11) “Emergency” means any situation which is likely to impose an immediate threat of injury to any Person or of material property damage or material economic loss to all or any part of the Facility.....	1

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- (12) "Facility" or "Facilities" shall mean the combined generation facility consisting of Unit 1, Unit 2 and the Common Facilities, and all energy producing equipment and auxiliary equipment, fuel storage and handling facilities and equipment, electrical transformers, interconnection facilities and metering facilities, as may be required for receipt of fuel and for delivery of electricity, and all other improvements related solely to the Units and located on the Site. 1
- (13) "Governmental Authority" means any court, tribunal, arbitrator, authority, agency, commission, official or other instrumentality of the United States, any foreign country or any domestic or foreign state, county or other political subdivision. 2
- (14) "NERC" shall mean the North American Electric Reliability Council, and any successor entity. 2
- (15) "Off-Peak Hourly Period" means those periods of time measured by hours ending 0100 through 0600 and hours ending 2300 through 2400 Monday through Saturday, and all hours on Sunday and NERC Holidays. 2
- (16) "PacifiCorp" shall have the meaning set forth in the Recitals..... 2
- (17) "PacifiCorp's Area" shall have the meaning given to it in Section 3.2 of this Agreement. 2
- (18) "Party" shall have the meaning given to it in the Recitals of this Agreement..... 2
- (19) "Performance Testing" shall have the meaning given to it in the [PPA/TSA]..... 2
- (20) "Person" means any individual, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization or Governmental Authority. 2
- (21) "Prudent Industry Practice" shall have the meaning given to it in the [PPA/TSA]..... 2
- (22) "Project Schedule" shall have the meaning given to it in the [PPA/TSA]. 2
- (23) "Replacement Power Costs" shall have the meaning given to it in Section 5.2(b) of this Agreement. 2
- (24) "Shutdown Periods" shall have the meaning given to it in Section 6.1 of this Agreement. 2
- (25) "Site" means the real property on which the Facilities are located. 2
- (26) "Substantial Completion" and "Substantial Completion Date" shall have the meanings given to them in the [PPA/TSA] and shall be the time at which PacifiCorp takes possession and control over the constructed Unit 2 pursuant to the terms of the [PPA/TSA]. **Error! Bookmark not defined.**

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(27) "Tagging and Safety Program" shall mean that tagging and safety program in effect and maintained by PacifiCorp at the Facility from time to time and provided to [NAME]. 2

(28) "Term" shall have the meaning given to it in Section 2.1 of this Agreement. 2

(29) "Unit" shall mean an individual generating facility consisting of the gas turbine, heat recovery system generator, steam turbine, auxiliary boilers and other associated facilities and equipment not included as Common Facility. 2

(30) "Unit 1" means the power plant located in _____, Utah, owned by PacifiCorp and the related facilities, real property and property rights related thereto including all necessary permits and licenses, but excluding the Common Facilities. 3

(31) "Unit 2" means the proposed power plant to be located in _____ under development by [NAME] adjacent to Unit 1 and the related facilities, real property and property rights related thereto including all necessary permits and licenses, but excluding the Common Facilities. 3

(32) "Unscheduled Shutdown" shall have the meaning given to it in Section 6.2(b) of this Agreement. 3

Rules as to Usage 3

1. The terms defined above have the meanings set forth above for all purposes, and such meanings are equally applicable to both the singular and plural forms of the terms defined. 3

EXHIBIT B TO CONSTRUCTION COORDINATION AGREEMENT Common Facilities 1

EXHIBIT C CONSTRUCTION COORDINATION AGREEMENT Site Plan Designation of Construction Area 1

EXHIBIT D CONSTRUCTION COORDINATION AGREEMENT Security Requirements 1

- Exhibit "A" – Glossary of Defined Terms
- Exhibit "B" – Common Facilities [TBD]
- Exhibit "C" – Site Plan Designation of Construction Area [TBD]
- Exhibit "D" – Security Requirements [TBD]

CONSTRUCTION COORDINATION AGREEMENT

This Construction Coordination Agreement (the "Agreement") is made and entered into as of the Effective Date (as defined below), by and between PacifiCorp, an Oregon corporation ("PacifiCorp"), and _____, a _____ [limited liability company] ("[NAME]") (PacifiCorp and [NAME] are individually referred to herein as a "Party" and collectively as the "Parties").

RECITALS

WHEREAS, PacifiCorp is an investor owned electric utility company subject to regulation by the Public Service Commission of Utah;

WHEREAS, PacifiCorp owns, operates and maintains Unit 1 at its generation facility located in _____, Utah.

WHEREAS, [NAME] desires to construct Unit 2, to be located adjacent to Unit 1 at the Facility;

WHEREAS, PacifiCorp and [NAME] have entered into a [Power Purchase Agreement ("PPA") / Tolling Services Agreement ("TSA")] providing for the purchase by PacifiCorp of certain of the energy and capacity generated by Unit 2 following Unit 2's reaching Commercial Operation;

WHEREAS, there is a need to coordinate the activities of [NAME] and its contractor(s) and subcontractors during construction, testing and commissioning of Unit 2 to avoid potential interference with the operation of Unit 1;

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each Party, the Parties hereto agree as follows:

ARTICLE I Definitions; Headings

1.1 Definitions

Unless the context shall otherwise require, capitalized terms used in this Agreement shall have the meanings assigned to them in the Glossary of Defined Terms attached hereto as Exhibit "A", which also contains rules as to usage that shall be applicable herein.

ARTICLE II Term and Governing Provisions

2.1 Term.

The Term of this Agreement shall become effective on the Effective Date and, unless earlier terminated pursuant to provisions hereof, shall continue in effect until PacifiCorp has accepted the [PPA/TSA] or has achieved Commercial Operation. Date.

As a matter of general priority, in the event of any conflict between the provisions of this Agreement or the [PPA/TSA], the provisions of this Agreement shall govern. Disputes related to the matters to be performed pursuant to this Agreement and not involving the [PPA/TSA] or work performed by or at the direction of the [PPA/TSA], shall nonetheless be governed by Section 15 (“Disagreements”) in the [PPA/TSA].

ARTICLE III Construction Interfaces

3.1 Construction Control.

[NAME] and its contractors shall be responsible for and have sole control over the construction of Unit 2, except for interconnections with the Common Facilities. [NAME] shall coordinate with PacifiCorp all activities to be performed in connection with the construction, testing and commissioning of Unit 2 pursuant to this Agreement, particularly if such activities may require taking Unit 1 off-line or have a substantial possibility of causing an outage at Unit 1.

[NAME] shall be responsible for erecting a temporary and movable construction fence (the “Construction Fence”) on the Site for the purpose of separating the Unit 2 construction area (the “Construction Area”), which is initially depicted by the cross-hatched area on Exhibit “C” attached hereto, from the rest of the Facility, including Unit 1, the switchyard and the Common Facilities. The Construction Fence may be moved and relocated as necessary with the prior written consent of PacifiCorp following the completion of certain phases of construction for the purpose of accessing other areas of the Facility, all as set out in the Project Schedule. During the Term, [NAME] will be in control of the Construction Area and will maintain a separate gate for access to the Construction Area. Prior to the Commercial Operation Date, the Construction Area will be reduced to [NAME]’s staging and laydown area and separate gate, and shall not include any Facilities necessary for operation of Unit 1, Unit 2 or the Common Facilities. Following the Commercial Operation Date [NAME] shall, and shall cause its contractors and subcontractors to, promptly remove all construction materials and equipment from the staging and laydown area, to remove the Construction Fence, and to erect suitable permanent fencing and related access roads to separate PacifiCorp’s facilities from [NAME]’s facilities, all as approved in writing by PacifiCorp.

[NAME] shall at all times utilize and cause its contractors, subcontractors, personnel and other persons allowed at any part of the Facility by [NAME] to utilize only [NAME]’s separate gate to the Construction Area.

3.2 [NAME]’s Access to PacifiCorp’s Area.

[NAME] shall provide PacifiCorp with reasonable notice of its need to access PacifiCorp’s Area for performance of work activities associated with the Common Facilities. [NAME] and PacifiCorp shall agree on a schedule for the performance of all

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work activities in PacifiCorp's Area consistent with the Project Schedule. PacifiCorp shall arrange for any safety instruction and workplace policy training deemed appropriate by PacifiCorp for [NAME]'s personnel prior to [NAME]'s personnel being allowed in PacifiCorp's Area. PacifiCorp shall arrange for escorts for [NAME]'s personnel accessing PacifiCorp's Area to the extent PacifiCorp reasonably deems such escorts necessary. In the event [NAME] needs to work on a system that could be used by PacifiCorp for the operation of Unit 1, [NAME] shall provide PacifiCorp with written notice and receive authorization from PacifiCorp that the system has been deactivated before commencing work on the system and [NAME] shall notify PacifiCorp once it completes work on the system so PacifiCorp can inspect and reactivate the system in accordance with PacifiCorp's Tagging and Safety Program.

3.3 PacifiCorp Access to the Construction Area.

At all times prior to the Commercial Operation Date [NAME] shall provide PacifiCorp and PacifiCorp's personnel access to the Construction Area upon PacifiCorp's request. [NAME] and PacifiCorp shall agree on a schedule for the performance of work activities by PacifiCorp's personnel in the Construction Area. PacifiCorp's personnel shall comply with [NAME]'s published safety program requirements while in the Construction Area. [NAME] may arrange for escorts for any PacifiCorp personnel accessing the Construction Area to the extent [NAME] reasonably deems such escorts necessary. The above notwithstanding, PacifiCorp may access the Construction Area without notice for the purpose of carrying out activities required for the operation of Unit 1 or responding to an Emergency.

3.4 Project Schedule and Coordination of PacifiCorp Support.

[NAME] shall (a) schedule all activities that will require or may result in the shutdown of or inability to dispatch Unit 1, and all work activities performed on or affecting the Common Facilities in accordance with the Project Schedule, (b) notify PacifiCorp in writing of such schedule(s) at the earliest practicable time, and (c) update such schedules in writing as necessary. [NAME] shall not undertake the foregoing Work activities until PacifiCorp has agreed in writing with such schedule and plan for performing the identified work.

3.5 Unit 1 and PacifiCorp's Area Control.

PacifiCorp shall have sole control over the operation of Unit 1 and the remainder of PacifiCorp's Area at all times.

3.6 Restrictions During Construction.

- (a) Except as otherwise provided in this Agreement, [NAME] shall perform or cause to be performed all construction activities with respect to Unit 2 in a manner that will avoid interference with PacifiCorp's operation of Unit 1.

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(b) [NAME] shall restrict construction workers and other personnel not employed by PacifiCorp from access to PacifiCorp's Area except as authorized in advance by PacifiCorp's Representative. Upon the reasonable request of [NAME], PacifiCorp shall authorize access to PacifiCorp's Area for the purpose of undertaking activities necessary to integrate Unit 2 into the Common Facilities, and after the Substantial Completion Date to perform any work activities required under the [PPA/TSA], in accordance with the Project Schedule and the work plan required under Section 3.4 above.

3.7 Transportation Routes and Lay-Down Areas.

[NAME] shall designate adequate transportation routes and lay-down areas for the construction work and materials for Unit 2, and, prior to commencing construction obtain PacifiCorp's written approval of all such proposed routes and laydown areas. In granting its approval PacifiCorp shall not be deemed to have recommended or confirmed the adequacy or suitability of such routes and laydown areas, and shall have no liability with respect to [NAME]'s selection of, use of or inability to use such routes and laydown areas.

3.8 Employee Discipline.

[NAME] shall adopt and enforce policies for disciplining construction employees if the employees' actions affect or are likely to affect Unit 1 or the Common Facilities other than as provided in the work plan and in Section 3.4 above. Any construction employee found to have violated PacifiCorp's security requirements regarding escorting and physical access to certain PacifiCorp's Areas described in the attached Exhibit "D" shall, at the request of PacifiCorp be assigned to work outside PacifiCorp's Area and shall be disciplined to the full extent permissible under [NAME]'s project labor agreement (if any), including without limitation terminated at PacifiCorp's request.

3.9 Security and Safety Requirements.

In addition to the requirements of [PPA/TSA] [NAME] shall, consistent with good and generally accepted construction practices and Prudent Industry Practice, undertake all commercially reasonable efforts to protect any and all parallel, converging and intersecting electric lines and poles, telephone lines and poles, highways, waterways, railroads, sewer lines, natural gas pipelines, drainage ditches, culverts, Unit 1 facilities and any and all property of others related to the Facility, and shall indemnify PacifiCorp from any and all Claims with respect to [NAME]'s actions or failures to act in connection with such facilities and property in connection with the Work.

3.8 Transition from Construction to Operation.

PacifiCorp shall provide oversight and consent of activities necessary for the connection of the Unit 2 systems with the Common Facilities. PacifiCorp shall provide [NAME] and its employees and contractors with reasonable controlled access to all Common

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Facilities, to enable [NAME] and its contractors to interconnect Unit 2 with the Common Facilities, all in accordance with the Project Schedule provided pursuant to Section 3.4 above, and upon receipt of notice from [NAME].

ARTICLE IV Construction Damage

4.1 Construction Damage.

In the event any activities undertaken in connection with the development, construction, commissioning or testing of Unit 2 cause any physical damage ("Construction Damage") to Unit 1, to the Common Facilities or to any portion of PacifiCorp's Area:

- (a) [NAME] shall be responsible for the full cost of rebuilding, restoring and/or repairing all Construction Damage.
- (b) [NAME] shall promptly, and in any event no later than one (1) day after the date on which the Construction Damage occurred, consult with PacifiCorp regarding the extent of the Construction Damage and possible approaches to remedying the Construction Damage.
- (c) [NAME] shall promptly, and in any event no later than five (5) days after the date on which the Construction Damage occurred, submit to PacifiCorp a detailed written proposal for rebuilding, restoring or replacing, at [NAME]'s expense, such Construction Damage.
- (d) PacifiCorp shall promptly evaluate any proposal submitted by [NAME] for, rebuilding, restoring or replacing, at [NAME]'s expense, such Construction Damage.
- (e) If PacifiCorp determines that [NAME] possesses the demonstrated qualifications and capability to timely perform the remedial actions set out in the proposal, PacifiCorp will cooperate with [NAME] to promptly undertake the rebuilding, restoration or replacement of the Construction Damage set out in the proposal to PacifiCorp's satisfaction, subject to such terms, conditions and restrictions as PacifiCorp may deem appropriate to ensure that the proposed activities comply with PacifiCorp's safety programs and practices and that the remedial actions will not result in further damage or loss of generation with respect to Unit 1 operations.
- (f) If PacifiCorp concludes that [NAME] lacks the demonstrated qualifications and capability or otherwise is not in a position to timely perform the remedial actions set out in the proposal, if [NAME] does not agree with PacifiCorp's terms, conditions and restrictions described in paragraph (d) above, or if [NAME] does not promptly undertake such remedial actions, then PacifiCorp shall be entitled to promptly commence

repairs to any Construction Damage to Unit 1, the Common Facilities or other portion of the PacifiCorp Area at [NAME]'s sole expense.

(g) In the event that [NAME] does not reimburse PacifiCorp for any cost of rebuilding, restoration or replacement activities related to the Construction Damage incurred by PacifiCorp (including without limitation the reasonable cost of PacifiCorp's consultants and internal personnel and resources) within thirty (30) days of PacifiCorp's invoice for the same, then PacifiCorp may set off any amounts owing to PacifiCorp from [NAME] from any payments owed by PacifiCorp to [NAME] under the [PPA/TSA];

(h) Nothing in this Article IV is intended to be nor shall operate as a limitation on PacifiCorp's right or ability to recover damages from [NAME] pursuant to the [PPA/TSA], this Agreement or otherwise at law or in equity.

ARTICLE V Shutdowns

5.1 Scheduled Shutdowns of Unit 1.

The Parties recognize that Unit 1 must be temporarily shut down for interconnection of Unit 2 to the Common Facilities and for other defined construction-related activities as identified in the Project Schedule. All scheduled shutdowns shall be scheduled, to the extent possible, during weekends and holiday periods.

IN NO EVENT SHALL ANY SCHEDULED SHUTDOWNS BE SCHEDULED DURING THE MONTHS OF JUNE, JULY, AUGUST OR SEPTEMBER, except and to the extent that Unit 1 has scheduled maintenance outages scheduled during such period.

[NAME] shall schedule and provide to PacifiCorp, at least 7 days prior to any necessary shutdown, written notice of the next upcoming outage and of any proposed changes to the outage periods set out in the Project Schedule.

[NAME] shall coordinate with PacifiCorp to balance the need to reduce these shutdown periods and to utilize other times of economic shutdown of Unit 1 to perform the required work under the [PPA/TSA] with the need to utilize these shutdown periods to perform work activities that have a reasonable probability of causing an unplanned shutdown of Unit 1.

If the Scheduled Shutdown of Unit 1 occurs at a time when Unit 1 is not otherwise scheduled by PacifiCorp to be shutdown and non-dispatchable, then [NAME] shall pay to PacifiCorp Replacement Power Costs calculated in the same manner as set forth in Section 5.2(c) as though the Scheduled Shutdown were an Unscheduled Shutdown.

5.2 Unscheduled Shutdowns of Unit 1.

(a) [NAME] shall be responsible for conducting its development, construction, commissioning, testing and startup activities in a manner that minimizes the impact of Unit 2 construction on the operation of Unit 1.

(b) In the event activities performed by [NAME] or its contractors causes Unit 1 to experience an unscheduled shutdown or loss of power generation capability (each an "Unscheduled Shutdown"), [NAME] shall be liable to PacifiCorp for all damages incurred by PacifiCorp in connection with such Unscheduled Shutdown. Damages associated with an Unscheduled Shutdown shall include, without limitation, (i) \$12,000, multiplied by the Unit 1 OEM's equivalent start ratio for the affected unit(s) per Unscheduled Shutdown occurrence, (ii) the cost of all physical damage to any Unit 1 equipment that is demonstrated to have occurred due to the Unscheduled Shutdown, and (iii) the cost of replacement power ("Replacement Power Costs") for the period of the Unscheduled Shutdown.

(c) Replacement Power Costs shall be calculated as follows, and shall be payable whether or not PacifiCorp actually purchases replacement power for the applicable period as liquidated damages for the lost generation portion of damages only:

(i) If an Unscheduled Shutdown occurs during work scheduled pursuant to Section 5.2(e)(i) while Unit 1 is operating, replacement power costs shall be calculated as the product of **(1) the Dow Jones SP15 Daily Firm On-Peak Index for the day of delivery, expressed in \$/MWh, multiplied by (2) the provided Hourly Scalar for each hour, multiplied by (3) the loss factor of 1.112, plus (4) the basis of \$13/MWh during each hour or portion of hour of the Unscheduled Shutdown, minus (5) Unit 1's incremental cost of generating power (i.e., the product of a given plant's then effective net heat rate multiplied by midpoint of the Kern River, Opal Plant Platt's Daily Gas Index at the time of the Unscheduled Shutdown expressed in units of \$/mmBtu)**

$$\text{_____} = \text{Market Price} - \text{Incremental Cost}$$

$$\text{Replacement Power} = (1 \times 2 \times 3 + 4) - 5$$

- (d) After an Unscheduled Shutdown of Unit 1, any such future work that is to be performed by [NAME] or its contractors of the same or similar nature to that which caused the Unscheduled Shutdown shall proceed as follows:
- (i) PacifiCorp and [NAME] shall develop a plan designed to accomplish the necessary work in a manner that will avoid reoccurrence of the Unscheduled Shutdown.
 - (ii) Such work plan shall provide that such work may, at PacifiCorp's election:
 - (1) be rescheduled to begin within, and end not less than five (5) hours before the end of, a subsequent Off-Peak Hourly Periods, during which Unit 1 may continue to operate; or
 - (2) PacifiCorp may elect to schedule a shutdown of Unit 1 during any subsequent Off-Peak Hourly Periods and such work may be performed during such shutdown beginning within, and ending no less than two (2) hours before the end of, such Off-Peak Hourly Periods.
- (e) PacifiCorp shall provide [NAME] with not less than eight (8) hours' advance notice (to be confirmed in writing) of any election to schedule a shutdown of Unit 1 pursuant to Section 5.2(d)(ii)(2).
- (f) Nothing in this Article V is intended to be nor shall operate as a limitation on PacifiCorp's right or ability to recover damages from [NAME] pursuant to the [PPA/TSA], this Agreement or otherwise at law or in equity.

5.3 Testing and Initial Firing of Combustion Turbines.

[NAME] shall conduct testing and initial firing of the Unit 2 combustion turbine generator during Off-Peak Hourly Periods.

ARTICLE VI

Notices and Miscellaneous Provisions

6.1 Notices, Consents and Approvals

Contact information for notices, requests, demands and other communications required or permitted hereunder is as follows:

PacifiCorp
Draft RFP 2009
Responses due December 1, 2005
if to [NAME], to:

with copies to:

or to such other person or address as [NAME] shall furnish to PacifiCorp;

if to PacifiCorp, to:

PacifiCorp
825 NE Multnomah, Suite 600
Portland, Oregon 97232-2315
Attn: _____

Tel: _____

Fax: _____

with copies, in connection with default notices, to:

or to such other person(s) or address(es) as PacifiCorp furnishes to [NAME] from time to time.

All notices, including, acceptances, consents, approvals, agreements, deliveries of information, designations, requests, demands and other communications required or permitted hereunder shall be in writing, properly addressed as provided in paragraph (a) above, and given by (i) hand delivery, (ii) a national overnight courier service, (iii) confirmed facsimile transmission, followed by a hard copy, or (iv) certified or registered mail, return receipt requested, and postage prepaid. Any such notice or other communication shall be deemed to have been duly given as of the date delivered if by hand delivery, national overnight courier service or confirmed facsimile transmission (provided a hard copy promptly follows by other means provided herein), or five (5) calendar days after mailing if by certified or registered mail.

6.2 Entire Agreement

This Agreement contains the entire agreement and understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, whether written or oral, of the Parties relating to the subject matter hereof. Any oral or written

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representation, warranty, course of dealing or trade usage not contained or referenced herein shall not be binding on either Party.

6.3 Amendment; Waiver

No amendment or other modification of any provision of this Agreement shall be valid or binding unless it is signed by each of the Parties. No waiver of any provision of this Agreement shall be valid or binding unless it signed by the Party waiving compliance with such provision. No delay on the part of either Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver or any partial exercise of any such right, power or privilege preclude any further exercise thereof or the exercise of any other such right, power or privilege. No waiver of any breach, term or condition of this Agreement by any Party shall constitute a subsequent waiver of the same or any other breach, term or condition.

6.4 Successors and Assigns

Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the Parties hereto and, to the extent permitted by this Agreement, their respective successors and assigns.

6.5 Third Party Beneficiaries

The provisions of this Agreement shall only be for the benefit of, and enforceable by, the Parties hereto and shall not inure to the benefit of or be enforceable by any third party.

6.6 Severability

In the event any one or more of the provisions contained in this Agreement should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby.

6.7 Further Assurances

Each Party shall, at the request of the other, execute and deliver or cause to be executed and delivered such documents and instruments not otherwise specified herein, and take or cause to be taken all such other reasonable actions, as may be necessary or desirable to more fully and effectively carry out the intent and purposes of this Agreement.

6.8 Publicity

Except as required by law, [NAME] agrees that they will not issue or release for external publication any press release, article, advertising or other publicity matter in any form (including print, electronic, or interview) relating to the Project, or to this Agreement without first consulting with and obtaining the prior consent of PacifiCorp, which consent shall not be unreasonably withheld or delayed. Except as required by law, PacifiCorp agrees that it will not

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issue or release for external publication any press release, article, advertising or other publicity matter in any form (including print, electronic, or interview) relating to this Agreement without first consulting with and obtaining the prior consent of [NAME], which consent shall not be unreasonably withheld or delayed. To the extent reasonably possible, the releasing Party will accommodate the concerns of the other Party. This requirement does not, however, restrict [NAME] from identifying its involvement in the Project in its marketing of products and services to others.

6.9 Independent Contractor

[NAME] is an independent contractor with respect to the Work, and each part thereof, and in respect of all work to be performed hereunder. Neither [NAME], the contractor, nor any subcontractor, the employees of any of such entities, employed in connection with the work shall be deemed to be agents, representatives, joint ventures, employees or servants of PacifiCorp by reason of their performance hereunder or in any manner dealt with herein. Neither Party shall perform any act or make any representation to any Person to the effect that [NAME], or any of its agents, representatives, the contractor or subcontractors, is the agent of PacifiCorp.

6.10 Survival

The provisions of Article 4 ("Construction Damage"), Article 5 ("Shutdowns"), and Sections 2.2 ("Governing Provisions"), 3.1 ("Construction Control"), 3.3 ("PacifiCorp Access to the Construction Area"), 3.9 ("Security and Safety Requirements"), 6.9 ("Independent Contractor") and 6.11 ("Governing Law; Waiver of Jury Trial") of this Agreement shall survive the expiration or earlier termination of this Agreement indefinitely, provided that the foregoing enumeration shall not be interpreted to bar survival of any other provision hereof which would otherwise be deemed to survive by operation of law.

6.11 Governing Law; Waiver of Jury Trial

THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF UTAH (WITHOUT GIVING EFFECT TO THE PRINCIPLES THEREOF RELATING TO CONFLICTS OF LAW).

EACH PARTY HEREBY IRREVOCABLY WAIVES ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT OR ANY MATTER ARISING HEREUNDER OR THEREUNDER. EACH PARTY HEREBY WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT OR ANY MATTER ARISING HEREUNDER OR THEREUNDER IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED.

6.12 Counterparts

This Agreement may be executed by the Parties in two or more separate counterparts (including by facsimile transmission), each of which shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

6.13 Captions

The captions for Articles and Sections contained in this Agreement are for convenience and reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained herein.

6.14 Costs and Expenses.

All Parties have jointly drafted this Agreement. Presumptions regarding the interpretation of documents against the persons drafting same shall not apply to this Agreement. Each Party hereto will pay all costs and expenses incident to its negotiation and preparation of this Agreement and, except as set forth herein, to its performance and compliance with all agreements and conditions contained herein on its part to be performed or complied with, including the fees, expenses and disbursements of its counsel and accountants. In the event of default hereunder, the Parties agree that the defaulting Party shall pay the fees, expenses and disbursements of counsel for the non-defaulting Party in enforcing this Agreement.

6.14 No Waiver.

Except as otherwise provided herein, no provision of this Agreement may be waived except in writing. No failure by either Party to exercise, and no delay in exercising, any right, power, or remedy under this Agreement shall operate as a waiver thereof. Any waiver at any time by a Party of its right with respect to default under this Agreement, or the respect to other matter arising in connection therewith, shall not be deemed a waiver with respect to any subsequent default or matter.

6.15 Liquidated Damages.

TO THE EXTENT ANY PAYMENT REQUIRED TO BE MADE UNDER THIS AGREEMENT IS AGREED BY THE PARTIES TO CONSTITUTE LIQUIDATED DAMAGES, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE AND THAT SUCH PAYMENT CONSTITUTES A REASONABLE APPROXIMATION OF SUCH DAMAGES, AND NOT A PENALTY.

6.16 Limitation of Liability.

BUYER SHALL NOT BE LIABLE TO SELLER FOR SPECIAL, PUNITIVE, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES, WHETHER SUCH DAMAGES ARE ALLOWED OR PROVIDED BY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, STATUTE OR OTHERWISE UNDER OR IN CONNECTION WITH THIS AGREEMENT.

PacifiCorp
Draft RFP 2009
Responses due December 1, 2005

IN WITNESS WHEREOF the parties hereto have executed this Agreement.

By [NAME]:

Title:

By:

Title:

EXHIBIT A TO CONSTRUCTION COORDINATION AGREEMENT Glossary of Defined Terms

Except as otherwise defined in the body of this Agreement, of which this Exhibit is a part, capitalized terms shall have the meanings set forth below:

- (1) "Action" shall mean any lawsuit, action, proceeding, investigation or complaint before any Governmental Authority, mediator or arbitrator.
- (2) "Agreement" shall have the meaning given to it in the Recitals of this Agreement.
- (3) "[PPA/TSA]" shall have the meaning set forth in the Recitals.
- (4) "PacifiCorp's Area" means the entirety of the Site that is not included in the Construction Area, as the same may exist from time to time.
- (5) "Claims" means any liabilities, fines, penalties or assessments other damages at law or in equity for the payment of money or for specific performance by or on behalf of PacifiCorp, including without limitation claims for injury or death to persons or damage to property, together with costs and attorneys fees associated therewith. .
- (6) "Commercial Operation Date" shall have the meaning set forth in the [PPA/TSA].
- (7) "Common Facilities" means those tangible assets, contracts, and permits owned by PacifiCorp in connection with Unit 1 and utilized in common by PacifiCorp and [NAME] for the construction, startup, commissioning and operation of Unit 2, identified on Exhibit "B".
- (8) "Construction Area" shall have the meaning given to it in Section 3.2 of this Agreement
- (9) "Construction Damage" shall have the meaning given to it in Section 4.1 of this Agreement.
- (10) "Construction Fence" shall have the meaning given to it in Section 3.2 of this Agreement.
- (11) "Effective Date" has the meaning set forth in the [APSA / EPC Contract]
- (12) "Emergency" means any situation which is likely to impose an immediate threat of injury to any Person or of material property damage or material economic loss to all or any part of the Facility.
- (13) "Facility" or "Facilities" shall mean Unit 1, Unit 2 and the Common Facilities, and all energy producing equipment and auxiliary equipment, fuel storage and handling facilities and equipment, electrical transformers, interconnection facilities and metering facilities, associated with Unit 1 or Unit 2 as may be required for receipt of fuel and for delivery of electricity, and all other improvements related solely to the Units and located on the Site.

Responses due December 1, 2005

- (14) "Governmental Authority" means any court, tribunal, arbitrator, authority, agency, commission, official or other instrumentality of the United States, any foreign country or any domestic or foreign state, county or other political subdivision.
- (15) "NERC" shall mean the North American Electric Reliability Council, and any successor entity.
- (16) "Off-Peak Hourly Period" means those periods of time measured by hours ending 0100 through 0600 and hours ending 2300 through 2400 Monday through Saturday, and all hours on Sunday and NERC Holidays.
- (17) "PacifiCorp" shall have the meaning set forth in the Recitals..
- (18) "PacifiCorp's Area" shall have the meaning given to it in Section 3.2 of this Agreement.
- (19) "Party" shall have the meaning given to it in the Recitals of this Agreement.
- (20) "Performance Testing" shall have the meaning given to it in the [PPA/TSA].
- (21) "Person" means any individual, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization or Governmental Authority.
- (22) "Prudent Industry Practice" shall have the meaning given to it in the [PPA/TSA].
- (23) "Project Schedule" shall mean a detailed schedule setting forth milestones for key stages of the construction, testing and commissioning of Unit 2, including without limitation provisions regarding necessary interfaces with the Common Facilities, provided by [NAME] to PacifiCorp and updated to reflect material changes in such schedule from time to time.
- (24) "Replacement Power Costs" shall have the meaning given to it in Section 5.2(b) of this Agreement.
- (25) "Shutdown Periods" shall have the meaning given to it in Section 6.1 of this Agreement.
- (26) "Site" means the real property on which the Facilities are located.
- (27) "Tagging and Safety Program" shall mean that tagging and safety program in effect and maintained by PacifiCorp at the Facility from time to time and provided to [NAME].
- (28) "Term" shall have the meaning given to it in Section 2.1 of this Agreement.
- (29) "Unit" shall mean an individual generating facility consisting of the gas turbine, heat recovery system generator, steam turbine, auxiliary boilers and other associated facilities and equipment owned by individually by PacifiCorp or [NAME] not included as Common Facility.

Responses due December 1, 2005

- (30) "Unit 1" means the power plant located in _____, Utah, owned by PacifiCorp and the related facilities, real property and property rights related thereto including all necessary permits and licenses, but excluding the Common Facilities.
- (31) "Unit 2" means the proposed power plant to be located in _____ under development by [NAME] adjacent to Unit 1 and the related facilities, real property and property rights related thereto including all necessary permits and licenses, but excluding the Common Facilities.
- (32) "Unscheduled Shutdown" shall have the meaning given to it in Section 6.2(b) of this Agreement.

Rules as to Usage

1. The terms defined above have the meanings set forth above for all purposes, and such meanings are equally applicable to both the singular and plural forms of the terms defined.
- (i) The singular includes the plural and vice versa;
 - (ii) Reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are permitted by this Agreement;
 - (iii) Reference to a Person in a particular capacity excludes such Person in any other capacity;
 - (iv) Any gender reference includes the other gender;
 - (v) Reference to any agreement (including this Agreement), document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof;
 - (vi) References used in any Article, Section, Schedule, Exhibit or clause refer to this agreement;
 - (vii) "Hereunder," "hereof," "hereto," "herein," and words of similar import are references to this Agreement as a whole not any particular part of provision hereof or thereof;
 - (viii) "Including" ("include") means including without limiting the generality of any description preceding such term;
 - (ix) Relative to any period of time, "from" means "from and including," "to" means "to but not including," and "through" means "through and including;" and

PacifiCorp
Draft RFP 2009

Responses due December 1, 2005

- (x) Reference to any law (including statutes and ordinances) means such law as amended, modified, codified or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder.

**EXHIBIT B TO
CONSTRUCTION COORDINATION AGREEMENT**

Common Facilities

PacifiCorp
Draft RFP 2009
Responses due December 1, 2005

EXHIBIT C
CONSTRUCTION COORDINATION AGREEMENT

Site Plan Designation of Construction Area

EXHIBIT D
CONSTRUCTION COORDINATION AGREEMENT
Security Requirement

RFP 2009
ATTACHMENT 1
MINIMUM REQUIREMENTS FOR
A FLEXIBLE RESOURCE
September 2005

Attachment 1

Title: Characteristics of how the Proxy was modeled in the 2004 IRP

- Starts per Day: 1 minimum, 2 maximum
- Start Up Cost (2004\$): \$1,793/start
- Variable O&M (2004\$): \$2.56/MWh
- Minimum Up Time: 8 hours
- Minimum Down Time: 8 hours
- Ramp Rate (warm start): 250MW/hour
- RunUp Rate (cold start): 125MW/hour

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Responses due December 1, 2005

RFP 2009
ATTACHMENT 2
QF BIDDER INFORMATION
September 2005



ELECTRIC SERVICE SCHEDULE NO. 38 - Continued

II. B. Procedures (continued)

Generally, the interconnection process involves (1) initiating a request for interconnection, (2) completion of studies to determine the system impacts associated with the interconnection and the design, cost, and schedules for constructing any necessary interconnection facilities, (3) execution of an Interconnection Facilities Agreement to address facility construction, testing and acceptance and (4) execution of an Interconnection Operation and Maintenance Agreement to address ownership and operation and maintenance issues.

Consistent with PURPA, the owner is responsible for all interconnection costs assessed by the Company on a nondiscriminatory basis.

ELECTRIC SERVICE SCHEDULE NO. 38 - Continued

II. Process for Negotiating Interconnection Agreements (continued)

Because of functional separation requirements mandated by the Federal Energy Regulatory Commission, interconnection and power purchase agreements are handled by different functions within the Company. Interconnection agreements (both transmission and distribution level voltages) are handled by the Company's power delivery function.

A. Communications

Initial communications regarding interconnection agreements should be directed to the Company in writing as follows:

Utah Power & Light Company
Manager-QF Contracts
825 NE Multnomah St, Suite 600
Portland, Oregon 97232

Responses due December 1, 2005

Based on the project size and other characteristics, the Company will direct the QF owner to the appropriate individual within the Company's power delivery function that will be responsible for negotiating the interconnection agreement with the QF owner. Thereafter, the QF owner should direct all communications regarding interconnection agreements to the designated individual, with a copy of any written communications to the address set forth above.

B. Procedures

The Company will follow the procedures for generation interconnection described in Part IV of the Company's Open Access Transmission Tariff (Tariff) on file with the Federal Regulatory Commission. A copy of the Tariff is available on-line at <http://www.oasis.pacificorp.com>

ELECTRIC SERVICE SCHEDULE NO. 38 - Continued

B. Procedures

1. The Company's proposed generic power purchase agreement may be obtained from the Company's website at www.pacificorp.com, or if the owner is unable to obtain it from the website, the Company will send a copy within seven days of a written request."
2. To obtain an indicative pricing proposal with respect to a proposed project, the owner must provide in writing to the Company, general project information reasonably required for the development of indicative pricing, including, but not limited to:
 - a) generation technology and other related technology applicable to the site
 - b) design capacity (MW), station service requirements, and net amount of power to be delivered to the Company's electric system
 - c) quantity and timing of monthly power deliveries (including project ability to respond to dispatch orders from the Company)
 - d) proposed site location and electrical interconnection point
 - e) proposed on-line date and outstanding permitting requirements
 - f) demonstration of ability to obtain QF status
 - g) fuel type (s) and source (s)

- h) plans for fuel and transportation agreements
- i) proposed contract term and pricing provisions (i.e., fixed, escalating, indexed)
- j) status of interconnection arrangements

3. The Company shall not be obligated to provide an indicative pricing proposal until all information described in Paragraph 2 has been received in writing from the QF owner. Within 30 days following receipt of all information required in Paragraph 2, the Company will provide the owner with an indicative pricing proposal, which may

ELECTRIC SERVICE SCHEDULE NO. 38 - Continued

B. Procedures (continued)

include other indicative terms and conditions, tailored to the individual characteristics of the proposed project. Such proposal may be used by the owner to make determinations regarding project planning, financing and feasibility. However, such prices are merely indicative and are not final and binding. Prices and other terms and conditions are only final and binding to the extent contained in a power purchase agreement executed by both parties and approved by the Commission. The Company will provide with the indicative prices a description of the methodology used to develop the prices.

4. If the owner desires to proceed forward with the project after reviewing the Company's indicative proposal, it may request in writing that the Company prepare a draft power purchase agreement to serve as the basis for negotiations between the parties. In connection with such request, the owner must provide the Company with any additional project information that the Company reasonably determines

to be necessary for the preparation of a draft power purchase agreement, which may include, but shall not be limited to:

- a) updated information of the categories described in Paragraph B.2,
- b) evidence of adequate control of proposed site
- c) identification of, and timelines for obtaining any necessary governmental permits, approvals or authorizations

ELECTRIC SERVICE SCHEDULE NO. 38 - Continued

B. Procedures (continued)

- d) assurance of fuel supply or motive force
 - e) anticipated timelines for completion of key project milestones
 - f) evidence that any necessary interconnection studies have been completed and assurance that the necessary interconnection arrangements are being made in accordance with Part II.
5. The company shall not be obligated to provide the owner with a draft power purchase agreement until all information required pursuant to Paragraph 4 has been received by the Company in writing. Within 30 days following receipt of all information required pursuant to paragraph 4, the Company shall provide the owner with a draft power purchase agreement containing a comprehensive set of proposed terms and conditions, including a specific pricing proposal for purchases from the project. Such draft shall serve as the basis for subsequent negotiations between the parties and, unless clearly indicated, shall not be construed as a binding proposal by the Company
6. After reviewing the draft power purchase agreement, the owner may prepare an initial set of written comments and proposals regarding the draft power purchase agreement and forward such comments and proposals to the Company. The Company shall not be obligated to commence negotiations with a QF owner until the Company has received an initial set of written comments and proposals from the QF owner. Following the Company's receipt of such comments and proposals, the owner may contact the Company to schedule contract negotiations at such times and

places as are mutually agreeable to the parties. In connection with such negotiations, the Company:

- a) will not unreasonably delay negotiations and will respond in good faith to any additions, deletions or modifications to the draft power purchase agreement that are proposed by the owner

ELECTRIC SERVICE SCHEDULE NO. 38 - Continued

B. Procedures (continued)

- b) may request to visit the site of the proposed project if such a visit has not previously occurred
 - c) will update its pricing proposals at appropriate intervals to accommodate any changes to the Company's avoided-cost calculations, the proposed project or proposed terms of the draft power purchase agreement
 - d) may request any additional information from the owner necessary to finalize the terms of the power purchase agreement and satisfy the Company's due diligence with respect to the Project.
7. When both parties are in full agreement as to all terms and conditions of the draft power purchase agreement, the Company will prepare and forward to the owner a final, executable version of the agreement. The Company reserves the right to condition execution of the power purchase agreement upon simultaneous execution of an interconnection agreement between the owner and the Company's power delivery function, as discussed in Part II. Prices and other terms and conditions in the power purchase agreement will not be final and binding until the power purchase agreement has been executed by both parties and approved by the Commission.

II. Process for Negotiating Interconnection Agreements

In addition to negotiating a power purchase agreement, QFs intending to make sales to the Company are also required to enter into an interconnection agreement that governs the physical interconnection of the project to the Company's transmission or distribution system. The Company's obligation to make purchases from a QF is conditioned upon all necessary interconnection arrangements being consummated.

It is recommended that the owner initiate its request for interconnection as early in the planning process as possible, to ensure that necessary interconnection arrangements proceed in a timely manner on a parallel track with negotiation of the power purchase agreement.

ELECTRIC SERVICE SCHEDULE NO. 38 - Continued

II. Process for Negotiating Interconnection Agreements (continued)

Because of functional separation requirements mandated by the Federal Energy Regulatory Commission, interconnection and power purchase agreements are handled by different functions within the Company. Interconnection agreements (both transmission and distribution level voltages) are handled by the Company's power delivery function.

A. Communications

Initial communications regarding interconnection agreements should be directed to the Company in writing as follows:

Utah Power & Light Company
Manager-QF Contracts
825 NE Multnomah St, Suite 600
Portland, Oregon 97232

Based on the project size and other characteristics, the Company will direct the QF owner to the appropriate individual within the Company's power delivery function that will be responsible for negotiating the interconnection agreement with the QF owner. Thereafter, the QF owner should direct all communications regarding interconnection agreements to the designated individual, with a copy of any written communications to the address set forth above.

B. Procedures

The Company will follow the procedures for generation interconnection described in Part IV of the Company's Open Access Transmission Tariff (Tariff) on file with the Federal Regulatory Commission. A copy of the Tariff is available on-line at <http://www.oasis.pacificorp.com>

PacifiCorp
Draft RFP 2009
Responses due December 1, 2005

RFP 2009
ATTACHMENT 3
POWER PURCHASE CONTRACT
September 2005

**PACIFICORP RFP-2009
POWER PURCHASE AGREEMENT**

dated as of [_____], 2006,

BETWEEN

**[Bidder # [●]],
as Seller,**

AND

**PACIFICORP,
as Buyer**

[_____ Project]

[_____, [State]]

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Exhibit Q	Guaranteed Performance Parameters
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Exhibit S	Credit Matrix [<i>Note to bidders: Credit Matrix attached as Appendix B to RFP 2009</i>]

THIS WORKING DRAFT DOES NOT CONSTITUTE A BINDING OFFER, SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE, AND IS CONDITIONED UPON SELECTION OF THE BIDDER, EXECUTION, AND EACH PARTY'S RECEIPT OF ALL REQUIRED MANAGEMENT AND BOARD APPROVALS IN THEIR SOLE AND ABSOLUTE DISCRETION (INCLUDING FINAL CREDIT AND LEGAL APPROVALS). ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS WORKING DRAFT OR ON STATEMENTS MADE DURING NEGOTIATIONS RELATING TO THIS WORKING DRAFT SHALL BE AT THAT PARTY'S OWN RISK. UNTIL THIS WORKING DRAFT IS NEGOTIATED, APPROVED BY ALL APPROPRIATE PARTIES AND EXECUTED BY EACH PARTY'S AUTHORIZED SIGNATORY, NO PARTY SHALL HAVE ANY LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS WORKING DRAFT OR IN THE COURSE OF NEGOTIATIONS. ANY ASSERTION TO THE CONTRARY IN ANY PROCEEDING OR ACTION REGARDING THIS WORKING DRAFT SHALL RENDER THIS WORKING DRAFT NULL AND VOID IN ITS ENTIRETY. DURING DISCUSSIONS AND NEGOTIATIONS ANY PARTY MAY CHANGE ITS POSITION ON ANY MATTER, WHETHER OR NOT SET FORTH IN OR BASED UPON THIS WORKING DRAFT, ANY OTHER DOCUMENT OR ANY COURSE OF DEALING, AT ANY TIME OR FOR ANY REASON.

POWER PURCHASE AGREEMENT

THIS POWER PURCHASE AGREEMENT dated as of [____], 2006 (this "Agreement"), is made and entered into between [____], a [*describe entity*] ("Seller"), and PacifiCorp, an Oregon corporation ("Buyer"). Seller and Buyer are referred to collectively as the "Parties" and individually as a "Party."

RECITALS

A. Seller intends to develop, construct, own, operate and maintain a natural gas fueled, combined cycle electric generation facility [*consisting of [●] combustion turbines – insert further description*] for the generation of electric energy located in [*township/range*], [____] County, [*State*], whose initial Facility Capacity shall be [525] MW (as more fully described in Exhibit A, the "Facility").

B. Seller responded to a Request for Proposals – PacifiCorp RFP 2009 which was issued by Buyer in September 2005. Buyer's objective in issuing the RFP was to fulfill, through a competitive bid process, a portion of its supply-side resource need as contemplated in Buyer's 2004 Integrated Resource Plan.

C. Buyer's selection of Seller was based upon a competitive bid and was, in part, based upon Seller's representations and warranties, Seller's schedule achieving the Guaranteed Commercial Operation Date (initially capitalized terms not defined in these Recitals are defined in Section 1 below), and the guaranteed performance of the Facility, all as set forth herein. Such matters were a material inducement for the selection of Seller, and Seller's failure to perform in accordance with the terms and conditions or Seller's failure to meet its representations and warranties and schedules for delivery of Net Energy shall cause material damage to Buyer.

D. Seller will make available and sell to Buyer, and Buyer will receive and purchase from Seller, Contract Capacity and Net Energy associated with such Contract Capacity pursuant to the terms and conditions of this Agreement. Seller acknowledges that Buyer will include such Contract Capacity in Buyer's resource planning.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below, the Parties agree as follows:

SECTION 1

DEFINITIONS; RULES OF INTERPRETATION

1.1 Defined Terms. Unless otherwise required by the context in which any term appears, defined terms used in this Agreement (as indicated by initial capitalization, except as otherwise provided in this Section 1.1) shall have the following meanings:

“**AAA**” has the meaning set forth in Section 15.2.

“**Affiliate**” means, with respect to any entity, each entity that directly or indirectly, controls or is controlled by or is under common control with such designated entity. 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 entity, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities or by contract or otherwise.

“**Alternate Representative**” has the meaning set forth in Section 6.4.2.

“**Ambient Facility Capacity**” means the Contract Capacity determined from the correction algorithms set forth in **Exhibit M**, based upon the Facility Capacity and the ambient conditions in effect in each hour.

“**Ancillary Services**” means those services and energy from time to time now or hereafter available that are necessary to support the Contract Capacity and transmission of energy from resources to loads while maintaining reliable operation of the System in accordance with Prudent Electrical Practices. Such services and energy include regulation reserve, spinning reserve, non-spinning reserve, voltage support, black start Capacity, and reactive power.

“**As-built Supplement**” shall be a supplement to **Exhibit A** that describes the Facility as actually built and shall include all such information as may reasonably be requested by Buyer.

“**Authorized Representative**” has the meaning set forth in Section 6.4.2

“**Availability Notice**” has the meaning set forth in Section 6.5.1.1.

“Baseload Capacity” means the Capacity of the Facility achieved when operating at the Reference Conditions with all items of Major Equipment operating at full load, but without duct firing.

“Business Day” means any day on which banks in Portland, Oregon are not authorized or required by Requirements of Law to be closed, beginning at 6:00 a.m. and ending at 5:00 p.m. local time in Oregon.

“Btu’s” means British Thermal Units.

“Buyer” has the meaning set forth in the Preamble.

“CAF_h” has the meaning set forth in Section 5.1.2.

“CAF_m” has the meaning set forth in Section 5.1.2.

“Capacity” means the output potential a machine or system can produce under specified conditions as generally expressed in kW or MW.

“Capacity Payment” means the Monthly Capacity Payments and the Minimum Monthly Capacity Payments payable in accordance with Section 5.1.

“Capacity Payment Rate” means, as of the Commercial Operation Date, \$[●]/kW/month.

“Capacity Payment Shortfall” has the meaning set forth in Section 5.1.4.

“Capacity Rights” means any current or future defined characteristic, certificate, tag, credit, ancillary service attribute, or accounting construct, including any accounting construct counted towards any current or future resource adequacy or reserve requirements, associated with the Capacity of the Facility or the Facility’s capability and ability to produce energy, but excluding any of the foregoing attributable to any expansion of the Facility occurring after the Commercial Operation Date, unless the output associated therewith is purchased by Buyer.

“Carry-Over Letter of Credit” has the meaning set forth in Section 5.1.4.

“Cash Escrow” means an escrow account established by Buyer in a commercial bank or trust company 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. Cash deposited to the escrow account shall earn interest at the rate applicable to money market deposits at the banking institution from time to time, and the interest shall be retained in the escrow account as additional security for Seller’s performance under this Agreement.

“CC” has the meaning set forth in Section 5.1.2.

“Collateral” has the meaning set forth in Section 7.5

“**Combustion Turbine**” or “**CT**” means any one of the combustion turbines comprising the Facility.

“**Commercial Operation Date**” means the date on which the Facility is fully operational, reliable and each condition set forth in Section 2.2.6 is satisfied.

“**Contract Capacity**” means [525] MW of Capacity from the Facility, comprised of [●] MW of Baseload Capacity and [●] MW of Peakload Capacity.

“**Contract Year**” means a twelve (12) month period commencing at 00:00 hours on January 1 and ending on 24:00 hours on December 31; *provided, however*, that the first Contract Year shall commence on the Commercial Operation Date and end on the next succeeding December 31, and the last Contract Year shall end on the last Day of the Term.

“**CPR**” has the meaning set forth in Section 5.1.2.

“**CPS**” has the meaning set forth in Section 5.1.2.

“**Credit Matrix**” means the credit matrix attached hereto as **Exhibit S**.

“**Credit Rating**” means, as of any date, the then applicable senior, unsecured, long-term debt or corporate credit rating of a Person published by either Moody’s or S&P.

“**Credit Support**” means, prior to the Commercial Operation Date, the amount (if any) shown as the Project Development Security on the Credit Matrix and, on and after the Commercial Operation Date, the amount (if any) shown on the Credit Matrix as the Default Security.

“**Credit Support Security**” means a guaranty, Letter of Credit or Cash Escrow provided pursuant to Section 7.1.

“**CT Start**” means the process of rotating any of the Facility’s Combustion Turbine rotors by means of such Combustion Turbine’s starting motor and subsequently introducing and igniting Fuel in the Combustion Turbine’s combustor and increasing the rotating speed of the unit’s rotor sufficiently that the starting motor can be disengaged, also referred to herein as the Start-Up of a Combustion Turbine.

“**Daily Delay Damages**” for each Day shall be equal to the product of (1) the Dow JonesTM Palo Verde Electricity Price Index for such Day, expressed in \$/MWh, *multiplied by* (2) the applicable hourly scalar set forth in **Exhibit D** for the applicable hour in the daily (i) firm on-peak, (ii) firm off-peak or (iii) 24-hour firm (on Sundays and NERC holidays) Dow JonesTM Palo Verde Electricity Price Index (each such hour, the “**Applicable Hour**”) during such Day, *multiplied by* (3) the loss factor of 1.112, *plus* (4) the basis of \$13/MWh for each Applicable Hour or portion thereof during such Day. If the Dow JonesTM Palo Verde Electricity Price Index ceases to be published during the Term, Buyer shall select as a replacement electricity price index or component, an index acceptable to Buyer in its discretion that, after any necessary adjustments, provides the most reasonable substitute quotation of the daily price of firm on-peak, firm off-peak or 24-hour firm energy at Palo Verde for the applicable periods.

“**Day**” means the 24-hour period beginning at midnight Pacific Prevailing Time on a day and ending at midnight Pacific Prevailing Time on the next succeeding day.

“**Dispatch**,” “**Dispatched**,” and “**Dispatching**” means the scheduling and control by the Buyer of Net Energy, through submittal of schedules pursuant to the Dispatch Procedures and other provisions of this Agreement.

“**Dispatch Procedures**” means the procedures under which Buyer is entitled to Dispatch the Facility, as set forth in **Exhibit O**.

“**Dollar**” or “**\$**” means the lawful currency of the United States of America.

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

“**Electrical Interconnection Facilities**” means all the facilities installed by Seller for the purpose of interconnecting the Facility to the Electricity Delivery Point, including electrical transmission lines, upgrades, transformers and associated equipment, substations, relay and switching equipment, and safety equipment, as set forth in **Exhibit B**.

“**Electricity Delivery Point**” means the physical point(s) for Seller’s delivery, and Buyer’s receipt, of Net Energy at which the Facility is connected with the Transmission Provider’s transmission system, as specified in the Interconnection Agreement and in **Exhibit B**. *[Note to Bidders: If energy is to be delivered to a transmission provider other than the Transmission Provider and wheeled to the Electricity Delivery Point, the Electricity Delivery Point will be at a point of interconnection with the Transmission Provider’s transmission system where the resource can be integrated as a Network Resource.]*

“**Electric Metering Equipment**” has the meaning set forth in Section 8.1.

“**Energy Payment**” means the payment to be made by Buyer to Seller pursuant to Section 5.3 and as specified in **Exhibit F**.

“**Environmental Law**” means any federal, state or local law including statutes, regulations, rulings, orders, administrative interpretations and other governmental restrictions and requirements having the force and effect of law relating to (i) the discharge or disposal of any substance into the air, soil or water, including pollutants, water pollutants or process waste water, (ii) storage, emissions transportation or disposal of any Regulated Material, (iii) the environment or hazardous substances, all as amended from time to time, (iv) land use requirements pertaining to Regulated Materials, including laws requiring environmental impact studies or other similar evaluations, and (v) environmental issues pertaining to the development, construction, operation or maintenance of the Facility.

“**Event of Default**” has the meaning set forth in Section 10.1.

“**EWG**” means an “exempt wholesale generator,” as defined under the Public Utility Holding Company Act of 1935, as amended from time to time.

“**Example**” means an example set forth in **Exhibit G**. Each Example is for purposes of illustration only and is not intended to constitute a representation, warranty or covenant concerning the matters assumed for purposes of each Example. If there is a conflict between an Example and the text of this Agreement, the text shall control.

“**Excused Outage**” has the meaning set forth in Section 5.1.2.

“**Facility**” shall have the meaning given to that term in **Recital A**.

“**Facility Capacity**” means the maximum Capacity of the Facility, expressed in MW, when operated consistent with the manufacturer’s recommended power factor and operating parameters, as set forth in **Exhibit A**.

“**FERC**” means the Federal Energy Regulatory Commission.

“**FIN 46**” has the meaning set forth in Section 6.13.

“**Force Majeure**” has the meaning set forth in Section 13.1.

“**Forced Outage**” means NERC Event Types U1, U2 and U3, as set forth in **Exhibit H**.

“**Fuel**” means natural gas.

“**Governmental Authority**” means any supranational, federal, state or other political subdivision thereof, having jurisdiction over Seller, Buyer or this Agreement, including any municipality, township and county, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any corporation or other entity owned or controlled by any of the foregoing.

“**Guaranteed Commercial Operation Date**” means June 1, 2009.

“**Guaranteed Heat Rate**” has the meaning assigned to such term in **Exhibit Q**.

“**Guaranteed Ramp Rate**” has the meaning set forth in **Exhibit Q**.

“**Guaranteed Start-Up Time**” has the meaning set forth in **Exhibit Q**.

“**Heat Rate**” means the number of Btu’s used to produce one MW of energy measured at the Electricity Delivery Point.

“**Interconnection Agreement**” means the agreement to be entered into separately between Seller and Transmission Provider providing for the construction and operation of the Electrical Interconnection Facilities.

“**Letter of Credit**” means an irrevocable standby letter of credit in form and substance acceptable to Buyer in its discretion, naming Buyer as the party entitled to demand payment and present draw requests thereunder, which letter of credit:

(1) is issued by a U.S. commercial bank or a foreign bank with a U.S. branch, with such bank having a net worth of at least \$1,000,000,000 and a Credit Rating of:

- (a) "A2" or higher from Moody's; or
- (b) "A" or higher from S&P;

(2) on the terms provided in the letter of credit, permits Buyer to draw up to the face amount thereof for the purpose of paying any and all amounts owing by Seller hereunder;

(3) if a letter of credit is issued by a foreign bank with a U.S. branch, permits Buyer to draw upon a U.S. branch;

(4) permits Buyer to draw the entire amount available thereunder if such letter of credit is not renewed or replaced at least thirty (30) Business Days prior to its stated expiration date;

(5) permits Buyer to draw the entire amount available thereunder if such letter of credit is not increased, replaced or replenished as and when provided in Section 7;

(6) is transferable by Buyer to any party to which Buyer may assign this Agreement under Section 17.7; and

(7) shall remain in effect for at least ninety (90) days after the end of the Term.

"Licensed Professional Engineer" means a person acceptable to Buyer in its reasonable judgment who (i) is licensed to practice engineering in the state in which the Facility is located, (ii) has training and experience in the engineering discipline(s) relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion, (iii) has no economic relationship, association, or nexus with Seller, (iv) is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility, (v) is engaged by Seller on terms reasonably acceptable to Buyer, (vi) has its fees paid for by Seller, and (vii) is licensed in an appropriate engineering discipline for the required certification being made. The engagement and payment of a Licensed Professional Engineer solely to provide the certifications, evaluations and opinions required by this Agreement shall not constitute a prohibited economic relationship, association or nexus with Seller, so long as such engineer has no other economic relationship, association or nexus with Seller.

"MAAF" has the meaning set forth in Section 5.1.2.

"Maintenance Outage" means NERC Event Type MO, as set forth in **Exhibit H**.

"Major Equipment" has the meaning set forth in **Exhibit I**.

“**Major Maintenance Cycle**” means, with respect to each item of Major Equipment, the period of time specified therefor in **Exhibit I**.

“**Mediation Notice**” has the meaning set forth in Section 15.2.1.

“**Minimum Monthly Capacity Payment**” has the meaning set forth in Section 5.1.3.

“**Monthly Capacity Payment**” has the meaning set forth in Section 5.1.2.

“**Moody’s**” shall mean Moody’s Investor Services, Inc.

“**MW**” means megawatt.

“**MWh**” means megawatt hour.

“**NERC**” means the North American Electric Reliability Council.

“**Net Energy**” means, for any period, the energy output of the Facility delivered to Buyer at the Electricity Delivery Point pursuant to Buyer’s Dispatch of the Facility of a quantity in MWh not to exceed that associated with Contract Capacity, as measured pursuant to Section 8, less station use and less transformation and transmission losses to the Electricity Delivery Point.

“**Network Resource**” means a generation resource which has been fully integrated into the System.

“**Notifying Party**” has the meaning set forth in Section 8.2.

“**Operating Procedures**” are set out in **Exhibit K**.

“**Pacific Prevailing Time**” means Pacific Standard Time or Pacific Daylight Time, as applicable on the Day in question.

“**Party**” has the meaning set forth in the Preamble.

“**Peakload Capacity**” means incremental Capacity, in excess of the Baseload Capacity, which is generated by the Facility utilizing duct firing.

“**Permits**” means all permits, licenses, approvals, certificates, entitlements and other authorizations issued by Governmental Authorities required for the development, construction, ownership, operation and maintenance of the Facility, and all amendments, modifications, supplements, general conditions and addenda thereto.

“**Person**” means any individual, entity, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association or other entity or governmental authority.

“**Planned Outage**” means NERC Event Type PO, as set forth on **Exhibit H**.

“**Pledge Interest**” has the meaning set forth in Section 7.2.2.

“Potential Event of Default” means an event which, but for the passing of time or the giving of notice or both, would constitute an Event of Default.

“Premises” means the real property on which the Facility is or will be located, as more fully described on **Exhibit A**.

“Prime Rate” means the rate per annum equal to the publicly announced prime rate or reference rate for commercial loans to large businesses in effect from time to time quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, N.Y., selected by the Party to whom interest based on the prime rate is being paid.

“Protective Apparatus” means such equipment and apparatus, including protective relays, circuit breakers and the like, necessary or appropriate to isolate the Facility from the System consistent with Prudent Electrical Practices.

“Prudent Electrical Practices” means any of the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry or any of the practices, methods or acts for gas fired, combined cycle electric generation facilities, which, in the exercise of reasonable judgment in the light of the facts known at the time a decision is made, would have been expected to accomplish the desired result in a cost efficient manner consistent with good business practices, reliability criteria, safety considerations and expediency. Prudent Electrical Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts.

“Reference Conditions” means the following conditions: standard ambient air pressure at the Premises of [●]; ambient temperature, dry bulb, of [●] degrees Fahrenheit; and relative humidity of [●] percent ([●]%).

“Regulated Materials” means any substance, material, or waste which is now or hereafter becomes listed, defined, or regulated in any manner by any United States federal, state or local law and includes any oil, petroleum, petroleum products and polychlorinated biphenyls.

“Remaining Capacity” means all the Capacity of the Facility in excess of the Contract Capacity.

“Replacement Price” means the price at which Buyer, acting in a commercially reasonable manner, purchases for delivery at the Electricity Delivery Point a replacement for any energy that Seller is required to deliver under this Agreement, plus (i) costs reasonably incurred by Buyer in purchasing such replacement energy, and (ii) additional transmission charges, if any, reasonably incurred by Buyer in causing replacement energy to be delivered to the Electricity Delivery Point. If Buyer elects not to make such a purchase, the Replacement Price shall be the market price at the Electricity Delivery Point for such energy not delivered, plus any additional cost or expense incurred as a result of Seller’s failure to deliver, as determined by Buyer in a commercially reasonable manner (but not including any penalties, ratcheted demand or similar charges).

“**Reporting Month**” has the meaning set forth in Section 6.9.1.

“**Requested Net Energy**” means, for any period, the Net Energy of the Facility that has been scheduled by Buyer for delivery in accordance with the Dispatch Procedures and other terms of this Agreement.

“**Required Facility Documents**” means all Permits and agreements now or hereafter necessary for the development, construction, ownership, operation and maintenance of the Facility including the documents (i) to which Seller and Buyer are a party evidencing the Security Interests and (ii) those set forth in **Exhibit C**.

“**Requirements of Law**” means collectively, as to Seller and [*if Seller is not the ultimate parent, any ultimate parent entity*], Seller’s organizational or governing documents and any federal, state, county or municipal, law, treaty, ordinance, franchise, rule, regulation, order, writ, judgment, injunction, decree, award or determination of any arbitrator, or a court or other Governmental Authority, in each case, now or hereafter applicable to or binding upon this Agreement, the Facility, Seller or [*if Seller is not the ultimate parent, any parent entity*] to which any of their respective properties are subject (including those pertaining to electrical, building, zoning, environmental and occupational health and safety).

“**RTO**” means any person, other than Transmission Provider, that becomes responsible as system operator for, or directs the operation of, the System.

“**S&P**” shall mean Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.).

“**Schedule**” or “**Scheduled**” means the acts of Buyer and Seller pursuant to Section 6.5 setting forth a schedule requesting and accepting the delivery of energy by Seller to Buyer on and after the Commercial Operation Date.

“**Scheduling Constraints**” means the limitations of the Facility’s Capacity arising as a result of the need to observe the physical ramp rates of the Major Equipment and maintain minimum run times, minimum down times, minimum dispatch levels of Net Energy and Capacity per CT, and maximum levels of Net Energy and Capacity, to be generated by any item of Major Equipment, in compliance with the warranty requirements relating to each item of Major Equipment, the operating and maintenance standards recommended by the Facility’s equipment suppliers, and Prudent Electrical Practice, as set forth on **Exhibit P**.

“**Scheduling Fees**” means fees assessed by any person to schedule the delivery of the energy.

“**Security Interests**” has the meaning set forth in Section 7.2.1.

“**Seller**” has the meaning set forth in the Preamble.

“**Simple Cycle**” means operation of a Combustion Turbine without capturing the waste heat from the Combustion Turbine in the associated heat recovery steam generator and, therefore, without producing additional Net Energy from the steam turbine utilizing steam produced by such heat recovery steam generator. When one or more CTs are operated in Simple

Cycle mode, the Facility will produce less Capacity and less Net Energy, while consuming Fuel at a higher heat rate, than when the Facility is operated in combined cycle mode to produce Baseload Capacity. The ramp rates applicable to each CT, as set forth in **Exhibit Q**, are faster in Simple Cycle mode than in combined cycle mode.

“**Solvency**” or “**Solvent**” has the meaning set forth in Section 3.2.12.

“**Standard Heat Rate**” means the actual Heat Rate of the Facility at varying levels of the Net Energy and varying ambient conditions.

“**Start-Up**” means a firing of one or more of the items constituting Major Equipment when such item or items of Major Equipment is not being operated, including any firing required to perform a CT Start. The period of a Start-Up of any item of Major Equipment begins at the commencement of such firing and ends when such item of Major Equipment obtains and produces on a continuous basis the desired quantity of Net Energy.

“**Start-Up Testing**” means the tests set in **Exhibit E**.

“**System**” means the electric transmission sub-station and distribution facilities owned, operated or maintained by Transmission Provider, which shall include, after construction and installation of the Facility, the circuit reinforcements, extensions, and associated terminal facility reinforcements or additions required to complete the Facility, all as set forth in the Interconnection Agreement.

“**Tariff**” means Buyer’s FERC Electric Tariff Fourth Revised Volume No. 11 Pro Forma Open Access Transmission Tariff, as revised from time to time.

“**Term**” has the meaning set forth in Section 2.1.

“**Transmission Provider**” means [*PacifiCorp, an Oregon corporation, acting in its transmission function capacity.*] [*Note to Bidders: If the Facility is interconnected to another system, identify the appropriate Transmission Provider.*] Seller acknowledges that Buyer, as Buyer under this Agreement, has no responsibility for or control over such Transmission Provider.

“**Unexcused Outage**” has the meaning set forth in Section 5.1.2.

“**Unplanned Outage**” means NERC Event Type U, as set forth on **Exhibit H**.

1.2 Rules of Interpretation.

1.2.1 General. Unless otherwise required by the context in which any term appears, (a) the singular shall include the plural and vice versa; (b) references to “Articles,” “Sections,” “Schedules,” “Annexes,” “Appendices” or “Exhibits” (if any) shall be to articles, sections, schedules, annexes, appendices or exhibits of this Agreement; (c) all references to a particular entity or an electricity market price index shall include a reference to such entity’s or index’s successors and (if applicable) permitted assigns; (d) the words “herein,” “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular section or

subsection hereof; (e) all accounting terms not specifically defined in this Agreement shall be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied; (f) references to this Agreement shall be deemed to include a reference to all appendices, annexes, schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time; (g) the masculine shall include the feminine and neuter and vice versa; (h) the word “including” shall be construed in its broadest sense to mean “without limitation” or “but not limited to” and (i) the word “or” is not necessarily exclusive.

1.2.2 Terms Not to Be Construed for or Against Either Party. Each term of this Agreement shall be construed simply according to its fair meaning and not strictly for or against either Party. The Parties have jointly prepared this Agreement, and no term of this Agreement shall be construed against a Party on the ground that the Party is the author of that provision.

1.2.3 Headings. The headings used for the sections of this Agreement are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions of this Agreement.

1.2.4 Interpretation with Interconnection Agreement. Each Party conducts its operations in a manner intended to comply with FERC Order No. 2004, Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions. Moreover, the Parties acknowledge that Transmission Provider’s transmission function offers transmission service on its System in a manner intended to comply with FERC policies and requirements relating to the provision of open-access transmission service. The Parties recognize that Seller will enter into the separate Interconnection Agreement.

1.2.4.1 The Parties acknowledge and agree that the Interconnection Agreement shall be a separate and free standing contract and that the terms of this Agreement are not binding upon Transmission Provider.

1.2.4.2 Notwithstanding any other provision in this Agreement, nothing in the Interconnection Agreement shall alter or modify the Parties’ rights, duties, and obligations under this Agreement. This Agreement shall not be construed to create any rights between Seller and Transmission Provider.

1.2.4.3 Seller expressly recognizes that, for purposes of this Agreement, Transmission Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with Transmission Provider or an Affiliate thereof.

SECTION 2

TERM; COMMENCEMENT OF OPERATION

2.1 Term. This Agreement shall become effective when it is signed and delivered by both Parties (the “**Effective Date**”) and, unless earlier terminated as provided in this Agreement, shall remain in effect until the [●] anniversary of the Commercial Operation Date (the “**Term**”).

2.2 Milestones. Time is of the essence of this Agreement, and Seller's ability to meet certain milestones before the Commercial Operation Date and to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date is critically important. Therefore, Seller shall achieve the following milestones unless waived or extended by Buyer in its sole and absolute discretion: *[Note to bidders: portions of this Section 2.2 may not be applicable to a non-facility dependent contract]*

2.2.1 By [date], Seller shall demonstrate to Buyer's reasonable satisfaction that Seller has made all arrangements and obtained all means for transporting Fuel in quantities sufficient to operate the Facility at the Facility Capacity for the Term;

2.2.2 By [date], Seller shall obtain and provide to Buyer copies of all Required Facility Documents necessary for construction of the Facility;

2.2.3 By [date], Seller shall provide to Buyer evidence acceptable to Buyer that Seller has obtained construction financing for the Facility (or alternatively permanent financing subject only to construction of the Facility and Seller's execution of the lender's loan documents);

2.2.4 By [date], Seller shall provide Buyer with an As-built Supplement acceptable to Buyer;

2.2.5 By [date], Seller shall begin deliveries of Net Energy for purposes of initiating Start-Up Testing; and

2.2.6 By the Guaranteed Commercial Operation Date, the Commercial Operation Date shall have occurred. This shall require that all of the following conditions shall have been satisfied or waived by Buyer in its sole and absolute discretion:

(1) Buyer shall have received a certificate addressed to Buyer from a Licensed Professional Engineer certifying that the Facility is able to generate energy reliably in amounts required by this Agreement and in accordance with all other terms and conditions of this Agreement;

(2) Start-Up Testing of the Facility shall have been completed;

(3) After Buyer has received notice of the completion of Start-Up Testing, Buyer shall have endorsed a certificate addressed to Buyer from a Licensed Professional Engineer certifying that the Facility has operated for testing purposes under this Agreement uninterrupted for a period of ten (10) consecutive days at a rate of at least the Facility Capacity based upon any sixty (60) minute period for the entire testing period. Seller must provide five (5) Business Days' written notice to Buyer before the start of the Start-Up Testing period. If the operation of the Facility is interrupted during this initial testing period or any subsequent testing period, the Facility shall start a new consecutive ten (10) day testing period and Seller shall provide Buyer forty-eight (48) hour written notice before the start of such testing period;

(4) Buyer shall have received a certificate addressed to Buyer from a Licensed Professional Engineer certifying that, in accordance with the Interconnection Agreement, all required Electrical Interconnection Facilities have been constructed, all required interconnection tests have been completed, the Facility is physically interconnected with the System and the Facility Capacity is a Network Resource;

(5) Buyer shall have received a certificate addressed to Buyer from a Licensed Professional Engineer certifying that Seller has obtained all Required Facility Documents for the construction and operation of the Facility and, if requested by Buyer in writing, Seller shall have provided copies of any or all such requested Required Facility Documents, together with (i) the certificates of insurance coverage or insurance policies required by Section 12.1, and (ii) copies of all Required Facility Documents which Seller is responsible to obtain or are required for the construction and operation of the Facility;

(6) Buyer shall have issued a written certificate to Seller certifying that Buyer has received all Facility drawings, plans, specifications, policies, and other documents required by this Agreement;

(7) Buyer shall have received a certificate addressed to Buyer from Seller's primary construction contractor certifying that the Facility has been turned over to Seller for permanent operation and maintenance and that the primary construction contractor owes no further construction-related obligations to Seller (other than punch list items); and

(8) Buyer shall have received a certificate addressed to Buyer from an office of Seller and acceptable to Buyer certifying that no Event of Default by Seller or Potential Event of Default by Seller exists under this Agreement.

2.3 Daily Delay Damages. Seller shall cause the Commercial Operation Date to occur on or before the Guaranteed Commercial Operation Date but no earlier than [● *months*] prior to June 1, 2009. If the Commercial Operation Date does not occur on or before the Guaranteed Commercial Operation Date, to compensate Buyer for the failure to provide energy from the Facility, Seller shall pay Buyer delay damages equal to the Daily Delay Damages for each Day or portion of a Day until that Day that the Commercial Operation Date occurs from and after the Guaranteed Commercial Operation Date, up to a total of forty-five (45) Days. Each Party agrees and acknowledges that (a) the damages that Buyer would incur for the failure to provide energy from the Facility due to delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date would be difficult or impossible to predict with certainty, and (b) the Daily Delay Damages are an appropriate approximation of such damages. This Section 2.3 shall not limit the amount of damages payable to Buyer if this Agreement is terminated as a result of Seller's failure to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date and any such damages shall be determined in accordance with Section 10.7. In addition, this Section 2.3 shall not limit the damages payable to Buyer for matters resulting from delay in achieving the Commercial Operation Date other than the failure to provide energy from the Facility.

2.4 Damages Invoicing. By the tenth (10th) day following the end of the calendar month of the Guaranteed Commercial Operation Date, and continuing on the tenth (10th) day following the end of any calendar month during which Daily Delay Damages are incurred, Buyer shall deliver to Seller a proper invoice showing Buyer's computation of such damages and any amount due Buyer in respect thereof for the preceding calendar month. No later than ten (10) days after receiving such an invoice, Seller shall pay to Buyer, by wire transfer of immediately available funds to an account specified in writing by Buyer or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice.

2.5 Buyer's Right to Monitor. During the design, procurement, construction, installation, start up and testing of the Facility, Seller shall permit Buyer and its advisors and consultants to:

(a) Review and discuss with Seller and its advisors and consultants monthly status reports on the progress of the development, design, construction and installation of the Facility. Between the date on which this Agreement is executed and thirty (30) days following the Commercial Operation Date, Seller shall, on or before the tenth (10th) day of each calendar month, provide Buyer with a brief monthly status report for the preceding month.

(b) Monitor the development, design, engineering, procurement, construction and installation of the Facility and the performance of the contractor(s) constructing the Facility.

(c) Review and monitor the contractors' performance and achievement of (i) all initial performance tests and other tests required under the Facility construction contracts that must be performed in order to achieve the Commercial Operation Date and (ii) all tests contemplated by the warranty agreement(s) between the Seller and manufacturer of the Facility's CTs and any other Major Equipment. Buyer reserves the right to require additional performance tests of the Facility's CTs in the event that Seller elects not to have such CTs or other Major Equipment covered by warranty agreements acceptable to Buyer. Seller shall provide Buyer with at least five (5) Business Days' prior notice of each such test.

(d) Witness initial performance tests and other tests and review the results thereof.

(e) Perform such examinations, inspections, and quality surveillance as, in Buyer's reasonable judgment, are appropriate and advisable to determine that all Major Equipment comprising the Facility has been properly commissioned and that the Facility has achieved the Commercial Operation Date.

The Parties acknowledge and agree that Buyer is under no obligation to perform any of the monitoring rights under this Section 2.5. Any information or knowledge obtained by Buyer in the exercise of its rights under this Section 2.5 shall not prevent Buyer from subsequently asserting that Seller failed to perform its obligations under this Agreement or failed to satisfy any of its conditions in Section 2, nor shall the exercise by Buyer of such rights be used as evidence that Seller performed its obligations under this Agreement or satisfied its conditions in Section 2 or that Buyer gave any consent to Seller's action in meeting its obligations under Section 2. Buyer's right to indemnification, payments for damages or other remedy in this Agreement will

not be affected by any investigation conducted with respect to, or any knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Commercial Operation Date, including with respect to the accuracy or inaccuracy of any representation or warranty, or compliance with any covenant or obligation hereunder. Buyer shall maintain one or more designated representatives for purposes of the monitoring activities contemplated in this Section 2.5, which representatives shall have authority to act for Buyer in all technical matters under this Section 2.5. However, Buyer's representatives, in their capacity as representatives, shall not have the authority to amend or modify any provision of this Agreement. Buyer's initial representatives for purposes of this Section 2.5 and their contact information are listed in **Exhibit N**. Buyer may, by written notice to Seller, change its representatives or the contact information for such representatives.

SECTION 3

REPRESENTATIONS AND WARRANTIES

3.1 Buyer's Representations and Warranties. Buyer represents, covenants, and warrants to Seller that:

3.1.1 Organization. Buyer is duly organized and validly existing under the laws of the State of Oregon.

3.1.2 Authority. Buyer has the requisite corporate power and authority to enter into this Agreement and to perform according to the terms of this Agreement.

3.1.3 Corporate Actions. Buyer has taken all corporate actions required to be taken by it to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

3.1.4 No Contravention. The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Buyer or any valid order of any court, or any regulatory agency or other body having authority to which Buyer is subject.

3.1.5 Valid and Enforceable Agreement. This Agreement is a valid and legally binding obligation of Buyer, enforceable against Buyer in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

3.2 Seller's Representations and Warranties. Seller represents, covenants, and warrants to Buyer that:

3.2.1 Organization. Seller is a [*insert legal entity*] duly [*organized*] and validly existing under the laws of [_____].

3.2.2 Authority. Seller (i) has the requisite power and authority to enter into this Agreement and to perform, including all required regulatory authority to make wholesale sales from the Facility; (ii) has the power and authority to own and operate its businesses and properties, to own or lease the property it occupies and to conduct the business in which it currently engaged; and is duly qualified as [_____] in Utah; and (iii) is in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification.

3.2.3 Actions. Seller has taken all [*insert appropriate legal entity*] actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

3.2.4 No Contravention. The execution, delivery, performance and observance by Seller of its obligations under this Agreement do not and will not:

3.2.4.1 contravene, conflict with or violate any provision of any material Requirements of Law presently in effect having applicability to either Seller or [*if Seller is not the ultimate parent, Seller's ultimate parent*];

3.2.4.2 require the consent or approval of or material filing or registration with any Governmental Authority or other person other than such consents and approvals which are (i) set forth in **Exhibit C** or (ii) required in connection with the construction and/or operation of the Facility and expected to be obtained in due course;

3.2.4.3 result in a breach of or constitute a default under any provision of any security issued by [*ultimate parent of Seller*] or any of its Affiliates or any material agreement, instrument or undertaking to which either [*ultimate parent of Seller*] or any of its Affiliates is a party or by which [*ultimate parent of Seller*]'s or any of its Affiliates' property is bound; or

3.2.4.4 require Seller to be licensed under the Utah Construction Trades Licensing Act.

3.2.5 Valid and Enforceable Agreement. This Agreement is a valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

3.2.6 Litigation. No litigation, arbitration, investigation or other proceeding is pending or, to the best of Seller's knowledge, threatened against either Seller, its parent(s), or any Affiliate with respect to this Agreement and the transactions contemplated hereby and thereby.

3.2.7 Accuracy of Information. To the knowledge of Seller, no exhibit, contract, report or document furnished by Seller to Buyer in connection with this Agreement, or

the negotiation or execution of this Agreement contains any material misstatement of fact or omits to state a material fact or any fact necessary to make the statements contained therein not misleading.

3.2.8 Required Facility Documents. All Required Facility Documents are set forth in **Exhibit C** attached hereto. To Seller's knowledge, no unusual or burdensome conditions are expected by Seller to be placed upon, or created by, any of the Required Facility Documents. The anticipated use of the Facility complies with all applicable restrictive covenants affecting the Premises and all Requirements of Law. The representation made in this Section 3.2.8 shall be deemed to be given throughout the entire Term.

3.2.9 Taxes. Seller has filed or caused to be filed all tax returns which were required to be filed and has paid all taxes shown to be due and payable on said returns or on any assessments made against it or any of its property including the Premises, and all other taxes, fees or other charges imposed on it or any of its property by any Governmental Authority, and no tax liens have been filed and no claims are being asserted with respect to any such taxes, fees or other charges, except where such taxes, fees or other charges are being contested in good faith by Seller through appropriate proceedings with adequate reserves set aside in the event of an adverse determination.

3.2.10 Seller's Intent. Seller intends:

3.2.10.1 To construct and operate the Facility in accordance with Prudent Electrical Practices, and in accordance with, and subject to the terms of this Agreement;

3.2.10.2 To supply the Contract Capacity and Net Energy of the Facility throughout the Term of this Agreement in accordance with the provisions of this Agreement; and

3.2.10.3 *[if Seller will be a single purpose vehicle, that its sole business shall be the ownership and operation of the Facility.]*

3.2.11 No Collusion. Neither Seller nor any of its representatives has entered into any form of collusive arrangement with any person or entity which directly or indirectly has to any extent lessened competition between Seller and any other person or entity for the supply of Capacity and energy sought by Buyer.

3.2.12 Solvency. Seller, its parent(s) and their Affiliates are Solvent. As used herein, "**Solvent**" and "**Solvency**" means with respect to any person or entity on any date of determination, that on such date (a) the book value of the property of such person or entity is greater than the total amount of book liabilities, including contingent liabilities that are probable and estimable, of such person or entity, (b) such person or entity is able to pay its debts as they become absolute and matured, taking into account the possibility of refinancing such obligations and selling assets, (c) such person or entity does not intend to, and does not believe that it will, incur debts or liabilities beyond such person's or entity's ability to pay such debts and liabilities as they mature taking into account the possibility of refinancing such obligations and selling assets and (d) such person or entity is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such person's or entity's property would constitute an unreasonably small capital. The amount of contingent liabilities at any time shall

be computed as the amount that are probable and estimable in the light of all the facts and circumstances existing at such time, and that can reasonably be expected to become an actual or matured liability.

3.3 Notice. If at any time during the Term, any Party obtains actual knowledge of any event or information which would have caused any of the representations and warranties made by it in this Section 3 to have been materially untrue or misleading when made, such Party shall provide the other Party with notice in accordance with Section 17.12 of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section 3 shall be given as soon as practicable after the occurrence of each such event.

SECTION 4

SALE AND PURCHASE OBLIGATIONS

4.1 Sale and Purchase of Contract Capacity, Capacity Rights, Net Energy and Ancillary Services.

4.1.1 Subject to the terms and conditions of this Agreement, on and after the Commercial Operation Date and for the balance of the Term, Seller shall make available to Buyer from the Facility the Contract Capacity and the Capacity Rights, and all Net Energy and Ancillary Services associated with such Contract Capacity that is Scheduled by Buyer for delivery in accordance with the Dispatch Procedures and Section 6.5.2.

4.1.2 Subject to Section 5.1, Buyer shall purchase the Contract Capacity of the Facility and pay a monthly Capacity Payment to Seller.

4.1.3 Seller shall provide Ancillary Services and Capacity Rights to Buyer without additional charge or expense.

4.1.4 Buyer shall be under no obligation to purchase any Capacity under this Agreement other than Contract Capacity.

4.1.5 Buyer shall pay the amounts specified in Section 5, and Seller shall then provide to Buyer without additional charge or expense all Net Energy and Ancillary Services that have been Scheduled by Buyer.

4.1.6 Seller shall provide to Buyer from the Facility the Contract Capacity, and associated quantities of Net Energy or Ancillary Services as Scheduled by Buyer in accordance with this Agreement. Subject to Section 4.3, the Contract Capacity, and the Net Energy and Ancillary Services associated with such Contract Capacity, shall be made available exclusively to Buyer and Seller shall be free to sell the Remaining Capacity of the Facility, and the Net Energy and Ancillary Services associated with such Remaining Capacity, to any third party. Seller shall have absolute discretion over the operation of the Facility to generate the quantities of Capacity, Net Energy and Ancillary Services to be delivered to Buyer in compliance with the

provisions of this Agreement. In addition, Seller shall have absolute discretion over the use of the Remaining Capacity in sales to any third party(s).

4.2 Deliveries; Title and Risk of Loss. All Net Energy and Ancillary Services that have been, at Buyer's option, Scheduled by Buyer shall be delivered by Seller to Buyer at the Electricity Delivery Point. Seller shall be deemed to be in exclusive control of, and responsible for any damage or personal injury caused by, Net Energy or Ancillary Services delivered hereunder up to the Electricity Delivery Point; and Buyer shall be deemed to be in exclusive control of, and responsible for any damages or injury caused by, such Net Energy or Ancillary Services from the Electricity Delivery Point. Seller warrants and agrees that it will transfer and deliver Contract Capacity, Capacity Rights, Ancillary Services and Net Energy to Buyer free and clear of all liens or other encumbrances and rights of third parties. Title to and risk of loss of all Net Energy or Ancillary Services shall transfer from Seller to Buyer upon delivery to Buyer at the Electricity Delivery Point.

4.3 Dispatching Deliveries from the Contract Capacity versus the Remaining Capacity.

4.3.1 Seller shall exclusively make available to Buyer the Contract Capacity of the Facility, and Seller shall deliver to Buyer, and Buyer shall receive, the quantities of Net Energy and Ancillary Services that were Scheduled by Buyer from such Contract Capacity in accordance with this Agreement. Seller retains absolute discretion as to which items of the Major Equipment of the Facility are operated to generate and deliver (i) the quantities of Net Energy and Ancillary Services to be delivered to Buyer from the Contract Capacity and (ii) the quantities of Net Energy and Ancillary Services to be delivered to any third party purchaser from the Remaining Capacity.

4.3.2 During any Excused Outage or Unexcused Outage of the Facility, as defined in Section 5.1.2, which causes a partial outage of the Facility, but not a complete shutdown of the Facility, Buyer's right to the Contract Capacity shall not be affected by any reduction in the Facility Capacity, and to the extent there is a reduction of Facility Capacity, Seller shall make available to Buyer all of such reduced Facility Capacity up to the Contract Capacity. Subject to the foregoing, Seller shall, at all times, have the right to make available for sale to any third party purchasing any of the Remaining Capacity no more than the actual available Capacity of the Facility less the Contract Capacity.

4.3.3 At any time that the Contract Capacity is available, Buyer may elect to Schedule any of the quantities of Net Energy, and equivalent quantities of Ancillary Services, specified in the range of dispatchable quantities of Net Energy on **Exhibit P**.

4.4 Curtailed Due to Failure to Comply with Interconnection Agreement. Buyer shall not be obligated to purchase Contract Capacity or receive or pay for Net Energy to the extent generation or transmission curtailment is required as a result of Seller's non-compliance with the Interconnection Agreement. Nothing in this Section 4.4 shall relieve Seller of its duty to comply with the Interconnection Agreement and Net Energy curtailed as provided under this Section 4.4 shall not be deemed to be an Excused Outage, or credited toward the achievement of Net Energy, as the case may be.

4.5 Sale of Test Energy. During the period between the Effective Date and the Commercial Operation Date, Seller shall sell and make available to Buyer, and Buyer shall purchase and accept, all energy produced by the Facility during such period (the “**Test Energy**”) as if it were Net Energy.

SECTION 5

PAYMENTS; COSTS

5.1 Capacity Payments. Commencing on the last day of the month in which the Commercial Operation Date occurs, Buyer shall, subject to Section 5.1.4, pay to Seller in arrears a Capacity Payment equal to the greater of (i) the Monthly Capacity Payment as determined in Section 5.1.2, or (ii) the Minimum Monthly Capacity Payment as determined in Section 5.1.3.

5.1.1 All Capacity Payments shall be billed on a calendar month basis. In the event that Commercial Operation Date does not occur at the start of a calendar month, the first month’s Capacity Payment shall be prorated to reflect the actual number of days of Commercial Operation in such month.

5.1.2 Monthly Capacity Payment. The “**Monthly Capacity Payment**” shall be computed based upon the following formula:

Monthly Capacity Payment = $(CC \times 1000 \times CPR \times MAAF) - CPS$, where:

CC = the Contract Capacity;

CPR = Capacity Payment Rate;

CPS = Capacity Payment Shortfall, if any; and

MAAF = Availability Adjustment Factor for that month, computed as follows:

a. If $CAF_m \geq 96\%$, $MAAF = 1$

b. If $CAF_m < 96\%$, $MAAF = 1 - 2 \times (.96 - CAF_m)$

Provided, however, MAAF cannot be less than zero (0).

CAF_m = Average Capacity Availability Factor for a month shall equal the sum of the hourly Capacity Availability Factors (“ CAF_h ”) determined for each hour of such month, divided by the total number of hours in such month; and

CAF_h = $(AD + DD) / AFCE$

Provided, however, CAF_h cannot be more than one (1).

where:

“**AD**” (Actual Deliveries) means, for any hour, the actual quantity of energy generated by the Facility and delivered by Seller to Buyer at the Electricity Delivery Point;

“**DD**” (Deemed Deliveries) means, for any hour, (i) a quantity of energy equal to the amount of energy that could have been generated by that portion of the Ambient Facility Capacity that was set forth in the Availability Notice (a) that was not dispatched by Buyer in such hour, unless such failure to dispatch was caused during times and to the extent that Transmission Provider curtails Network Integration Transmission Service (as defined in the Tariff) to Buyer pursuant to the terms of the Tariff, (b) that was not generated and delivered due to a Potential Event of Default or an Event of Default by Buyer, or (c) that was not operated to generate and deliver Net Energy or Ancillary Services to Buyer due to any failure by Buyer; (ii) any amount of energy that was not available from the Facility for dispatch and receipt by Buyer, during the relevant hour, due to any outage or derating that meets the requirements for Scheduled Maintenance established in **Exhibit I**; and (iii) any amount of energy that was not available from the Facility for Dispatch and receipt by Buyer, during the relevant hour, due to any Force Majeure event. The unavailability of Capacity for any of the reasons set forth in clauses (i)(c), (ii) or (iii) shall be considered an “**Excused Outage**.” To the extent that the Capacity of the Facility, up to the Contract Capacity, is unavailable to Buyer for any reason other than an Excused Outage shall be considered an “**Unexcused Outage**.”

“**AFCE**” (Ambient Facility Capacity Energy) means the quantity of energy that could be produced from the Ambient Facility Capacity during such hour.

5.1.3 Minimum Monthly Capacity Payment. During any month, the “**Minimum Monthly Capacity Payment**” shall equal the amount determined by the following formula:

Minimum Monthly Capacity Payment = $CC \times 1000 \times CPR \times [\bullet\%]$, where:

CC = the Contract Capacity;

CPR = Capacity Payment Rate; and

% = $[\bullet]$.

5.1.4 Carry-Over Provisions. With respect to any month in which the calculated Monthly Capacity Payment is less than the Minimum Monthly Capacity Payment, the difference between the two payment amounts shall be set forth in a separate account (the amount in such account is referred to herein as the “**Capacity Payment Shortfall**”). The Capacity Payment Shortfall shall be increased by interest at the Prime Rate divided by 365 on the maximum amount of the Capacity Payment Shortfall on that day and shall be recovered by Buyer as a credit against the otherwise applicable Monthly Capacity Payment owed to Seller for such month and by drawing on the Carry-Over-Letter of Credit as provided below. That portion of any Capacity Payment Shortfall which is not recovered in any month shall be carried over to each subsequent

month thereafter until recovered by Buyer in full from Seller. If the Capacity Payment Shortfall exceeds \$[●], then Seller shall provide a Letter of Credit for the benefit of Buyer, in form reasonably acceptable to Buyer, with a face amount equal to the full amount of the Capacity Payment Shortfall amounts (“**Carry-Over Letter of Credit**”). The amount of such Carry-Over Letter of Credit shall be adjusted thereafter, at the end of each month, to equal the then-outstanding Capacity Payment Shortfall. At the end of each Contract Year, Buyer shall be entitled to draw down against the Carry-Over Letter of Credit for the amount the Capacity Payment Shortfall that has not been recovered as of that date.

5.2 Energy Payment. Commencing on the last day of the month in which the Commercial Operation Date occurs, Buyer shall pay to Seller in arrears a Energy Payment as set forth in **Exhibit F** for Net Energy.

5.3 Test Energy. For the period between the Effective Date and the Commercial Operation Date, Seller shall sell and deliver Net Energy to Buyer at the Electricity Delivery Point as Test Energy. Buyer shall pay Seller for Test Energy delivered at the Electricity Delivery Point, an amount per MWh equal to eighty-five percent (85%) of the settled price for the applicable hour in the daily (i) firm on-peak, (ii) firm-off peak or (iii) 24-hour firm (on Sundays and NERC holidays) Dow JonesTM Palo Verde Electricity Price Index; *provided, however*, that the amount to be paid by Buyer for such Test Energy shall in no event exceed seventy-five percent (75%) of the price per MWh specified on **Exhibit M** for the first Contract Year. If the Dow JonesTM Palo Verde Index ceases to be published during the Term, Buyer shall select as a replacement electricity price index or component, an index acceptable to Buyer in its discretion that, after any necessary adjustments, provides the most reasonable substitute quotation of the daily price of firm on-peak, firm off-peak or 24-hour firm energy at Palo Verde for the applicable periods.

5.4 Costs and Charges. Seller shall be responsible for all costs or charges imposed in connection with the delivery of Net Energy at the Electricity Delivery Point, including transmission costs and charges. Without limiting the generality of the foregoing, except to the extent otherwise provided in the Interconnection Agreement, Seller shall bear all costs associated with the modifications to Transmission Provider’s interconnection facilities or electric system (including system upgrades) caused by or related to (a) the interconnection of the Facility with Transmission Provider’s system, (b) any increase in Capacity of the Facility, and (c) any increase of delivery of energy from the Facility.

5.5 Station Service. Seller shall be responsible for arranging and obtaining, at its sole risk and expense, any station service required by the Facility that is not provided by the Facility itself.

SECTION 6

OPERATION AND CONTROL

6.1 As-Built Supplement. Upon completion of construction of the Facility, Seller shall provide Buyer the As-built Supplement. The As-built Supplement shall be deemed effective and shall be added to **Exhibit A** of this Agreement when it has been reviewed and

approved by Buyer. Buyer shall not unreasonably withhold, condition or delay its approval of the As-built Supplement.

6.2 Measurement and Quality of Net Energy. All Net Energy shall be measured at the Electricity Delivery Point and shall meet all requirements in the Interconnection Agreement and the specifications set forth in **Exhibit P**. Seller shall instruct the Transmission Provider in writing that Buyer is entitled to receive, directly from Transmission Provider, any and all data associated with the Facility and/or the production of Net Energy that the Transmission Provider has in its possession.

6.3 Standard of Facility Operation.

6.3.1 General.

6.3.1.1 At Seller's sole cost and expense, Seller shall operate, maintain and repair the Facility and the Electrical Interconnection Facilities in accordance with (i) the standards, criteria and formal guidelines of FERC, NERC, any RTO, and any successors to the functions thereof; (ii) the Required Facility Documents; (iii) the Interconnection Agreement; (iv) all Requirements of Law; (v) the requirements of this Agreement; and (vi) Prudent Electrical Practice. During the Term, Seller shall be the sole owner of the Electrical Interconnection Facilities. Seller shall defend, indemnify and hold Buyer harmless from and against any requirements to comply with FERC Open Access requirements respecting the Electrical Interconnection Facilities caused by Seller's act or omission. Seller acknowledges that it shall have no claims under this Agreement against Buyer, acting in its merchant function capacity, with respect to any requirements imposed by or damages caused by Buyer, acting in its transmission function capacity, in connection with the Interconnection Agreement or otherwise.

6.3.1.2 Without limiting the generality of Section 6.3.1.1, Seller shall:

6.3.1.2.1 At all times, employ qualified and trained personnel for managing, operating and maintaining the Facility and for coordinating such managing, operating and maintenance with Buyer. Seller shall ensure that prior to or on the first Day Seller delivers energy to the Electricity Delivery Point such qualified and trained personnel are available to Buyer at all times, twenty-four (24) hours per Day during the Term.

6.3.1.2.2 Operate and maintain the Facility with due regard for the safety, security and reliability of the System and Buyer's customers and in compliance with the general specifications contained in **Exhibit I**.

6.3.1.2.3 Comply with operating and maintenance standards recommended by the Facility's equipment suppliers.

6.3.1.2.4 Coordinate the Facility's relaying and protection to conform with Prudent Electrical Practice.

6.3.1.2.5 Furnish and install, at Seller's sole expense, a manually operable disconnecting device that can be locked by Buyer in the open position and visually

checked to be in the open position, so as to be able to electrically isolate the Facility from the System. This device(s) shall be installed at a location at or near the Electricity Delivery Point.

6.3.1.2.6 Have the Facility's protective relays calibrated and operationally checked, at least annually by a person qualified to perform such service and provide Buyer with a written confirmation of the calibration.

6.3.1.2.7 Operate the Facility in such a manner so as not to have an adverse effect on Buyer's voltage level or voltage waveform.

6.3.1.2.8 Operate the Facility in a manner and consistent with the Operating Procedures so as to permit Buyer to dispatch individual items of Major Equipment required to generate energy Scheduled by Buyer.

6.3.2 Interconnection. Pursuant to the Interconnection Agreement, Seller shall be responsible for the costs and expenses associated with interconnection of the Facility at its Facility Capacity at the Electricity Delivery Point, including the costs of any System upgrades beyond the Electricity Delivery Point necessary to interconnect the Facility with System and to allow the delivery of energy to the Electricity Delivery Point.

6.3.3 Coordination with System. Pursuant to the Interconnection Agreement, Seller shall be responsible for the coordination and synchronization of the Facility's equipment with the System, and shall be solely responsible for (and shall defend and hold Buyer harmless against) any damage that may occur as a direct result of Seller's improper coordination or synchronization of such equipment with the System.

6.4 Operating Procedures and Compliance.

6.4.1 Without limiting the generality of Section 6.2, during the Term, the Parties shall observe the Operating Procedures.

6.4.2 In the Operating Procedures, each Party has designated an authorized representative (an "**Authorized Representative**") and an alternate representative (an "**Alternate Representative**") to act in the Authorized Representative's absence. A Party's appointment of an Authorized Representative and Alternate Representative shall remain in full force and effect until the Party delivers written notice of substitution to the other Party. The Authorized Representatives and Alternate Representatives shall be managers well-experienced with regard to matters relating to the implementation of the Parties' rights and obligations under this Agreement.

6.4.3 Operational Compliance.

6.4.3.1 Required Facility Documents. Seller shall maintain in full force and effect and available for inspection by Buyer during the Term all Required Facility Documents now or hereafter required.

6.4.3.2 Hazardous Substances. Seller shall operate the Facility in compliance with all Environmental Laws and permits, licenses, rules or orders promulgated,

issued or otherwise required by a Governmental Authority having jurisdiction or enforcement power over any Environmental Law and Seller. Seller shall immediately notify Buyer if Seller or any Affiliate of Seller receives or obtains any actual knowledge of or actual notice of any past, present or future actions or plans which may interfere with or prevent compliance or continued compliance with Environmental Laws, affect the construction or operation of the Facility, or may give rise to any material liability under any Environmental Laws or to any common law or legal liability or otherwise form the basis of any claim, action, demand, suit, proceeding, hearing, study or investigation under Environmental Laws.

6.4.4 Taxes. Seller shall pay when due or reimburse Buyer for all existing and any new sales, use, excise, ad valorem, and any other similar taxes, imposed or levied by any Governmental Authority on the sale of Net Energy to Buyer under this Agreement regardless of whether such taxes are payable by Buyer or Seller under Requirements of Law.

6.4.5 Fines and Penalties.

6.4.5.1 Seller shall pay when due, and in no event later than thirty (30) days of assessment, all fines, penalties, or legal costs incurred by Seller or for which Seller is legally responsible for noncompliance by Seller, its agents, employees, contractors or subcontractors, with any provision of this Agreement, any agreement, commitment, obligation or liability incurred in connection with this Agreement or the Facility or any Requirements of Law, except where such fines, penalties or legal costs are being contested in good faith by Seller, its agents or contractors through appropriate proceedings with (i) adequate reserves set aside, or (ii) if requested by Buyer, the posting of adequate security, in the event of an adverse determination.

6.4.5.2 Subject to Section 6.4.4, if fines, penalties, or legal costs are assessed against Buyer by any Governmental Authority due to noncompliance by Seller with any Requirements of Law, or if the performance of Seller is delayed or stopped by order of any Governmental Authority due to Seller's noncompliance with any Requirements of Law, Seller shall indemnify and hold harmless Buyer against any and all losses, liabilities, damages, and claims suffered or incurred by Buyer.

6.4.5.3 Seller shall reimburse Buyer for all fees, damages, or penalties imposed by any Governmental Authority, other person or to other utilities for violations to the extent caused by a Potential Event of Default or an Event of Default by Seller or a failure of performance by Seller under this Agreement.

6.5 Scheduling Procedures. [*Note to bidders: portions of this Section 6.5 may not be applicable to a non-facility dependent contract*]

6.5.1 Availability Notices and Updates.

6.5.1.1 By 5:00 A.M. Pacific Prevailing Time on the Business Day immediately preceding the next three (3) Days on which energy is to be delivered by Seller to Buyer, Seller shall provide Buyer with an hourly forecast of the Capacity of the Facility expected to be available to Buyer, up to the Contract Capacity, and for each hour of the next three (3) Days (as set forth in the form of **Exhibit L**, an "Availability Notice"); *provided, however*, that

an Availability Notice provided on a Day before any non-Business Day shall include forecasts for each Day to and including the next Business Day. Delivery of an Availability Notice by Seller to Buyer with respect to any item of Major Equipment declared Available shall be deemed a declaration that all Ancillary Services capable of being provided from such Major Equipment are available for the Days for which such Availability Notice shall be effective. Seller shall promptly update Availability Notices any time information becomes available indicating a change in the forecast of generation of energy from the then current forecast; and in any event within 15 minutes of each time it becomes aware of a change (favorable or unfavorable) in the availability, or projected availability, of the Facility or electric transmission capacity, *provided* that such changes to the daily Availability Notices may be delivered by telephone within the fifteen (15) minute initial period and then later confirmed in writing within the hour. To the extent commercially reasonable, the parties shall cooperate to implement and use automatic forecast updates.

6.5.1.2 Availability Notices shall specify any known limitations on the availability of electric transmission capacity made known to Seller that may affect the ability of the Facility to generate and deliver Scheduled Energy to the Electricity Delivery Point. Seller will also provide Buyer with a monthly Availability Notice six Business Days before the commencement of each such month, and a weekly Availability Notice on each Friday for the next week. Availability Notices identifying reductions in availability will include a short description of the nature of the problem, steps taken or being taken to resolve it and Seller's estimate of the time by which a reduction in availability will be resolved. Availability Notices identifying projected restorations of Capacity availability will specify the time and extent that such restoration is projected to occur, and Seller will issue a further notice after restoration of availability is complete. Without limiting the foregoing, Seller will inform Buyer of any major limitations, restrictions, deratings or outages known to Seller affecting the ability to generate Facility Capacity for the following Day and will promptly update Seller's notice to the extent of any material changes in this information.

6.5.1.3 Availability Notices will be used by and relied upon by Buyer to establish and adjust electric transmission schedules. If Seller has provided notice to Buyer of a reduction in availability affecting transmission schedules, then prior to increasing Facility generation for delivery to Buyer as a result of restored availability, Seller will provide Buyer timely notice so as to enable Buyer sufficient time to reestablish its transmission schedules. The failure by Seller to provide revised Availability Notices is not a breach of this Agreement, but rather places Seller at risk for electric imbalance penalties or charges incurred by Buyer due to its lack of notice; *provided, however*, the failure to provide such notices more than [●] times a Contract Year shall constitute the failure to perform a material obligation hereunder that is not capable of being cured.

6.5.2 Dispatch Notice.

6.5.2.1 No later than 5:00 P.M. Pacific Prevailing Time on each Business Day, Buyer shall deliver to Seller a statement (which may be communicated by fax, e-mail or other electronic medium or a recorded telephone line) setting forth the estimated quantity of Net Energy to be Scheduled during each hour of the immediately following Day(s) at the Electricity Delivery Point. These estimates shall not be binding upon Buyer and Buyer may subsequently

revise its estimates. The foregoing estimates by Buyer shall not be construed to permit Seller to limit the availability of the Facility such that Buyer is restricted from Dispatching Contract Capacity unless the Facility Capacity is physically unavailable due to Force Majeure, Planned Outage or Unplanned Outage, as the case may be. Buyer's written statement may request the delivery of energy to be Scheduled during any or all hours of any Day.

6.5.2.2 Each Dispatch Notice submitted by Buyer shall specify (i) the quantities of Net Energy or Ancillary Services being Scheduled from the Baseload Capacity component of the Contract Capacity, (ii) the quantities, if any, of Net Energy or Ancillary Services being Scheduled from the Peakload Capacity component of the Contract Capacity, and (iii) the quantities, if any, of Net Energy or Ancillary Services being Scheduled from the Facility in Simple Cycle mode. In order to be included on any Dispatch Notice, each quantity of Net Energy, and each equivalent quantity of Ancillary Services, being Scheduled by Buyer from the Baseload Capacity component of the Contract Capacity, or from the Peakload Capacity component of the Contract Capacity, or in Simple Cycle mode, must be shown as a dispatchable quantity on **Exhibit O**. Any amount not shown on **Exhibit O**, but which falls between listed numbers on **Exhibit O** and is explicitly within the range of allowed dispatch, shall be interpolated from the numbers immediately above and below that amount which are listed on **Exhibit O**, including applicable heat rates. An example of a hypothetical Dispatch Notice is attached hereto as **Exhibit R**.

6.5.2.3 Seller shall be obligated to accept a request for Net Energy that has been provided to Seller in accordance with the requirements of Sections 6.5.2.1 and 6.5.2.2 except to the extent (i) such request exceeds the Contract Capacity or the Scheduling Constraints or (ii) Seller declares that the Facility is not available as a result of a previously declared Planned Outage, a Forced Outage, or an event of Force Majeure. Seller shall promptly notify Buyer if Seller determines that it will not accept a Schedule submitted by Buyer for any of the foregoing reasons.

6.5.2.4 Buyer shall pay or reimburse Seller for all Scheduling Fees charged by any third parties, if any, associated with the Scheduling of Net Energy or Ancillary Services generated by the Facility for delivery to Buyer hereunder or, if applicable, any fees charged by an independent third party for providing Ancillary Services required to deliver Net Energy or Ancillary Services generated by the Facility to Buyer.

6.5.2.5 From time to time during the Term, Buyer may designate a third party to Schedule quantities of Net Energy on behalf of Buyer in accordance with any Requirements of Law. Buyer may also wish to change the designated entity acting in such capacity from time to time. Accordingly, upon request of Buyer, Seller shall make such arrangements in accordance with the Requirements of Law at Buyer's cost as may be reasonably necessary to facilitate the re-designation of the Person who may Schedule quantities of Net Energy on Buyer's behalf.

6.5.2.6 As shown in the Scheduling Constraints set forth for the Facility in **Exhibit P**, the ramp rates applicable to the various items of Major Equipment comprising the Facility are faster for the Facility operating in Simple Cycle mode than in combined cycle mode. To the extent that Buyer elects to Schedule the delivery of Net Energy, and any equivalent

quantity of Ancillary Services, from the Facility in Simple Cycle mode the Scheduling Constraints applicable to Simple Cycle mode shall be applicable to such Scheduling by Buyer. For any Scheduling by Buyer of Net Energy or Ancillary Services from the Baseload Capacity component or the Peakload Capacity component of the Contract Capacity, the Scheduling Constraints applicable to combined cycle mode shall be applicable to such Scheduling by Buyer.

6.5.2.7 Buyer may Dispatch energy and Ancillary Services on a real time basis, subject to the Operating Procedures. Seller shall be obligated to accept a request for a change to the applicable schedule for energy and Ancillary Services.

6.6 Outages.

6.6.1 Planned Outages. No Planned Outage may be scheduled to occur during any portion of the time period commencing on May 15 and concluding on September 15.

6.6.2 Maintenance Outages. If Seller reasonably determines that it is necessary to schedule a Maintenance Outage, Seller shall notify Buyer of the proposed Maintenance Outage at least five (5) days before the outage begins (or such shorter period to which Buyer may reasonably consent in light of then existing conditions). Upon such notice, the Parties shall plan the Maintenance Outage to mutually accommodate the reasonable requirements of Seller and the service obligations of Buyer; *provided, however*, that, unless Buyer otherwise consents, such consent not to be unreasonably withheld, no Maintenance Outage may be scheduled between the hour ending 0700 through the hour ending 2200, Monday through Saturday, during the time period commencing on May 15 and concluding on September 15. Notice of a proposed Maintenance Outage shall include the expected start date and time of the outage, the amount of Capacity of the Facility that will not be available, and the expected completion date and time of the outage. Seller shall give Buyer notice of the Maintenance Outage as soon as Seller determines that the Maintenance Outage is necessary. Buyer shall promptly respond to such notice and may request reasonable modifications in the schedule for the outage. Seller shall use all reasonable efforts to comply with any request to modify the schedule for a Maintenance Outage. Seller shall notify Buyer of any subsequent changes in Capacity available to Buyer or any changes in the Maintenance Outage completion date and time. As soon as practicable, any notifications given orally shall be confirmed in writing. Seller shall take all reasonable measures and exercise its best efforts to minimize the frequency and duration of Maintenance Outages.

6.6.3 Forced Outages. Seller shall promptly provide to Buyer an oral report of any Forced Outage of the Facility. This report shall include the amount of the Capacity of the Facility that will not be available because of the Forced Outage and the expected return date of such Capacity. Seller shall promptly update the report as necessary to advise Buyer of changed circumstances. As soon as practicable, if the Forced Outage resulted in more than five percent (5%) of the Facility Capacity being unavailable, the oral report shall be confirmed in writing. Seller shall take all reasonable measures and exercise its best efforts to avoid Forced Outages and to minimize their duration.

6.6.4 Notice of Deratings and Outages. Without limiting the foregoing, Seller will inform Buyer of any major limitations, restrictions, deratings or outages known to Seller affecting the Facility for the following day and will promptly update Seller's notice to the extent

of any material changes in this information, with “major” defined as affecting more than five percent (5%) of the Facility Capacity.

6.7 Schedule Coordination. If, as a result of this Agreement, Buyer is deemed by an RTO to be financially responsible for Seller’s performance under the Interconnection Agreement, due to Seller’s lack of a “scheduling coordinator” or other RTO recognized standing or otherwise, then (a) Seller shall use commercially reasonable and diligent efforts to acquire such RTO recognized standing such that Buyer is no longer responsible for Seller’s performance under the Interconnection Agreement, and (b) Seller shall defend, indemnify and hold Buyer harmless against any liability arising due to Seller’s performance or failure to perform under the Interconnection Agreement.

6.8 Electronic Communications.

6.8.1 Telemetry. Seller shall provide telemetry equipment and facilities capable of transmitting the following information concerning the Facility pursuant to the Interconnection Agreement and to Buyer on a real-time basis and will operate such equipment when requested by Buyer to indicate:

6.8.1.1 instantaneous MW output at the Electricity Delivery Point;

6.8.1.2 Net Energy; and

6.8.1.3 Facility Capacity.

Seller shall also transmit to Buyer any other data from the Facility that Seller receives on a real time basis. Seller shall provide such real time data to Buyer on the same basis as the basis on which Seller receives the data (e.g., if Seller receives the data in four second intervals, Buyer shall also receive the data in four second intervals).

6.8.2 Dedicated Communication Circuit. Seller shall install a dedicated direct communication circuit (which may be by common carrier telephone) between Buyer and the control center in the Facility’s control room or such other communication equipment as the Parties may agree.

6.9 Reports and Records.

6.9.1 Monthly Reports. Within thirty (30) days after the end of each calendar month during the Term (each, a “**Reporting Month**”), Seller shall provide to Buyer a report in electronic format, which report shall include (a) summaries of the Facility’s output data for the Reporting Month in intervals not to exceed one hour (or such shorter period as is reasonably possible with commercially available technology), including information from the Facility’s Computer Monitoring System; (b) summaries of any other significant events related to the construction or operation of the Facility for the Reporting Month; and (c) any supporting information that Buyer may from time to time reasonably request (including historical data for the Facility).

6.9.2 Electronic Fault Log. Seller shall maintain an electronic fault log of operations of the Facility during each hour of the Term beginning as of the Commercial Operation Date. Seller shall provide Buyer with a copy of the electronic fault log within thirty (30) days after the end of the calendar month to which the fault log applies.

6.9.3 Other Information to Be Provided to Buyer. Seller shall provide to Buyer the following information concerning the Facility:

6.9.3.1 Upon the request of Buyer, the manufacturers' guidelines and recommendations for maintenance of the Facility equipment;

6.9.3.2 A detailed report summarizing the results of maintenance performed during each Planned Outage and any Forced Outage, and upon request of Buyer any of the technical data obtained in connection with such maintenance; and

6.9.3.3 A detailed report describing the facts, circumstances and events that caused and arose out of, or related to, any Forced Outage, failed Start-Up or other item of Major Equipment being taken off-line or tripping for any reason other than in connection with a Planned Outage.

6.9.4 Information to Any Governmental Authority. Seller shall, promptly upon written request from Buyer, provide Buyer with all data which is collected by Seller related to the Facility reasonably required for reports to and information requests from any Governmental Authority. Along with said information, Seller shall provide to Buyer copies of all submittals to any Governmental Authority directed by Buyer and related to the operation of the Facility with a certificate that the contents of the submittals are true and accurate to the best of Seller's knowledge. Seller shall use best efforts to provide this information to Buyer soon enough so that Buyer has time to review such information and meet any submission deadlines imposed by the requesting organization or entity. After the sending or filing any statement, application, and report or any document with any Governmental Authority relating to operation and maintenance of the Facility, Seller shall promptly provide to Buyer with a copy of the same.

6.9.5 Information to Any Intervenor. Seller shall, promptly upon written request from Buyer, provide Buyer with data reasonably required for information requests from any state or federal agency intervenor or any other party achieving intervenor status in any Buyer rate proceeding or other proceeding before any Governmental Authority. Seller shall use best efforts to provide this information to Buyer soon enough so that Buyer has time to review such information and meet any submission deadlines imposed by the requesting organization or entity.

6.9.6 Environmental Information. Seller shall, promptly upon written request from Buyer, provide Buyer with all data reasonably requested by Buyer relating to environmental information under the Required Facility Documents.

6.9.7 Information Relating to Facility Performance. Seller shall provide Buyer monthly operational reports in a form and substance acceptable to Buyer and Seller shall, promptly upon written request from Buyer, provide Buyer with all operational data requested by Buyer with respect to the performance of the Facility and delivery of energy therefrom.

6.9.8 Audited Financial Statements. Seller shall provide Buyer within ninety (90) days after the end of each calendar year, its audited financial statements together with the audited financial statements of any guarantor providing Credit Support, in each case prepared in accordance with generally accepted accounting principles by an accounting firm of nationally recognized standing in the electric power industry reasonably acceptable to Buyer.

6.9.9 Notice of Default. Seller shall promptly notify Buyer of receipt of written notice or actual knowledge of the occurrence of any event of default under any material agreement to which Seller is a party and of any other development, financial or otherwise, which would have a material adverse effect on Seller, the Facility or Seller's ability to develop, construct, operate, maintain or own the Facility as provided in this Agreement.

6.9.10 Notice of Litigation. Following its receipt of written notice or actual knowledge of the commencement of any action, suit, and proceeding before any court or Governmental Authority which would, if adversely determined, adversely affect Seller, the Premises or the Facility, Seller shall promptly give notice to Buyer of the same.

6.9.11 Additional Information. Seller shall provide to Buyer such other information respecting the condition or operations of Seller and the Facility as Buyer may, from time to time, reasonably request.

6.10 Access Rights. Upon reasonable prior notice and subject to the safety rules and regulations of Seller, Seller shall provide Buyer and its authorized agents, employees and inspectors with reasonable access to the Facility: (a) for the purpose of reading or testing metering equipment, (b) as necessary to witness any required Capacity tests necessary to determine the amount of Capacity associated with the Facility, (c) in connection with the operation and maintenance of the Electrical Interconnection Facilities for the Facility, (d) to provide tours of the Facility to customers and other guests of Buyer (not more than twelve (12) times per year), (e) for purposes of implementing Section 9.5, and (f) for other reasonable purposes at the reasonable request of Buyer.

6.11 EWG. Seller shall provide Buyer with copies of Seller's applications to FERC for EWG status and for authority to sell energy under this Agreement within ten (10) days of filing such application(s). During the Term, Seller shall either (i) maintain its EWG status and its authority to sell power under this Agreement or (ii) otherwise cause Seller to be exempt from federal and state regulations as an electric utility.

6.12 Facility Images. Buyer shall be free to use any and all images from or of the Facility for promotional purposes. Upon Buyer's request and at Buyer's expense, Seller shall install equipment as Buyer may request, including without limitation video and or web-based imaging equipment. Buyer shall use its discretion with respect to how images from or of the Facility are presented by Buyer, including without limitation associating images of the Facility with Buyer's corporate logo but not the corporate logo of Seller.

6.13 Financial and Accounting Information. If Buyer or one of its Affiliates determines that, under the Financial Accounting Standards Board's revised Interpretation No. 46, Consolidation of Variable Interest Entities ("FIN 46"), it may hold a variable interest in Seller,

but it lacks the information necessary to make a definitive conclusion, Seller hereby agrees to provide sufficient financial and ownership information so that Buyer or its Affiliate may confirm whether a variable interest does exist under FIN 46. If Buyer or one of its affiliates determines that, under FIN 46, it holds a variable interest in Seller, Seller hereby agrees to provide sufficient financial and other information to Buyer or its Affiliate so that Buyer may properly consolidate the entity in which it holds the variable interest and/or present the disclosures required by FIN 46.

SECTION 7

SECURITY AND CREDIT SUPPORT

7.1 Credit Support. If at any time during the Term, Seller maintains a Credit Rating of (1) "Aa2" or higher by Moody's and (2) "AA" or higher by S&P, then Seller will not be required to post any Credit Support Security. If Seller does not meet the Credit Rating requirements of (1) and (2) in the preceding sentence, it may have to post Credit Support Security in the amounts outlined on the Credit Matrix based upon its' Credit Rating or that of the entity providing a guaranty as Credit Support Security on behalf of the Seller, and the size of the project. If Seller has a published Credit Rating from each of S&P and Moody's, the lower rating will be used to determine the level of Credit Support in the Credit Matrix. If Seller, or the entity providing a guaranty as Credit Support Security on behalf of the Seller, has no published Credit Rating, an equivalent Credit Rating will be determined by Buyer through the application of Buyer's proprietary credit scoring model developed in conjunction with S&P, and the amount of Credit Support for Seller (as shown on the Credit Matrix) will be based upon this equivalent Credit Rating. If the required Credit Support is greater than zero dollars (\$0.00), upon the request of Buyer, Seller shall within five (5) Business Days provide one of the following in the amount of the Credit Support: (x) a guaranty, in form and substance acceptable to Buyer in its sole discretion from a Person acceptable to Buyer in its sole discretion, (y) a Letter of Credit, or (z) a Cash Escrow.

7.2 Subordinated Security Interests.

7.2.1 Security Interests. Concurrently with the execution of this Agreement and simultaneously with the acquisition by Seller after the Effective Date of any real property in connection with the Facility (including land and water or rights thereto), Seller shall execute, file and record such agreements, documents, instruments, deeds of trust and other writings as Buyer may request, all in form and substance satisfactory to Buyer, to give Buyer a perfected security interest in and lien on the Facility, the Premises and all other assets necessary or in Buyer's opinion desirable for the development, construction, ownership, operation or maintenance of the Facility as security for Seller's performance and any amounts owed by Seller to Buyer pursuant to this Agreement (collectively the "**Security Interests**"). The Security Interests shall be subordinate in right of payment, priority and remedies only to the interests of the financiers for the Facility contemplated by Section 2.2.3 and approved by Buyer.

7.2.2 Pledge of Ownership Interests. [*Note to bidders: This section is applicable only if Seller is a special purpose entity.*] Concurrently with the execution of this Agreement, Seller's equity holders shall execute and file such agreements, documents,

instruments, and other writings as Buyer may request, all in form and substance satisfactory to Buyer, to give Buyer a perfected security interest in and lien on all ownership interests in Seller as security for Seller's performance and any amounts owed by Seller to Buyer pursuant to this Agreement (the "**Pledge Interest**"). The Pledge Interest shall be subordinate in right of payment, priority and remedies only to the interests of the financiers for the Facility contemplated by Section 2.2.3 and approved by Buyer.

7.2.3 Maintenance of Security Interests. Seller shall execute and file and record (or cause to be executed and filed and recorded) such Uniform Commercial Code financing statements and deeds of trust and shall take such further action and execute such further instruments and other writings as shall be required by Buyer to confirm and continue the validity, priority, and perfection of the Security Interests [and the Pledge Interest]. The granting of the Security Interests [and the Pledge Interest] shall not be to the exclusion of, nor be construed to limit the amount of any further claims, causes of action or other rights accruing to Buyer by reason of any breach or default by Seller under this Agreement or the termination of this Agreement prior to the expiration of the Term.

7.2.4 Transfer of Required Facility Documents. The Security Interests shall provide that if Buyer acts to obtain title to the Facility pursuant to the interests provided by Seller pursuant to Section 7.2.1, Seller shall take all steps necessary to transfer all Required Facility Documents necessary to operate the Facility to Buyer, and shall diligently prosecute and cooperate in such transfers.

7.3 Quarterly Financial Statements. If requested by Buyer, Seller shall within thirty (30) days provide Buyer with copies of its most recent quarterly financial statements, together with the audited financial statements of any guarantor providing Credit Support, in each case prepared in accordance with generally accepted accounting principles.

7.4 Security is Not a Limit on Seller's Liability. The Credit Support and Security Interests contemplated by this Section 7: (a) constitutes security for, but is not a limitation of, Seller's obligations under this Agreement, and (b) shall not be Buyer's exclusive remedy for Seller's failure to perform in accordance with this Agreement. To the extent that Buyer draws on the Credit Support, Seller shall within five (5) Business Days reinstate the security to the full amount required by this Section 7.

7.5 Escrow Account. With respect to any Cash Escrow established pursuant to this Section 7 as Credit Support, Seller hereby grants Buyer a security interest in the escrow account and all moneys and other amounts in the account to secure payment and performance of Seller's obligations under this Agreement. Buyer shall have, and Seller agrees to take all further action required or reasonably requested by Buyer to ensure that Buyer has, all rights of a secured party under Article 9 of the Uniform Commercial Code and applicable law with respect to the escrow account and all moneys and other amounts in the escrow account. The escrow agreement shall be in form and substance acceptable to Buyer in its discretion and shall contain the following language: "Escrow Agent acknowledges that Seller has granted Buyer a security interest in the amounts held by Escrow Agent in the [*describe escrow accounts and all moneys and other amounts in the account*] (collectively, the "**Collateral**"). Escrow Agent acknowledges that it (a) has received and holds possession of the Collateral for the benefit of Buyer and not as the

agent of or on behalf of Seller and (b) shall continue to hold possession of the Collateral for Buyer's benefit until Escrow Agent receives notice in an authenticated record from Buyer that Buyer's security interest in the Collateral has been terminated. Escrow Agent acknowledges that it has no rights in and to the Collateral other than its right to receive payment of its fees and expenses pursuant to the Escrow Agreement."

SECTION 8

METERING

8.1 Net Energy. Meter equipment shall be installed, owned, operated, maintained and tested in accordance with the terms of the Interconnection Agreement and shall automatically account for line losses between such meter equipment and the Electricity Delivery Point (collectively, the "**Electric Metering Equipment**"). The Electric Metering Equipment shall be capable of metering Net Energy delivered at the Electricity Delivery Point on a continuous real time basis.

8.1.1 Seller Electric Metering. Seller shall be responsible for the maintenance, testing and calibration of the Electric Metering Equipment and the maintenance and testing of the electrical facilities and Protective Apparatus, including any transmission equipment and related facilities, necessary to interconnect the Facility at the Electricity Delivery Point. Such installation shall be completed, and the delivery of such data shall be commenced, as promptly as possible but in no event later than one month prior to the commencement of Net Energy deliveries. Seller shall bear all costs and expenses of installing, maintaining and testing all Electric Metering Equipment.

8.1.2 Check Meters. Buyer may at its option and expense install and operate one or more check meters to check Seller's meters. Such check meters shall be for check purposes and shall not be used in the measurement of Net Energy or Ancillary Services for the purposes of this Agreement. The check meters shall be subject at all reasonable times to inspection and examination by the Seller or its designee. The installation and operation thereof shall, however, be done entirely by Buyer at no cost or expense to Seller. The Seller shall grant to Buyer, at no cost or expense, the right to install such check meters at the Electricity Delivery Point and the right to access such check meters at reasonable times as requested by Buyer if such check meters are located on the Premises.

8.1.3 Change in Measurement Method. If, at any time during the Term a new method or technique is developed with respect to electricity measurement, or the determination of the factors used in electricity measurement, such new method or technique may be substituted for the method set forth in this Section 8.1 when in the opinion of the Parties, employing such new method or technique is advisable, and they so agree in writing.

8.1.4 Industry Standards. All Electric Metering Equipment, whether owned by the Seller or by a third party, shall be operated, maintained and tested by and/or on behalf of the Seller in accordance with Prudent Electrical Practices.

8.1.5 Access. Each Party shall have the right to receive reasonable advance notice with respect to, and to be present at the time of, any installing, cleaning, changing, repairing, inspecting, testing, calibrating or adjusting of Electric Metering Equipment. The records from such Electric Metering Equipment shall be the property of the Seller, but upon reasonable advance notice, the Seller shall make available to Buyer all data, records and charts relating to the Electric Metering Equipment, together with calculations therefrom, for inspection and verification.

8.1.6 Installations. Any installations of Electric Metering Equipment required pursuant to this Agreement shall be scheduled by the Seller; provided, however, that no installation which shall or could affect deliveries of Net Energy shall be made without the prior written consent of Buyer, which shall not be unreasonably withheld. Any installations of check meters by Buyer shall be scheduled by Buyer; provided, however that the installation shall not unreasonably interfere with the operation and maintenance of the Facility by the Seller.

8.1.7 Estimates. During the period after the Effective Date and prior to the installation and commencement of operation of the meters contemplated by this Section 8.1.8, the Net Energy generated and delivered shall be estimated in good faith by the Seller and the Parties shall prepare and submit invoices on the basis of such estimates. Any such invoice shall be adjusted retroactively based on the performance of the Facility during the three month period immediately following the installation of such meters.

8.1.8 Inspection. Seller, at its sole cost and expense, shall inspect and calibrate, or cause to be inspected and calibrated, all Electric Metering Equipment periodically, but not less frequently than annually. When any test, in the case of Electric Metering Equipment, shall show a measurement error of more than one-quarter percent (1/4%), correction shall be made for the period during which the measurement instruments were in error, first, by using the registration of Buyer's check meter, if installed and registering accurately; if no check meter is installed and registering accurately, or if the period cannot be ascertained, correction shall be made for one-half (1/2) of the period elapsed since the last date of test; and the measuring instrument shall be adjusted immediately to measure accurately.

8.2 Records. The Parties shall, for five (5) years or such longer period as may be required by the applicable Governmental Authority, each keep and maintain accurate and detailed records relating to the Facility's hourly deliveries of Net Energy. Such records shall be made available for inspection by either Party or any Governmental Authority having jurisdiction with respect thereto during normal business hours upon reasonable notice. If either Party (the "**Notifying Party**") shall propose to discard any records theretofore required to be retained by this Section 8.2, it shall give notice to the other Party thereof and the other Party may within thirty (30) days elect to take possession of such records by notice to the Notifying Party, and in such case the Notifying Party shall promptly, and in any event, no later than five (5) days following receipt of such notice, deliver such records to the other Party at its expense. If the Party receiving a Notice pursuant to this Section 8.2 shall not respond within such thirty (30) days, the Notifying Party may discard such records without any further obligation hereunder. Upon written request by Buyer, Seller promptly shall request that the Transmission Provider provide in writing any and all meter or other data associated with the Facility and Net

Energy directly to Buyer. Notwithstanding any other provision of this Agreement, Buyer shall have the right to provide such meter data to any RTO or generation tracking service.

8.3 Adjustment to Loss Factors. If Buyer or Seller has a reasonable basis for concluding that the Electric Metering Equipment is not accurately measuring losses between the Electric Metering Equipment and the Electricity Delivery Point, it may propose an adjustment to the Electric Metering Equipment by notice to the other Party. Such an adjustment shall be prospective only. The notice will include information explaining in reasonable detail why the loss factor appears to be incorrect. The other Party shall have thirty (30) days in which to approve or disapprove of the proposed adjustment, which approval may not be unreasonably withheld, conditioned or delayed. A proposed loss factor adjustment that is not disapproved by notice to Seller given within the thirty (30) day period shall be deemed approved. The Parties shall cooperate in causing PacifiCorp Transmission to make an appropriate adjustment to the Electric Metering Equipment pursuant to the Interconnection Agreement.

SECTION 9

BILLINGS, COMPUTATIONS AND PAYMENTS

9.1 Monthly Invoices. On or before the tenth (10th) day following the end of each month, Seller shall deliver to Buyer a proper invoice showing Seller's computation of the Energy Payment, MAAF and the Capacity Payment for such month. If such invoice is delivered by Seller to Buyer, Buyer shall send to Seller payment for Seller's deliveries in respect thereof on or before the thirtieth (30th) day following the end of each month.

9.2 Offsets. Buyer may offset any payment due under this Agreement against amounts owing from Seller to Buyer pursuant to this Agreement, any other agreement between the Parties or otherwise.

9.3 Interest on Late Payments. Any amounts that are not paid when due under this Agreement shall bear interest at the Prime Rate plus two hundred (200) basis points from the date due until paid; provided, however, that this interest rate shall at no time exceed the maximum rate allowed by applicable law.

9.4 Disputed Amounts. If either Party, in good faith, disputes any amount due pursuant to an invoice rendered under this Agreement, such Party shall notify the other Party of the specific basis for the dispute and, if the invoice shows an amount due, shall pay that portion of the statement that is undisputed, on or before the due date. Any such notice shall be provided within two (2) years of the date of the invoice in which the error first occurred. If any amount disputed by such Party is determined to be due the other Party, or if the Parties resolve the payment dispute, the amount due shall be paid within five (5) days of such determination or resolution, along with interest accrued at the rate determined under Section 9.3 from the date due until the date paid.

9.5 Audit Rights. Buyer, through its authorized representatives, shall have the right, at its sole expense and during normal business hours, to examine and copy the records of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation

made hereunder or to verify the Seller's performance of its obligations hereunder. Upon request, Seller shall provide to Buyer statements evidencing the quantities of energy delivered at the Electricity Delivery Point. If any statement is found to be inaccurate, a corrected statement shall be issued and any amount due thereunder will be promptly paid and shall bear interest calculated at the rate determined under Section 9.3 from the date of the overpayment or underpayment to the date of receipt of the reconciling payment. Notwithstanding the above, no adjustment shall be made with respect to any statement or payment hereunder unless Buyer questions the accuracy of such payment or statement within two (2) years after the date of such statement or payment.

SECTION 10

DEFAULTS AND REMEDIES

10.1 Defaults. The following events are defaults (each, an "**Event of Default**") under this Agreement:

10.1.1 Events of Default by Either Party.

10.1.1.1 A Party's failure to make a payment when due under this Agreement if the failure is not cured within ten (10) days after the non-defaulting Party gives the defaulting Party a notice of the default.

10.1.1.2 A Party (a) makes an assignment for the benefit of its creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing; (c) becomes insolvent; or (d) is unable to pay its debts when due.

10.1.1.3 A Party's breach of a representation or warranty made by that Party in this Agreement if the breach is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party a notice of the default.

10.1.1.4 A Party otherwise fails to perform any material obligation imposed upon that Party by this Agreement if the failure is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party notice of the default; provided, however, that, upon written notice from the defaulting Party, this thirty (30) day period shall be extended by an additional sixty (60) days if (a) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (b) the default is capable of being cured within the additional sixty (60) day period, and (c) the defaulting Party commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure.

10.1.2 Events of Default by Seller.

10.1.2.1 Seller's failure to post or increase the Carry-Over Letter of Credit within ten (10) Business Days after the end of each month as may be required under Section 5.1.4.

10.1.2.2 Seller's failure to cause the Facility to achieve (a) an average of the applicable CAF_ms of at least [●%] in any three (3) consecutive quarters in a Contract Year or (b) achieve an average of the applicable CAF_ms of at least [●%] in three (3) out of any five (5) consecutive Contract Years.

10.1.2.3 Seller's failure to post and maintain Credit Support as required by Section 7 if the failure is not cured within five (5) days after Buyer gives Seller a notice of the default.

10.1.2.4 Seller's failure to achieve a milestone by the date set forth for the achievement of that milestone in Section 2.2 (other than the failure to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date) if the failure is not cured within thirty (30) days after Buyer gives Seller a notice of the default.

10.1.2.5 Seller's failure to cause the Facility to achieve the Commercial Operation Date on or before the Guaranteed Commercial Operation Date.

10.1.2.6 Seller's failure to cure any default under any Required Facility Documents (including the Interconnection Agreement) within the time allowed for a cure under such agreement or instrument.

10.1.2.7 Seller's sale of energy from the Facility to a Party other than Buyer in breach of this Agreement if Seller does not permanently cease such sale and compensate Buyer for the damages arising from the breach within ten (10) days after Buyer gives Seller a notice of default.

10.1.2.8 For reasons other than an event of Force Majeure or an Event of Default by Buyer, the Facility being unavailable to provide energy for ninety (90) consecutive days or one hundred twenty (120) non-consecutive days in any three hundred sixty-five (365) day period commencing on the Commercial Operation Date and prior to end of the Term.

10.2 Termination and Remedies.

10.2.1 Upon the occurrence of, and during the continuation of, an Event of Default, the non-defaulting Party shall be entitled to all remedies available at law or in equity, and may terminate this Agreement by notice to the other Party designating the date of termination and delivered to the defaulting Party no less than ten (10) days before such termination date. Further, during the continuation of an Event of Default by Seller, and until it has recovered all damages incurred on account of such Event of Default by Seller, without exercising its termination right, Buyer may offset its damages against any payment due Seller.

10.2.2 In the event of a termination of this Agreement:

10.2.2.1 The Parties' respective obligations under this Agreement shall terminate (other than those obligations which expressly are to be performed after termination).

10.2.2.2 Each Party shall pay to the other all amounts due the other under this Agreement for all periods prior to termination subject to offset by the non-defaulting Party against damages incurred by such Party.

10.2.2.3 The amounts due pursuant to Section 10.2.3.2 shall be paid within thirty (30) days of the billing date for such charges plus interest thereon at the Prime Rate from the date of termination until the date paid.

10.2.2.4 The provisions of Sections 6.4.4, 6.9.4, 6.9.5, 8.2, 9.3, 9.4, 9.5, 10.7, 10.9, 11 and 14 shall survive the termination of this Agreement.

10.3 Specific Performance. Buyer shall be entitled to seek and obtain a decree compelling specific performance or granting injunctive relief 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 Seller under this Agreement. Seller agrees that in view of the nature of the bid procedure that caused Seller to be selected, and the importance of the Facility and the Buyer's requirement for Capacity and energy, specific performance (including temporary and preliminary relief) and injunctive and other equitable relief, including access to all records of Seller, are proper in the event of any actual or threatened breach of any material obligation by Seller under this Agreement, and that any liability limits contained in this Agreement shall not operate to limit the exercise of Buyer's remedies in equity to cause Seller to perform its obligations under this Agreement. In any action for specific performance or injunctive relief or other equitable relief, all expenses incurred by the prevailing party in such proceeding, including reasonable counsel fees, shall be awarded to the prevailing party in such proceeding. Seller agrees that it will not assert as a defense to Buyer's action for specific performance of, or injunctive relief or other equitable relief relating to, Seller's obligations hereunder that the amounts payable or paid by Seller in respect of liquidated damages or actual damage constitute an adequate remedy for the breach of such obligation, and Seller hereby conclusively waives such defense.

10.4 Failure to Meet Availability. If an Event of Default by Seller described in Section 10.1.2.2 shall occur, Buyer shall have the right to enter the Facility and do all such things as Buyer may consider necessary or desirable to remedy such situation or to improve the availability of the Contract Capacity, including making any repairs to the Major Equipment or the Facility. Seller shall reimburse Buyer for and shall indemnify and hold harmless Buyer from and against all losses, costs, charges and expenses incurred by Buyer in connection with exercise of its rights under this Section 10.4 other than due to the gross negligence or willful misconduct of Buyer. In connection with the exercise of the rights under this Section 10.4, Buyer shall have the right to recoup and set off all such losses, costs, charges and expenses against amounts otherwise owed by Buyer under this Agreement.

10.5 License to Operate Facility. During the occurrence and continuance of an Event of Default by Seller, Seller hereby irrevocably grants to Buyer the right, license, and authority to enter the Premises, operate the Facility, and to perform Seller's obligations under this Agreement for the Term of this Agreement. Notwithstanding the license granted to Buyer in this Section 10.5, so long as no Event of Default by Seller which would entitle Buyer to terminate this Agreement has occurred and is continuing, Buyer agrees that Seller may operate the Facility and

provide the energy and Capacity in accordance with its obligations under this Agreement. Upon the occurrence of an Event of Default and the expiration of all applicable opportunities to cure, Buyer may, but shall not be obligated to, exercise its rights as licensee under this Section 10.5 in lieu of termination. Buyer's right to operate the Facility pursuant to the license granted in this Section 10.5 shall be effective for a period not to exceed 365 days from the date Buyer first exercises its license rights. During any period in which Buyer is operating the Facility pursuant to the license granted in this Section 10.5, Seller shall, upon request from Buyer, reimburse Buyer for all reasonable costs and expenses incurred by Buyer to operate and maintain the Facility. In connection with the exercise of the rights under this Section 10.5, Buyer shall have the right to recoup and set off all such losses, costs, charges and expenses against amounts otherwise owed by Buyer under this Agreement.

10.6 Termination of Duty to Buy. If this Agreement is terminated because of Seller's default, Seller may not require Buyer to purchase energy from the Facility before the date on which the Term would have ended had this Agreement remained in effect. Seller hereby waives its rights to require Buyer to do so.

10.7 Net Replacement Power Costs. If this Agreement is terminated because of Seller's default, Seller shall pay Buyer the positive difference, if any, obtained by subtracting (a) the result of (1) the energy, stated in MWh, that Seller was obligated to provide to Buyer during the remainder of the Term, multiplied by (2) the price per MWh specified in **Exhibit F** for the remaining Contract Years, from (b) the Replacement Price for any energy that Seller was obligated to provide during the remainder of the Term. Amounts owed by Seller pursuant to this Section 10.7 shall be due within five (5) Business Days after Buyer gives Seller notice of the amount due.

10.8 Default Security. Buyer may apply the Credit Support Security at any time to reduce amounts due from Seller to Buyer under this Agreement which are not paid when due.

10.9 Cumulative Remedies. The rights and remedies provided to Buyer under this Agreement are cumulative and not exclusive of any rights or remedies which Buyer would otherwise have.

SECTION 11

INDEMNIFICATION AND LIABILITY

11.1 Indemnities.

11.1.1 Indemnity by Seller. Seller hereby releases, indemnifies and holds harmless Buyer, its directors, officers, agents, and representatives against and from any and all losses, claims, actions or suits, including costs and attorney's fees, resulting from, or arising out of or in any way connected with (a) the energy delivered by Seller under this Agreement to and at the Electricity Delivery Point, (b) any facilities on Seller's side of the Electricity Delivery Point, (c) Seller's operation and/or maintenance of the Facility, or (d) arising from this Agreement, including any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property

belonging to Buyer, Seller or others, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of Buyer, its directors, officers, employees, agents or representatives.

11.1.2 Indemnity by Buyer. Buyer hereby releases, indemnifies and holds harmless Seller, its directors, officers, agents, and representatives against and from any and all losses, claims, actions or suits, including costs and attorney's fees, resulting from, or arising out of or in any way connected with the energy delivered by Seller under this Agreement after the Electricity Delivery Point, including any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of Seller, its directors, officers, employees, agents or representatives.

11.2 No Dedication. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent individual or entity.

11.3 Consequential Damages. Buyer shall not be liable to Seller for special, punitive, indirect, exemplary or consequential damages, whether such damages are allowed or provided by contract, tort (including negligence), strict liability, statute or otherwise.

SECTION 12

INSURANCE

12.1 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller under this Agreement, Seller shall secure and continuously carry with an insurance company or companies rated not lower than "A" by the A.M. Best Company the insurance coverage specified on **Exhibit J** during the periods specified on **Exhibit J**.

12.2 Certificates and Certified Copies of Policies. Seller shall provide Buyer with a certified "true and correct" copy of the insurance policies, provisions and endorsements contemplated by **Exhibit J** within ten (10) days after the date by which such policies are required to be obtained (as set forth in **Exhibit J**). If any coverage is written on a "claims-made" basis, the certification accompanying the policy shall conspicuously state that the policy is "claims made."

SECTION 13

FORCE MAJEURE

13.1 Definition of Force Majeure. As used in this Agreement, "**Force Majeure**" or "**an event of Force Majeure**" means an event (a) is not anticipated as of the date of this Agreement, (b) is not within the reasonable control of the Party affected by the event, (c) is not

the result of such Party's negligence or failure to act, and (d) could not be overcome by the affected Party's use of due diligence in the circumstances. Force Majeure includes, but is not restricted to, events of the following types (but only to the extent that such an event, in consideration of the circumstances, satisfies the tests set forth in the preceding sentence): acts of God; fire; explosion; civil disturbance; sabotage; action or restraint by court order or public or government authority (as long as the affected Party has not applied for or assisted in the application for, and has opposed to the extent reasonable, such court or government action). Notwithstanding the foregoing, none of the following constitute Force Majeure: (i) Seller's ability to sell, or Buyer's ability to purchase energy at a more advantageous price than is provided under this Agreement; (ii) the cost or availability of Fuel; (iii) economic hardship including lack of money; (iv) the imposition upon Seller of costs or taxes allocated to Seller under Sections 5 or 6; (v) delay or failure by Buyer to obtain any Required Facility Document; (vi) strikes or labor disturbances occurring at the Facility, the Premises or any of Buyer's or Seller's facilities; (vii) changes in, or costs of compliance with, Environmental Laws enacted after the date of this Agreement; and **[(viii) the failure of the Transmission Provider for any reason to transmit Contract Capacity or energy.]** *[Note to bidders: clause (viii) to be added if PacificCorp Transmission is not the Transmission Provider.]*

13.2 Suspension of Performance. If either Party is rendered wholly or in part unable to perform its obligations under this Agreement because of an event of Force Majeure, both Parties shall be excused from the performance affected by the event of Force Majeure, provided that:

13.2.1 the Party affected by the Force Majeure, shall, within two (2) weeks after the occurrence of the event of Force Majeure, give the other Party written notice describing the particulars of the event; and

13.2.2 the suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure; and

13.2.3 the affected Party shall use diligent efforts to remedy its inability to perform.

13.3 Force Majeure Does Not Affect Other Obligations. No obligations of either Party that arose before the Force Majeure causing the suspension of performance or that arise after the cessation of the Force Majeure shall be excused by the Force Majeure.

13.4 Right to Terminate. If a Force Majeure event prevents a Party from substantially performing its obligations under this Agreement for a period exceeding one hundred eighty (180) days, then Buyer may terminate this Agreement by giving ten (10) days' prior notice to Seller. Upon such termination, neither Party will have any liability to the other with respect to the period following the effective date of such termination; *provided, however*, that this Agreement will remain in effect to the extent necessary to facilitate the settlement of all liabilities and obligations arising under this Agreement before the effective date of such termination.

SECTION 14

CONFIDENTIALITY

14.1 Confidential Business Information. The Parties' proposals and negotiations prior to the date hereof concerning this Agreement, the terms of this Agreement, and the actual charges billed to Buyer under this Agreement, constitute the "Confidential Business Information" of both Parties. Seller and Buyer each agree to hold such Confidential Business Information wholly confidential.

14.2 Duty to Maintain Confidentiality. Confidential Business Information may only be used by the Parties for purposes related to the approval, administration or enforcement of this Agreement and for no other purpose. Each Party agrees not to disclose Confidential Business Information to any other person (other than its affiliates, counsel, consultants, lenders, prospective lenders, buyers, prospective buyers, contractors constructing or providing services to the Facility, employees, officers and directors who agree to be bound by the provisions of this Section), without the prior written consent of the other Party, provided that either Party may disclose Confidential Business Information, if such disclosure is required by law, required in order for Buyer to receive regulatory recovery of expenses related to the Agreement or pursuant to an order of a court or regulatory agency or in order to enforce this Agreement or to seek approval of this Agreement. In the event a Party is required by law or by a court or regulatory agency to disclose Confidential Business Information, such Party shall to the extent possible notify the other Party at least three (3) Business Days in advance of such disclosure.

14.3 Irreparable Injury; Remedies. Each Party agrees that violation of the terms of this Section 14 constitutes irreparable harm to the other, and that the harmed Party may seek any and all remedies available to it at law or in equity, including injunctive relief.

14.4 News Releases and Publicity. Before issuing any news release or promotional material regarding the Facility, Seller shall contact Buyer for language that credits Buyer as purchasing the Net Energy and shall use such language in such news releases and promotional material.

SECTION 15

DISAGREEMENTS

15.1 Negotiations. The Parties shall attempt in good faith to resolve all disputes arising out of or related to or in connection with this Agreement promptly by negotiation, as follows. Any Party may give the other Party written notice of any dispute not resolved in the normal course of business. Executives of both Parties at levels one level above the personnel who have previously been involved in the dispute shall meet at a mutually acceptable time and place within ten (10) days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days from the referral of the dispute to senior executives, or if no meeting of such senior executives has taken place within fifteen (15) days after such referral, either Party may initiate litigation as provided hereinafter if neither Party has

requested that the dispute be mediated in accordance with Section 15.2 below. All negotiations pursuant to this clause are confidential.

15.2 Mediation. If the dispute is not resolved within thirty (30) days from the referral of the dispute to senior executives, or if no meeting of senior executives has taken place within fifteen (15) days after such referral, either Party may request that the matter be submitted to nonbinding mediation. If the other Party agrees, the mediation will be conducted in accordance with the Construction Industry Arbitration Rules and Mediation Procedures (Including Procedures for Large, Complex Construction Disputes) of the American Arbitration Association (the "AAA"), as amended and effective on July 1, 2003 (the "**Mediation Procedures**"), notwithstanding any Dollar amounts or Dollar limitations contained therein.

15.2.1 The Party requesting the mediation, may commence the mediation process with AAA by notifying AAA and the other Party in writing ("**Mediation Notice**") of such Party's desire that the dispute be resolved through mediation, including therewith a copy of the Dispute Notice and the response thereto, if any, and a copy of the other Party's written agreement to such mediation.

15.2.2 The mediation shall be conducted through, by and at the office of AAA located in Salt Lake City, Utah.

15.2.3 The mediation shall be conducted by a single mediator. The Parties may select any mutually acceptable member from the panel of retired judges at AAA as a mediator. If the parties cannot agree on a mediator within five (5) days after the date of the Mediation Notice, then the AAA's Arbitration Administrator shall send a list and resumes of three (3) available mediators to the parties, each of whom shall strike one name, and the remaining person shall be appointed as the mediator. If more than one name remains, either because one or both parties have failed to respond to the AAA's Arbitration Administrator within five (5) days of receiving the list or because one or both parties have failed to strike a name from the list or because both parties strike the same name, the AAA's Arbitration Administrator will choose the mediator from the remaining names. If the designated mediator shall die, become incapable or, unwilling to, or unable to serve or proceed with the mediation, a substitute mediator shall be appointed in accordance with the selection procedure described above in this Section 15.2.3, and such substitute mediator shall have all such powers as if he or she has been originally appointed herein.

15.2.4 The mediation shall consist of one or more informal, nonbinding meetings between the Parties and the mediator, jointly and in separate caucuses, out of which the mediator will seek to guide the Parties to a resolution of the dispute. The mediation process shall continue until the resolution of the dispute, or the termination of the mediation process pursuant to Section 15.2.7.

15.2.5 The mediator's fees and expenses, shall be borne equally by the Parties. Each Party shall bear its own expenses incurred in connection with such mediation; provided, however, that if any dispute hereunder is not fully resolved as a result of such mediation, the prevailing party shall be awarded its reasonable attorney fees in any subsequent dispute resolution proceedings.

15.2.6 All verbal and written communications between the parties and issued or prepared in connection with this Section 15.2 shall be deemed prepared and communicated in furtherance, and in the context, of dispute settlement, and shall be exempt from discovery and production, and shall not be admissible in evidence (whether as admission or otherwise) in any arbitration or other proceedings for the resolution of the dispute.

15.2.7 The initial mediation meeting between the Parties and the mediator shall be held within twenty (20) days after the Mediation Notice. Either Party may terminate the mediation process upon the earlier to occur of (A) the failure of the initial mediation meeting to occur within twenty (20) days after the date of the Mediation Notice, (B) the passage of thirty (30) days from the date of the Mediation Notice without the dispute having been resolved, or (C) such time as the mediator makes a finding that there is no possibility of resolution through mediation. The mediation shall follow and be governed by the laws of the State of Oregon.

15.2.8 All deadlines specified in this Section 15.2 may be extended by mutual agreement.

15.3 Choice of Forum. Each Party irrevocably consents and agrees that any legal action or proceeding arising out of this Agreement or the actions of the Parties leading up to the Agreement shall be brought exclusively in the United States District Court for the District of Oregon, Portland Division. By execution and delivery of this Agreement, each Party (a) accepts the exclusive jurisdiction of such court and waives any objection that it may now or hereafter have to the exercise of personal jurisdiction by such court over each Party, (b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court arising out of such documents or actions, (c) irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceedings arising out of such documents brought in such court (including any claim that any such suit, action or proceeding has been brought in an 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, postage prepaid, to such Party at its address as set forth in this Agreement, and (e) agrees that nothing in this Agreement shall affect the right to effect service of process in any other manner permitted by law.

15.4 Settlement Discussions. The Parties agree that no statements of position or offers of settlement made in the course of the dispute process described in this Section will be offered into evidence for any purpose in any litigation or arbitration between the Parties, nor will any such statements or offers of settlement be used in any manner against either Party in any such litigation or arbitration. Further, no such statements or offers of settlement shall constitute an admission or waiver of rights by either Party in connection with any such litigation or arbitration. At the request of either Party, any such statements and offers of settlement, and all copies thereof, shall be promptly returned to the Party providing the same.

15.5 Waiver of Jury Trial. EACH PARTY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS

AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY TO THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT. EACH PARTY HEREBY WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND ANY OTHER AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY MATTER ARISING HEREUNDER OR THEREUNDER IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED.

15.6 Equitable Remedies. In any action for specific performance or injunctive relief or other equitable relief, all expenses incurred by the prevailing party in such proceeding, including reasonable counsel fees, shall be awarded to the prevailing party in such proceeding. Seller agrees that it will not assert as a defense to Buyer's action for specific performance of, or injunctive or other equitable relief relating to, Seller's obligations hereunder that the amounts payable or paid by Seller in respect of liquidated damages constitute an adequate remedy for the breach of such obligation, and Seller hereby conclusively waives such defense. Seller shall at all times during the Term, own, lease, control, hold in its own name or be signatory to all Required Facility Documents (as the case may be) relating to the Facility to the extent necessary to prevent a material adverse effect on Buyer's right to specific performance or injunctive relief.

SECTION 16

GUARANTEED PERFORMANCE PARAMETERS

16.1 Guaranteed Heat Rate. Seller shall operate and maintain the Facility so as to achieve the Guaranteed Heat Rate in accordance with the provisions of **Exhibit Q**.

16.2 Guaranteed Start-Up Time. Seller shall operate and maintain the Facility so as to achieve the Guaranteed Start-Up Time in accordance with the provisions of **Exhibit Q**.

16.3 Guaranteed Ramp Rate. Seller shall operate and maintain the Facility so as to achieve the Guaranteed Ramp Rate in accordance with the provisions of **Exhibit Q**.

SECTION 17

MISCELLANEOUS

17.1 Several Obligations. Nothing contained in this Agreement shall be construed to create an association, trust, partnership or joint venture or to impose a trust, partnership or fiduciary duty, obligation or liability on or between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

17.2 Choice of Law. This Agreement shall be interpreted and enforced in accordance with the laws of the state of Oregon, excluding any choice of law rules that may direct the application of the laws of another jurisdiction.

17.3 Partial Invalidity. The Parties do not intend to violate any Requirements of Law governing the subject matter of this Agreement. If any of the terms of this Agreement are finally held or determined to be invalid, illegal or void as being contrary to any Requirements of Law or public policy, all other terms of the Agreement shall remain in effect. The Parties shall use best efforts to amend this Agreement to reform or replace any terms determined to be invalid, illegal or void, such that the amended terms (a) comply with and are enforceable under Requirements of Law, (b) give effect to the intent of the Parties in entering into this Agreement, and (c) preserve the balance of the equities contemplated by this Agreement in all material respects.

17.4 Waiver. No waiver of any provision of this Agreement shall be effective unless the waiver is set forth in a writing that (a) expressly identifies the provision being waived, and (b) is signed by the Party waiving the provision. A Party's waiver of one or more failures by the other Party in the performance of any of the provisions of this Agreement shall not be construed as a waiver of any other failure or failures, whether of a like kind or different nature.

17.5 Governmental Jurisdiction and Authorizations. This Agreement is subject to the jurisdiction of those Governmental Authorities having control over either Party or this Agreement. Buyer's duty to comply with this Agreement is conditioned on Seller's submission to Buyer before the Commercial Operation Date and maintaining thereafter copies of all Required Facility Documents.

17.6 Restriction on Assignments. Except as expressly provided in Section 17.7, neither Party shall assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other Party.

17.7 Permitted Assignments. The Buyer may assign its rights, delegate its duties or otherwise transfer its interests hereunder, in whole or in part to another entity having a long-term credit rating assigned thereto by a "nationally recognized statistical rating organization" (as that term is used in Rule 15c3-1(c)(2)(vi)(F) under the Securities Exchange Act of 1934) that equals or exceeds the Buyer's long term credit rating as of the date of such assignment.

17.8 Entire Agreement. This Agreement (including all attached Exhibits, which are incorporated by this reference) supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding the subject matter of this Agreement. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

17.9 Amendments. This Agreement shall not be altered or amended except by an instrument in writing specifically identifying the provisions to be amended and executed by authorized representatives of both parties.

17.10 No Third Party Beneficiaries. This Agreement does not confer any rights upon any person other than the parties and their respective successors and permitted assigns. There are no third party beneficiaries of this Agreement.

17.11 Agents and Subcontractors. This Agreement may be performed by Buyer through the use of agents and subcontractors (but such use shall not relieve Buyer of any obligation hereunder).

17.12 Notices. All notices, requests, statements or payments shall be (a) made to the addresses set forth below, (b) in writing, and (c) delivered by letter, facsimile or other documentary form. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day during which the notice is received or hand delivered. Notice by overnight mail or courier shall be deemed to have been received upon delivery as evidenced by the delivery receipt.

To Seller:

with a copy to:

To Buyer:

PacifiCorp
825 NE Multnomah, Suite 2000
Portland, Oregon 97232-2315
Attn: Sr. Vice President, Commercial & Trading

with copies to:

PacifiCorp
825 NE Multnomah, Suite 600
Portland, Oregon 97232-2315
Attn: Director of Contract Administration, C&T

Jeremy Weinstein, Esq.
Senior Counsel
PacifiCorp
825 NE Multnomah, Suite 1800
Portland, Oregon 97232-2315

The Parties may change any of the persons to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section.

17.13 Mobile-Sierra. The rates for service specified in this Agreement shall remain in effect until expiration of the Term, and shall not be subject to change for any reason, including regulatory review, absent agreement of the parties. Neither Party shall petition FERC pursuant to the provisions of sections 205 or 206 of the Federal Power Act (16 U.S.C. § 792 et seq.) to amend such prices or terms, or support a petition by any other person seeking to amend such prices or terms, absent the agreement in writing of the other Party. Further, absent the agreement in writing by both Parties, the standard of review for changes to this Agreement proposed by a Party, a non-party or the 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). To the extent that the FERC adopts specific language that parties must incorporate into agreements in order to

bind FERC, third parties and themselves to a public interest standard of review, the Parties hereby incorporate such language herein by reference.

17.14 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which is an original and all of which taken together constitute one and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their respective names as of the date first above written.

[SELLER],
as Seller

By: _____

Name: _____

Title: _____

PACIFICORP,
as Buyer

By: _____

Name: _____

Title: _____

EXHIBIT A

DESCRIPTION OF SELLER'S FACILITY

Seller's Facility consists of a [] generator manufactured by []. More specifically, the Facility *[provide description of Facility, etc]*.

Facility Capacity: [] MW, under the following conditions: *[describe manufacturer's stated operating conditions]*.

Identify the maximum output of the generator(s) and describe any differences between that output and the Facility Capacity:

Station service requirements are described as follows: []
[]

Location of the Facility: The Facility is to be constructed in the vicinity of [] in [] County, Utah. The real property on which the Facility is to be constructed (the "Premises") is more particularly described as follows:

[legal description of parcel]

Power factor requirements: *[insert]*

EXHIBIT B

ELECTRICITY DELIVERY POINT/ELECTRICAL INTERCONNECTION FACILITIES

[Note to Bidders: Please include a description of the point of metering]

EXHIBIT C

REQUIRED FACILITY DOCUMENTS

EXHIBIT D

HOURLY SCALARS

EXHIBIT E

START-UP TESTING

[Note to Bidders: To be determined following evaluation of proposed resource]

EXHIBIT F

ENERGY PAYMENT

The Energy Payment (“EP”) for each [] shall be \$[] per MWh, adjusted as follows:

$$EP = \$[] \times CPIA \times NEO$$

Where:

EP is the Energy Payment to be determined for a [].

$$CPIA = \frac{(I_n - I_{Base})}{I_{Base}}$$

Where:

I_n is the CPI-U Index most recently published as of the last Day of the applicable [].

I_{Base} is the CPI-U Index most recently published as of [].

NEO is the Net Energy delivered during the [].

EXHIBIT G

EXAMPLES

EXHIBIT H

EVENT TYPES

The outages in the following table are arranged in order of priority - from most urgent to least urgent. The add screen in the AIS system will only accept these standardized NERC event types.

Event Type	Description of Outages
U1	<u>Unplanned (Forced) Outage - Immediate</u> - An outage that requires immediate removal of a unit from service, another outage state or a Reserve Shutdown state. This type of outage results from immediate mechanical/electrical/hydraulic control systems trips and operator-initiated trips in response to unit alarms.
U2 ¹	<u>Unplanned (Forced) Outage - Delayed</u> - An outage that does not require immediate removal of a unit from the in-service state but requires removal within six (6) hours. This type of outage can only occur while the unit is in service.
U3 ¹	<u>Unplanned (Forced) Outage - Postponed</u> - An outage that can be postponed beyond six hours but requires that a unit be removed from the in-service state before the end of the next weekend. This type of outage can only occur while the unit is in service.
SF ¹	<u>Startup Failure</u> - An outage that results from the inability to synchronize a unit within a specified startup time period following an outage or Reserve Shutdown. A startup period begins with the command to start and ends when the unit is synchronized. An SF begins when the problem preventing the unit from synchronizing occurs. The SF ends when the unit is synchronized or another SF occurs.
MO	<u>Maintenance Outage</u> - An outage that can be deferred beyond the end of the next weekend, but requires that the unit be removed from service before the next planned outage. (Characteristically, a MO can occur any time during the year, has a flexible start date, may or may not have a predetermined duration and is usually much shorter than a PO.)
ME	<u>Maintenance Outage Extension</u> - An extension of a maintenance outage (MO) beyond its estimated completion date. This is typically used where the original scope of work requires more time to complete than originally scheduled. Do not use this where unexpected problems or delays render the unit out of service beyond the estimated end date of the MO.
PO	<u>Planned Outage</u> - An outage that is scheduled well in advance and is of a predetermined duration, lasts for several weeks and occurs only once or twice a year. (Boiler overhauls, turbine overhauls or inspections are typical planned outages.)
PE	<u>Planned Outage Extension</u> - An extension of a planned outage (PO) beyond its estimated completion date. This is typically used where the original scope of work requires more time to complete than originally scheduled. Do not use this where unexpected problems or delays render the unit out of service beyond the estimated end date of the PO.

The deratings in the following table are arranged in order of priority - from most urgent to least urgent. The add screen in the AIS system will only accept these standardized NERC event types.

Event Type	Description of Deratings – Restrictions
D1	<u>Unplanned (Forced) Derating - Immediate</u> - A derating that requires an immediate reduction in capacity.
D2 ²	<u>Unplanned (Forced) Derating - Delayed</u> - A derating that does not require an immediate reduction in capacity but requires a reduction in capacity within six (6) hours.
D3 ²	<u>Unplanned (Forced) Derating - Postponed</u> - A derating that can be postponed beyond six hours but requires a reduction in capacity before the end of the next weekend.
D4	<u>Maintenance Derating</u> - A derating that can be deferred beyond the end of the next weekend but requires a reduction in capacity before the next Planned Outage (PO). A D4 can have a flexible start date and may or may not have a predetermined duration.
PD	<u>Planned Derating</u> - A derating that is scheduled well in advance and is of a predetermined duration. (Periodic derating for tests, such as weekly turbine valve tests, should not be reported as PD's. Report deratings for these types as Maintenance Deratings (D4).

The other reportable events listed in the table below are in no particular order. Although these events are reportable, they have no reducing impact on the Equivalent Availability Factor.

Event Type	Description of Other Reportable Events
RS	<u>Reserve Shutdown</u> - An event that exists whenever a unit is available for load but is not synchronized due to lack of demand. This type of event is sometimes referred to as an economy outage or economy shutdown. If a unit is shut down due to any equipment-related problems, whether or not the unit was needed by the system, report an Unplanned (Forced) Outage, Maintenance Outage, or Planned Outage, <u>not</u> a Reserve Shutdown.
NC	<u>Noncurtailing Event</u> - An event that exists whenever equipment or major components are removed for maintenance, testing, or other purposes that does not result in a unit outage or derating.
	<u>Noncurtailing Event</u> - An event that exists whenever a unit is being intentionally dispatched at a level less than its full capacity, when the designated capacity would otherwise be at full capacity, because of lack of demand on the system.

EXHIBIT I

MAJOR EQUIPMENT ANN MAINTENANCE SCHEDULE

EXHIBIT J

REQUIRED INSURANCE

[Note to Bidders: To be determined by PacifiCorp insurance group based on project and market conditions]

EXHIBIT K

OPERATING PROCEDURES

EXHIBIT L

AVAILABILITY NOTICE

EXHIBIT M

AMBIENT FACILITY CAPACITY CORRECTION ALGORITHMS

EXHIBIT N

BUYER'S INITIAL DESIGNATED REPRESENTATIVES

1. Authorized Representatives

2. Alternates

EXHIBIT O

DISPATCH PROCEDURES

EXHIBIT P

NET ENERGY SPECIFICATIONS AND DISPATCHABLE
QUANTITIES OF NET ENERGY

EXHIBIT Q

GUARANTEED PERFORMANCE PARAMETERS; BASELOAD HEAT RATES,
PEAKLOAD HEAT RATES AND SIMPLE CYCLE HEAT RATES

EXHIBIT R

DISPATCH NOTICE

EXHIBIT S
CREDIT MATRIX

**RFP 2009
ATTACHMENT 4
[RESERVED]**

PacifiCorp
Draft RFP 2009
Responses due December 1, 2005

RFP 2009
ATTACHMENT 5
TOLLING SERVICE AGREEMENT
CONTRACT
September 2005

**PACIFICORP RFP-2009
TOLLING AGREEMENT**

dated as of [_____], 2006,

BETWEEN

[*Bidder # [•]*],
as Seller,

AND

PACIFICORP,
as Buyer

[_____ Project]

[_____, [State]]

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Exhibit R	Guaranteed Performance Parameters; Baseload Heat Rates, Peakload Heat Rates and Simple Cycle Heat Rates
Exhibit S	Dispatch Notice
Exhibit T	Credit Matrix [<i>Note to bidders: Credit Matrix attached as Appendix B to RFP 2009</i>]

THIS WORKING DRAFT DOES NOT CONSTITUTE A BINDING OFFER, SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE, AND IS CONDITIONED UPON SELECTION OF THE BIDDER, EXECUTION, AND EACH PARTY'S RECEIPT OF ALL REQUIRED MANAGEMENT AND BOARD APPROVALS IN THEIR SOLE AND ABSOLUTE DISCRETION (INCLUDING FINAL CREDIT AND LEGAL APPROVALS). ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS WORKING DRAFT OR ON STATEMENTS MADE DURING NEGOTIATIONS RELATING TO THIS WORKING DRAFT SHALL BE AT THAT PARTY'S OWN RISK. UNTIL THIS WORKING DRAFT IS NEGOTIATED, APPROVED BY ALL APPROPRIATE PARTIES AND EXECUTED BY EACH PARTY'S AUTHORIZED SIGNATORY, NO PARTY SHALL HAVE ANY LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS WORKING DRAFT OR IN THE COURSE OF NEGOTIATIONS. ANY ASSERTION TO THE CONTRARY IN ANY PROCEEDING OR ACTION REGARDING THIS WORKING DRAFT SHALL RENDER THIS WORKING DRAFT NULL AND VOID IN ITS ENTIRETY. DURING DISCUSSIONS AND NEGOTIATIONS ANY PARTY MAY CHANGE ITS POSITION ON ANY MATTER, WHETHER OR NOT SET FORTH IN OR BASED UPON THIS WORKING DRAFT, ANY OTHER DOCUMENT OR ANY COURSE OF DEALING, AT ANY TIME OR FOR ANY REASON.

TOLLING AGREEMENT

THIS TOLLING AGREEMENT dated as of [____], 2006 (this "Agreement"), is made and entered into between [____], a [describe entity] ("Seller"), and PacifiCorp, an Oregon corporation ("Buyer"). Seller and Buyer are referred to collectively as the "Parties" and individually as a "Party."

RECITALS

A. Seller intends to develop, construct, own, operate and maintain a natural gas fueled, combined cycle electric generation facility [*consisting of [●] combustion turbines -- insert further description*] for the generation of electric energy located in [township/range], [____] County, [State], whose initial Facility Capacity shall be [525] MW (as more fully described in Exhibit A, the "Facility").

B. Seller responded to a Request for Proposals – PacifiCorp RFP 2009 which was issued by Buyer in September 2005. Buyer's objective in issuing the RFP was to fulfill, through a competitive bid process, a portion of its supply-side resource need as contemplated in Buyer's 2004 Integrated Resource Plan.

C. Buyer's selection of Seller was based upon a competitive bid and was, in part, based upon Seller's representations and warranties, Seller's schedule achieving the Guaranteed Commercial Operation Date (initially capitalized terms not defined in these Recitals are defined in Section 1 below), and the guaranteed performance of the Facility, all as set forth herein. Such matters were a material inducement for the selection of Seller, and Seller's failure to perform in accordance with the terms and conditions or Seller's failure to meet its representations and warranties and schedules for delivery of Net Energy shall cause material damage to Buyer.

D. Seller will make available and sell to Buyer, and Buyer will receive and purchase from Seller, Contract Capacity and Net Energy associated with such Contract Capacity pursuant to the terms and conditions of this Agreement. Seller acknowledges that Buyer will include such Contract Capacity in Buyer's resource planning.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth below, the Parties agree as follows:

SECTION 1

DEFINITIONS; RULES OF INTERPRETATION

1.1 Defined Terms. Unless otherwise required by the context in which any term appears, defined terms used in this Agreement (as indicated by initial capitalization, except as otherwise provided in this Section 1.1) shall have the following meanings:

“**AAA**” has the meaning set forth in Section 15.2.

“**Affiliate**” means, with respect to any entity, each entity that directly or indirectly, controls or is controlled by or is under common control with such designated entity. 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 entity, shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities or by contract or otherwise.

“**Alternate Representative**” has the meaning set forth in Section 6.4.2.

“**Ambient Facility Capacity**” means the Contract Capacity determined from the correction algorithms set forth in **Exhibit M**, based upon the Facility Capacity and the ambient conditions in effect in each hour.

“**Ancillary Services**” means those services and energy from time to time now or hereafter available that are necessary to support the Contract Capacity and transmission of energy from resources to loads while maintaining reliable operation of the System in accordance with Prudent Electrical Practices. Such services and energy include regulation reserve, spinning reserve, non-spinning reserve, voltage support, black start Capacity, and reactive power.

“**As-built Supplement**” shall be a supplement to **Exhibit A** that describes the Facility as actually built and shall include all such information as may reasonably be requested by Buyer.

“**Authorized Representative**” has the meaning set forth in Section 6.4.2

“**Availability Notice**” has the meaning set forth in Section 6.5.1.1.

“Baseload Capacity” means the Capacity of the Facility achieved when operating at the Reference Conditions with all items of Major Equipment operating at full load, but without duct firing.

“Baseload Fuel Supply Requirement” means, with respect to any Day, the product of the applicable Baseload Heat Rate multiplied by the quantity of Net Energy, or equivalent quantity of Ancillary Services, to be delivered from the Baseload Capacity component of the Contract Capacity.

“Baseload Heat Rate” has the meaning set forth in Section 6.5.3.8.

“Business Day” means any day on which banks in Portland, Oregon are not authorized or required by Requirements of Law to be closed, beginning at 6:00 a.m. and ending at 5:00 p.m. local time in Oregon.

“Btu’s” means British Thermal Units.

“Buyer” has the meaning set forth in the Preamble.

“CAF_h” has the meaning set forth in Section 5.1.2.

“CAF_m” has the meaning set forth in Section 5.1.2.

“Capacity” means the output potential a machine or system can produce under specified conditions as generally expressed in kW or MW.

“Capacity Payment” means the Monthly Capacity Payments and the Minimum Monthly Capacity Payments payable in accordance with Section 5.1.

“Capacity Payment Rate” means, as of the Commercial Operation Date, \$[●]/kW/month.

“Capacity Payment Shortfall” has the meaning set forth in Section 5.1.4.

“Capacity Rights” means any current or future defined characteristic, certificate, tag, credit, ancillary service attribute, or accounting construct, including any accounting construct counted towards any current or future resource adequacy or reserve requirements, associated with the Capacity of the Facility or the Facility’s capability and ability to produce energy, but excluding any of the foregoing attributable to any expansion of the Facility occurring after the Commercial Operation Date, unless the output associated therewith is purchased by Buyer.

“Carry-Over Letter of Credit” has the meaning set forth in Section 5.1.4.

“Cash Escrow” means an escrow account established by Buyer in a commercial bank or trust company 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. Cash deposited to the escrow account shall earn interest at the rate applicable to money market deposits at the banking institution from time to time, and the interest shall be

retained in the escrow account as additional security for Seller's performance under this Agreement.

"CC" has the meaning set forth in Section 5.1.2.

"Collateral" has the meaning set forth in Section 7.5

"Combustion Turbine" or "CT" means any one of the combustion turbines comprising the Facility.

"Commercial Operation Date" means the date on which the Facility is fully operational, reliable and each condition set forth in Section 2.2.6 is satisfied.

"Contract Capacity" means [525] MW of Capacity from the Facility, comprised of [●] MW of Baseload Capacity and [●] MW of Peakload Capacity.

"Contract Year" means a twelve (12) month period commencing at 00:00 hours on January 1 and ending on 24:00 hours on December 31; *provided, however*, that the first Contract Year shall commence on the Commercial Operation Date and end on the next succeeding December 31, and the last Contract Year shall end on the last Day of the Term.

"CPR" has the meaning set forth in Section 5.1.2.

"CPS" has the meaning set forth in Section 5.1.2.

"Credit Matrix" means the credit matrix attached hereto as **Exhibit T**.

"Credit Rating" means, as of any date, the then applicable senior, unsecured, long-term debt or corporate credit rating of a Person published by either Moody's or S&P.

"Credit Support" means, prior to the Commercial Operation Date, the amount (if any) shown as the Project Development Security on the Credit Matrix and, on and after the Commercial Operation Date, the amount (if any) shown on the Credit Matrix as the Default Security.

"Credit Support Security" means a guaranty, Letter of Credit or Cash Escrow provided pursuant to Section 7.1.

"CT Start" means the process of rotating any of the Facility's Combustion Turbine rotors by means of such Combustion Turbine's starting motor and subsequently introducing and igniting Fuel in the Combustion Turbine's combustor and increasing the rotating speed of the unit's rotor sufficiently that the starting motor can be disengaged, also referred to herein as the Start-Up of a Combustion Turbine.

"Daily Delay Damages" for each Day shall be equal to the product of (1) the Dow JonesTM SP15 Firm On-peak Index (or if on a Sunday or a NERC holiday, the 24-hour firm index) for such Day, expressed in \$/MWh, *multiplied by* (2) the applicable hourly scalar set forth in **Exhibit D** for the hours ending 0700 – 2200 Pacific Prevailing Time, seven (7) days a week,

including NERC holidays (each such hour, an “**On-Peak Hour**”) during such Day, *multiplied by* (3) the loss factor of 1.112, *plus* (4) the basis of \$13/MWh for each On-Peak Hour or portion thereof during such Day, *minus* (5) the market price at the Fuel Delivery Point of the Fuel that would have been required to generate all Net Energy attributable to the Contract Capacity during each On-Peak Hour in such Day using the Guaranteed Heat Rate. The market price of Fuel at the Fuel Delivery Point will be determined by Buyer using any commercially reasonable method. If the Dow JonesTM SP15 Firm On-peak Index ceases to be published during the Term, Buyer shall select as a replacement electricity price index or component, an index acceptable to Buyer in its discretion that, after any necessary adjustments, provides the most reasonable substitute quotation of the daily price of firm on-peak energy at SP15 for the applicable periods.

“**Day**” means the 24-hour period beginning at midnight Pacific Prevailing Time on a day and ending at midnight Pacific Prevailing Time on the next succeeding day.

“**Dispatch,**” “**Dispatched,**” and “**Dispatching**” means the scheduling and control by the Buyer of Net Energy, through submittal of schedules pursuant to the Dispatch Procedures and other provisions of this Agreement.

“**Dispatch Procedures**” means the procedures under which Buyer is entitled to Dispatch the Facility, as set forth in **Exhibit P**.

“**Dollar**” or “**\$**” means the lawful currency of the United States of America.

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

“**Electrical Interconnection Facilities**” means all the facilities installed by Seller for the purpose of interconnecting the Facility to the Electricity Delivery Point, including electrical transmission lines, upgrades, transformers and associated equipment, substations, relay and switching equipment, and safety equipment, as set forth in **Exhibit B**.

“**Electricity Delivery Point**” means the physical point(s) for Seller’s delivery, and Buyer’s receipt, of Net Energy at which the Facility is connected with the Transmission Provider’s transmission system, as specified in the Interconnection Agreement and in **Exhibit B**. [*Note to Bidders: If energy is to be delivered to a transmission provider other than the Transmission Provider and wheeled to the Electricity Delivery Point, the Electricity Delivery Point will be at a point of interconnection with the Transmission Provider’s transmission system where the resource can be integrated as a Network Resource.*]

“**Electric Metering Equipment**” has the meaning set forth in Section 8.1.

“**Environmental Law**” means any federal, state or local law including statutes, regulations, rulings, orders, administrative interpretations and other governmental restrictions and requirements having the force and effect of law relating to (i) the discharge or disposal of any substance into the air, soil or water, including pollutants, water pollutants or process waste water, (ii) storage, emissions transportation or disposal of any Regulated Material, (iii) the environment or hazardous substances, all as amended from time to time, (iv) land use requirements pertaining to Regulated Materials, including laws requiring environmental impact

studies or other similar evaluations, and (v) environmental issues pertaining to the development, construction, operation or maintenance of the Facility.

“**Event of Default**” has the meaning set forth in Section 10.1.

“**EWG**” means an “exempt wholesale generator,” as defined under the Public Utility Holding Company Act of 1935, as amended from time to time.

“**Example**” means an example set forth in **Exhibit G**. Each Example is for purposes of illustration only and is not intended to constitute a representation, warranty or covenant concerning the matters assumed for purposes of each Example. If there is a conflict between an Example and the text of this Agreement, the text shall control.

“**Excused Outage**” has the meaning set forth in Section 5.1.2.

“**Facility**” shall have the meaning given to that term in **Recital A**.

“**Facility Capacity**” means the maximum Capacity of the Facility, expressed in MW, when operated consistent with the manufacturer’s recommended power factor and operating parameters, as set forth in **Exhibit A**.

“**FERC**” means the Federal Energy Regulatory Commission.

“**FIN 46**” has the meaning set forth in Section 6.13.

“**Force Majeure**” has the meaning set forth in Section 13.1.

“**Forced Outage**” means NERC Event Types U1, U2 and U3, as set forth in **Exhibit H**.

“**Fuel**” means natural gas meeting the specifications set forth in **Exhibit O**.

“**Fuel Delivery Point**” means the point at which Fuel is delivered from [_____] to the Facility, as specified in **Exhibit O**.

“**Fuel Metering Point**” means the delivery point specified in **Exhibit O**.

“**Fuel Supply Requirement**” means, for any Day, the sum, without duplication, of (i) the Start-Up Fuel Quantity for each Start-Up that occurs during such Day and (ii) the Operating Fuel Quantity for such Day.

“**Fuel Transporter**” means the pipeline company selected by Buyer to transport the Fuel to the Facility.

“**Governmental Authority**” means any supranational, federal, state or other political subdivision thereof, having jurisdiction over Seller, Buyer or this Agreement, including any municipality, township and county, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any corporation or other entity owned or controlled by any of the foregoing.

“**Guaranteed Commercial Operation Date**” means June 1, 2009.

“**Guaranteed Heat Rate**” has the meaning assigned to such term in **Exhibit R**.

“**Guaranteed Ramp Rate**” has the meaning set forth in **Exhibit R**.

“**Guaranteed Start-Up Time**” has the meaning set forth in **Exhibit R**.

“**Heat Rate**” means the number of Btu’s used to produce one MW of energy measured at the Electricity Delivery Point.

“**Interconnection Agreement**” means the agreement to be entered into separately between Seller and Transmission Provider providing for the construction and operation of the Electrical Interconnection Facilities.

“**Letter of Credit**” means an irrevocable standby letter of credit in form and substance acceptable to Buyer in its discretion, naming Buyer as the party entitled to demand payment and present draw requests thereunder, which letter of credit:

(1) is issued by a U.S. commercial bank or a foreign bank with a U.S. branch, with such bank having a net worth of at least \$1,000,000,000 and a Credit Rating of:

(a) “A2” or higher from Moody’s; or

(b) “A” or higher from S&P;

(2) on the terms provided in the letter of credit, permits Buyer to draw up to the face amount thereof for the purpose of paying any and all amounts owing by Seller hereunder;

(3) if a letter of credit is issued by a foreign bank with a U.S. branch, permits Buyer to draw upon a U.S. branch;

(4) permits Buyer to draw the entire amount available thereunder if such letter of credit is not renewed or replaced at least thirty (30) Business Days prior to its stated expiration date;

(5) permits Buyer to draw the entire amount available thereunder if such letter of credit is not increased, replaced or replenished as and when provided in Section 7;

(6) is transferable by Buyer to any party to which Buyer may assign this Agreement under Section 17.7; and

(7) shall remain in effect for at least ninety (90) days after the end of the Term.

“**Licensed Professional Engineer**” means a person acceptable to Buyer in its reasonable judgment who (i) is licensed to practice engineering in the state in which the Facility is located, (ii) has training and experience in the engineering discipline(s) relevant to the matters with

respect to which such person is called upon to provide a certification, evaluation or opinion, (iii) has no economic relationship, association, or nexus with Seller, (iv) is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility, (v) is engaged by Seller on terms reasonably acceptable to Buyer, (vi) has its fees paid for by Seller, and (vii) is licensed in an appropriate engineering discipline for the required certification being made. The engagement and payment of a Licensed Professional Engineer solely to provide the certifications, evaluations and opinions required by this Agreement shall not constitute a prohibited economic relationship, association or nexus with Seller, so long as such engineer has no other economic relationship, association or nexus with Seller.

“**MAAF**” has the meaning set forth in Section 5.1.2.

“**Maintenance Outage**” means NERC Event Type MO, as set forth in **Exhibit H**.

“**Major Equipment**” has the meaning set forth in **Exhibit I**.

“**Major Maintenance Cycle**” means, with respect to each item of Major Equipment, the period of time specified therefor in **Exhibit I**.

“**Mediation Notice**” has the meaning set forth in Section 15.2.1.

“**Minimum Monthly Capacity Payment**” has the meaning set forth in Section 5.1.3.

“**Monthly Capacity Payment**” has the meaning set forth in Section 5.1.2.

“**Moody’s**” shall mean Moody’s Investor Services, Inc.

“**MW**” means megawatt.

“**MWh**” means megawatt hour.

“**NERC**” means the North American Electric Reliability Council.

“**Net Energy**” means, for any period, the energy output of the Facility delivered to Buyer at the Electricity Delivery Point pursuant to Buyer’s Dispatch of the Facility of a quantity in MWh not to exceed that associated with Contract Capacity, as measured pursuant to Section 8, less station use and less transformation and transmission losses to the Electricity Delivery Point.

“**Network Resource**” means a generation resource which has been fully integrated into the System.

“**Notifying Party**” has the meaning set forth in Section 8.2.

“**Operating Fuel Quantity**” means, with respect to any hour, the sum of (i) any Baseload Fuel Supply Requirements, (ii) any Peakload Fuel Supply Requirement, and (iii) any Simple Cycle Fuel Requirements.

“**Operating Procedures**” are set out in **Exhibit K**.

“Pacific Prevailing Time” means Pacific Standard Time or Pacific Daylight Time, as applicable on the Day in question.

“Party” has the meaning set forth in the Preamble.

“Peakload Capacity” means incremental Capacity, in excess of the Baseload Capacity, which is generated by the Facility utilizing duct firing.

“Peakload Fuel Supply Requirement” means with respect to any Day, the product of the applicable Peakload Heat Rate multiplied by the quantity Net Energy, or equivalent quantity of Ancillary Services, to be delivered from the Peakload Capacity component of the Contract Capacity.

“Peakload Heat Rate” has the meaning set forth in Section 6.5.3.8.

“Permits” means all permits, licenses, approvals, certificates, entitlements and other authorizations issued by Governmental Authorities required for the development, construction, ownership, operation and maintenance of the Facility, and all amendments, modifications, supplements, general conditions and addenda thereto.

“Person” means any individual, entity, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, association or other entity or governmental authority.

“Planned Outage” means NERC Event Type PO, as set forth on **Exhibit H**.

“Pledge Interest” has the meaning set forth in Section 7.2.2.

“Potential Event of Default” means an event which, but for the passing of time or the giving of notice or both, would constitute an Event of Default.

“Premises” means the real property on which the Facility is or will be located, as more fully described on **Exhibit A**.

“Prime Rate” means the rate per annum equal to the publicly announced prime rate or reference rate for commercial loans to large businesses in effect from time to time quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, N.Y., selected by the Party to whom interest based on the prime rate is being paid.

“Protective Apparatus” means such equipment and apparatus, including protective relays, circuit breakers and the like, necessary or appropriate to isolate the Facility from the System consistent with Prudent Electrical Practices.

“Prudent Electrical Practices” means any of the practices, methods and acts engaged in or approved by a significant portion of the electrical utility industry or any of the practices, methods or acts for gas fired, combined cycle electric generation facilities, which, in the exercise

of reasonable judgment in the light of the facts known at the time a decision is made, would have been expected to accomplish the desired result in a cost efficient manner consistent with good business practices, reliability criteria, safety considerations and expediency. Prudent Electrical Practices is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts.

“Reference Conditions” means the following conditions: standard ambient air pressure at the Premises of [●]; ambient temperature, dry bulb, of [●] degrees Fahrenheit; and relative humidity of [●] percent ([●]%).

“Regulated Materials” means any substance, material, or waste which is now or hereafter becomes listed, defined, or regulated in any manner by any United States federal, state or local law and includes any oil, petroleum, petroleum products and polychlorinated biphenyls.

“Remaining Capacity” means all the Capacity of the Facility in excess of the Contract Capacity.

“Replacement Price” means the price at which Buyer, acting in a commercially reasonable manner, purchases for delivery at the Electricity Delivery Point a replacement for any energy that Seller is required to deliver under this Agreement, plus (i) costs reasonably incurred by Buyer in purchasing such replacement energy, and (ii) additional transmission charges, if any, reasonably incurred by Buyer in causing replacement energy to be delivered to the Electricity Delivery Point. If Buyer elects not to make such a purchase, the Replacement Price shall be the market price at the Electricity Delivery Point for such energy not delivered, plus any additional cost or expense incurred as a result of Seller’s failure to deliver, as determined by Buyer in a commercially reasonable manner (but not including any penalties, ratcheted demand or similar charges).

“Reporting Month” has the meaning set forth in Section 6.9.1.

“Requested Net Energy” means, for any period, the Net Energy of the Facility that has been scheduled by Buyer for delivery in accordance with the Dispatch Procedures and other terms of this Agreement.

“Required Facility Documents” means all Permits and agreements now or hereafter necessary for the development, construction, ownership, operation and maintenance of the Facility including the documents (i) to which Seller and Buyer are a party evidencing the Security Interests and (ii) those set forth in **Exhibit C**.

“Requirements of Law” means collectively, as to Seller and [*if Seller is not the ultimate parent, any ultimate parent entity*], Seller’s organizational or governing documents and any federal, state, county or municipal, law, treaty, ordinance, franchise, rule, regulation, order, writ, judgment, injunction, decree, award or determination of any arbitrator, or a court or other Governmental Authority, in each case, now or hereafter applicable to or binding upon this Agreement, the Facility, Seller or [*if Seller is not the ultimate parent, any parent entity*] to which any of their respective properties are subject (including those pertaining to electrical, building, zoning, environmental and occupational health and safety).

“**RTO**” means any person, other than Transmission Provider, that becomes responsible as system operator for, or directs the operation of, the System.

“**S&P**” shall mean Standard & Poor’s Rating Group (a division of McGraw-Hill, Inc.).

“**Schedule**” or “**Scheduled**” means the acts of Buyer and Seller pursuant to Section 6.5 setting forth a schedule requesting and accepting the delivery of energy by Seller to Buyer on and after the Commercial Operation Date.

“**Scheduling Constraints**” means the limitations of the Facility’s Capacity arising as a result of the need to observe the physical ramp rates of the Major Equipment and maintain minimum run times, minimum down times, minimum dispatch levels of Net Energy and Capacity per CT, and maximum levels of Net Energy and Capacity, to be generated by any item of Major Equipment, in compliance with the warranty requirements relating to each item of Major Equipment, the operating and maintenance standards recommended by the Facility’s equipment suppliers, and Prudent Electrical Practice, as set forth on **Exhibit Q**.

“**Scheduling Fees**” means fees assessed by any person to schedule the delivery of the energy.

“**Security Interests**” has the meaning set forth in Section 7.2.1.

“**Seller**” has the meaning set forth in the Preamble.

“**Simple Cycle**” means operation of a Combustion Turbine without capturing the waste heat from the Combustion Turbine in the associated heat recovery steam generator and, therefore, without producing additional Net Energy from the steam turbine utilizing steam produced by such heat recovery steam generator. When one or more CTs are operated in Simple Cycle mode, the Facility will produce less Capacity and less Net Energy, while consuming Fuel at a higher heat rate, than when the Facility is operated in combined cycle mode to produce Baseload Capacity. The ramp rates applicable to each CT, as set forth in **Exhibit R**, are faster in Simple Cycle mode than in combined cycle mode.

“**Simple Cycle Fuel Supply Requirement**” means with respect to any Day, the product of the applicable Simple Cycle Heat Rate multiplied by the quantity of Net Energy, or equivalent quantity of Ancillary Services, to be delivered from the Facility while dispatched in Simple Cycle mode.

“**Simple Cycle Heat Rate**” has the meaning set forth in Section 6.5.3.8.

“**Solvency**” or “**Solvent**” has the meaning set forth in Section 3.2.12.

“**Standard Heat Rate**” means the actual Heat Rate of the Facility at varying levels of the Net Energy and varying ambient conditions.

“**Start-Up**” means a firing of one or more of the items constituting Major Equipment when such item or items of Major Equipment is not being operated, including any firing required to perform a CT Start. The period of a Start-Up of any item of Major Equipment begins at the

commencement of such firing and ends when such item of Major Equipment obtains and produces on a continuous basis the desired quantity of Net Energy.

“**Start-Up Fuel Quantity**” means, with respect to any Start-Up(s) initiated to supply Net Energy and Ancillary Services to Buyer, the quantity of Fuel actually required by each CT Start.

“**Start-Up Testing**” means the tests set in **Exhibit E**.

“**System**” means the electric transmission sub-station and distribution facilities owned, operated or maintained by Transmission Provider, which shall include, after construction and installation of the Facility, the circuit reinforcements, extensions, and associated terminal facility reinforcements or additions required to complete the Facility, all as set forth in the Interconnection Agreement.

“**Tariff**” means Buyer’s FERC Electric Tariff Fourth Revised Volume No. 11 Pro Forma Open Access Transmission Tariff, as revised from time to time.

“**Term**” has the meaning set forth in Section 2.1.

“**Transmission Provider**” means [*PacifiCorp, an Oregon corporation, acting in its transmission function capacity.*] [*Note to Bidders: If the Facility is interconnected to another system, identify the appropriate Transmission Provider.*] Seller acknowledges that Buyer, as Buyer under this Agreement, has no responsibility for or control over such Transmission Provider.

“**Unexcused Outage**” has the meaning set forth in Section 5.1.2.

“**Unplanned Outage**” means NERC Event Type U, as set forth on **Exhibit H**.

“**Variable Energy Payment**” means the payment to be made by Buyer to Seller pursuant to Section 5.3 and as specified in **Exhibit F**.

1.2 Rules of Interpretation.

1.2.1 General. Unless otherwise required by the context in which any term appears, (a) the singular shall include the plural and vice versa; (b) references to “Articles,” “Sections,” “Schedules,” “Annexes,” “Appendices” or “Exhibits” (if any) shall be to articles, sections, schedules, annexes, appendices or exhibits of this Agreement; (c) all references to a particular entity or an electricity market price index shall include a reference to such entity’s or index’s successors and (if applicable) permitted assigns; (d) the words “herein,” “hereof” and “hereunder” shall refer to this Agreement as a whole and not to any particular section or subsection hereof; (e) all accounting terms not specifically defined in this Agreement shall be construed in accordance with generally accepted accounting principles in the United States of America, consistently applied; (f) references to this Agreement shall be deemed to include a reference to all appendices, annexes, schedules and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time; (g) the masculine shall include the feminine and neuter and vice versa; (h) the

word “including” shall be construed in its broadest sense to mean “without limitation” or “but not limited to” and (i) the word “or” is not necessarily exclusive.

1.2.2 Terms Not to Be Construed for or Against Either Party. Each term of this Agreement shall be construed simply according to its fair meaning and not strictly for or against either Party. The Parties have jointly prepared this Agreement, and no term of this Agreement shall be construed against a Party on the ground that the Party is the author of that provision.

1.2.3 Headings. The headings used for the sections of this Agreement are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions of this Agreement.

1.2.4 Interpretation with Interconnection Agreement. Each Party conducts its operations in a manner intended to comply with FERC Order No. 2004, Standards of Conduct for Transmission Providers, requiring the separation of its transmission and merchant functions. Moreover, the Parties acknowledge that Transmission Provider’s transmission function offers transmission service on its System in a manner intended to comply with FERC policies and requirements relating to the provision of open-access transmission service. The Parties recognize that Seller will enter into the separate Interconnection Agreement.

1.2.4.1 The Parties acknowledge and agree that the Interconnection Agreement shall be a separate and free standing contract and that the terms of this Agreement are not binding upon Transmission Provider.

1.2.4.2 Notwithstanding any other provision in this Agreement, nothing in the Interconnection Agreement shall alter or modify the Parties’ rights, duties, and obligations under this Agreement. This Agreement shall not be construed to create any rights between Seller and Transmission Provider.

1.2.4.3 Seller expressly recognizes that, for purposes of this Agreement, Transmission Provider shall be deemed to be a separate entity and separate contracting party whether or not the Interconnection Agreement is entered into with Transmission Provider or an Affiliate thereof.

SECTION 2

TERM; COMMENCEMENT OF OPERATION

2.1 Term. This Agreement shall become effective when it is signed and delivered by both Parties (the “**Effective Date**”) and, unless earlier terminated as provided in this Agreement, shall remain in effect until the [●] anniversary of the Commercial Operation Date (the “**Term**”).

2.2 Milestones. Time is of the essence of this Agreement, and Seller’s ability to meet certain milestones before the Commercial Operation Date and to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date is critically important.

Therefore, Seller shall achieve the following milestones unless waived or extended by Buyer in its sole and absolute discretion:

2.2.1 By [date], Seller shall demonstrate to Buyer's reasonable satisfaction that Seller has made all arrangements and obtained all means for transporting Fuel in quantities sufficient to operate the Facility at the Facility Capacity and shall assign all such transportation rights to Buyer for the Term;

2.2.2 By [date], Seller shall obtain and provide to Buyer copies of all Required Facility Documents necessary for construction of the Facility;

2.2.3 By [date], Seller shall provide to Buyer evidence acceptable to Buyer that Seller has obtained construction financing for the Facility (or alternatively permanent financing subject only to construction of the Facility and Seller's execution of the lender's loan documents);

2.2.4 By [date], Seller shall provide Buyer with an As-built Supplement acceptable to Buyer;

2.2.5 By [date], Seller shall begin deliveries of Net Energy for purposes of initiating Start-Up Testing; and

2.2.6 By the Guaranteed Commercial Operation Date, the Commercial Operation Date shall have occurred. This shall require that all of the following conditions shall have been satisfied or waived by Buyer in its sole and absolute discretion:

(1) Buyer shall have received a certificate addressed to Buyer from a Licensed Professional Engineer certifying that the Facility is able to generate energy reliably in amounts required by this Agreement and in accordance with all other terms and conditions of this Agreement;

(2) Start-Up Testing of the Facility shall have been completed;

(3) After Buyer has received notice of the completion of Start-Up Testing, Buyer shall have endorsed a certificate addressed to Buyer from a Licensed Professional Engineer certifying that the Facility has operated for testing purposes under this Agreement uninterrupted for a period of ten (10) consecutive days at a rate of at least the Facility Capacity based upon any sixty (60) minute period for the entire testing period. Seller must provide five (5) Business Days' written notice to Buyer before the start of the Start-Up Testing period. If the operation of the Facility is interrupted during this initial testing period or any subsequent testing period, the Facility shall start a new consecutive ten (10) day testing period and Seller shall provide Buyer forty-eight (48) hour written notice before the start of such testing period;

(4) Buyer shall have received a certificate addressed to Buyer from a Licensed Professional Engineer certifying that, in accordance with the Interconnection Agreement, all required Electrical Interconnection Facilities have been constructed, all required

interconnection tests have been completed, the Facility is physically interconnected with the System and the Facility Capacity is a Network Resource;

(5) Buyer shall have received a certificate addressed to Buyer from a Licensed Professional Engineer certifying that Seller has obtained all Required Facility Documents for the construction and operation of the Facility and, if requested by Buyer in writing, Seller shall have provided copies of any or all such requested Required Facility Documents, together with (i) the certificates of insurance coverage or insurance policies required by Section 12.1, and (ii) copies of all Required Facility Documents which Seller is responsible to obtain or are required for the construction and operation of the Facility;

(6) Buyer shall have issued a written certificate to Seller certifying that Buyer has received all Facility drawings, plans, specifications, policies, and other documents required by this Agreement;

(7) Buyer shall have received a certificate addressed to Buyer from Seller's primary construction contractor certifying that the Facility has been turned over to Seller for permanent operation and maintenance and that the primary construction contractor owes no further construction-related obligations to Seller (other than punch list items); and

(8) Buyer shall have received a certificate addressed to Buyer from an office of Seller and acceptable to Buyer certifying that no Event of Default by Seller or Potential Event of Default by Seller exists under this Agreement.

2.3 Daily Delay Damages. Seller shall cause the Commercial Operation Date to occur on or before the Guaranteed Commercial Operation Date but no earlier than [**● months**] prior to June 1, 2009. If the Commercial Operation Date does not occur on or before the Guaranteed Commercial Operation Date, to compensate Buyer for the failure to provide energy from the Facility, Seller shall pay Buyer delay damages equal to the Daily Delay Damages for each Day or portion of a Day until that Day that the Commercial Operation Date occurs from and after the Guaranteed Commercial Operation Date, up to a total of forty-five (45) Days. Each Party agrees and acknowledges that (a) the damages that Buyer would incur for the failure to provide energy from the Facility due to delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date would be difficult or impossible to predict with certainty, and (b) the Daily Delay Damages are an appropriate approximation of such damages. This Section 2.3 shall not limit the amount of damages payable to Buyer if this Agreement is terminated as a result of Seller's failure to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date and any such damages shall be determined in accordance with Section 10.7. In addition, this Section 2.3 shall not limit the damages payable to Buyer for matters resulting from delay in achieving the Commercial Operation Date other than the failure to provide energy from the Facility.

2.4 Damages Invoicing. By the tenth (10th) day following the end of the calendar month of the Guaranteed Commercial Operation Date, and continuing on the tenth (10th) day following the end of any calendar month during which Daily Delay Damages are incurred, Buyer shall deliver to Seller a proper invoice showing Buyer's computation of such damages and any

amount due Buyer in respect thereof for the preceding calendar month. No later than ten (10) days after receiving such an invoice, Seller shall pay to Buyer, by wire transfer of immediately available funds to an account specified in writing by Buyer or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in such invoice.

2.5 Buyer's Right to Monitor. During the design, procurement, construction, installation, start up and testing of the Facility, Seller shall permit Buyer and its advisors and consultants to:

(a) Review and discuss with Seller and its advisors and consultants monthly status reports on the progress of the development, design, construction and installation of the Facility. Between the date on which this Agreement is executed and thirty (30) days following the Commercial Operation Date, Seller shall, on or before the tenth (10th) day of each calendar month, provide Buyer with a brief monthly status report for the preceding month.

(b) Monitor the development, design, engineering, procurement, construction and installation of the Facility and the performance of the contractor(s) constructing the Facility.

(c) Review and monitor the contractors' performance and achievement of (i) all initial performance tests and other tests required under the Facility construction contracts that must be performed in order to achieve the Commercial Operation Date and (ii) all tests contemplated by the warranty agreement(s) between the Seller and manufacturer of the Facility's CTs and any other Major Equipment. Buyer reserves the right to require additional performance tests of the Facility's CTs in the event that Seller elects not to have such CTs or other Major Equipment covered by warranty agreements acceptable to Buyer. Seller shall provide Buyer with at least five (5) Business Days' prior notice of each such test.

(d) Witness initial performance tests and other tests and review the results thereof.

(e) Perform such examinations, inspections, and quality surveillance as, in Buyer's reasonable judgment, are appropriate and advisable to determine that all Major Equipment comprising the Facility has been properly commissioned and that the Facility has achieved the Commercial Operation Date.

The Parties acknowledge and agree that Buyer is under no obligation to perform any of the monitoring rights under this Section 2.5. Any information or knowledge obtained by Buyer in the exercise of its rights under this Section 2.5 shall not prevent Buyer from subsequently asserting that Seller failed to perform its obligations under this Agreement or failed to satisfy any of its conditions in Section 2, nor shall the exercise by Buyer of such rights be used as evidence that Seller performed its obligations under this Agreement or satisfied its conditions in Section 2 or that Buyer gave any consent to Seller's action in meeting its obligations under Section 2. Buyer's right to indemnification, payments for damages or other remedy in this Agreement will not be affected by any investigation conducted with respect to, or any knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Commercial Operation Date, including with respect to the accuracy or inaccuracy of any representation or warranty, or compliance with any covenant or obligation

hereunder. Buyer shall maintain one or more designated representatives for purposes of the monitoring activities contemplated in this Section 2.5, which representatives shall have authority to act for Buyer in all technical matters under this Section 2.5. However, Buyer's representatives, in their capacity as representatives, shall not have the authority to amend or modify any provision of this Agreement. Buyer's initial representatives for purposes of this Section 2.5 and their contact information are listed in **Exhibit N**. Buyer may, by written notice to Seller, change its representatives or the contact information for such representatives.

SECTION 3

REPRESENTATIONS AND WARRANTIES

3.1 Buyer's Representations and Warranties. Buyer represents, covenants, and warrants to Seller that:

3.1.1 Organization. Buyer is duly organized and validly existing under the laws of the State of Oregon.

3.1.2 Authority. Buyer has the requisite corporate power and authority to enter into this Agreement and to perform according to the terms of this Agreement.

3.1.3 Corporate Actions. Buyer has taken all corporate actions required to be taken by it to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

3.1.4 No Contravention. The execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Buyer or any valid order of any court, or any regulatory agency or other body having authority to which Buyer is subject.

3.1.5 Valid and Enforceable Agreement. This Agreement is a valid and legally binding obligation of Buyer, enforceable against Buyer in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

3.2 Seller's Representations and Warranties. Seller represents, covenants, and warrants to Buyer that:

3.2.1 Organization. Seller is a [*insert legal entity*] duly [*organized*] and validly existing under the laws of [_____].

3.2.2 Authority. Seller (i) has the requisite power and authority to enter into this Agreement and to perform, including all required regulatory authority

to make wholesale sales from the Facility; (ii) has the power and authority to own and operate its businesses and properties, to own or lease the property it occupies and to conduct the business in which it currently engaged; and is duly qualified as [] in Utah; and (iii) is in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification.

3.2.3 Actions. Seller has taken all [*insert appropriate legal entity*] actions required to authorize the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby.

3.2.4 No Contravention. The execution, delivery, performance and observance by Seller of its obligations under this Agreement do not and will not:

3.2.4.1 contravene, conflict with or violate any provision of any material Requirements of Law presently in effect having applicability to either Seller or [*if Seller is not the ultimate parent, Seller's ultimate parent*];

3.2.4.2 require the consent or approval of or material filing or registration with any Governmental Authority or other person other than such consents and approvals which are (i) set forth in **Exhibit C** or (ii) required in connection with the construction and/or operation of the Facility and expected to be obtained in due course;

3.2.4.3 result in a breach of or constitute a default under any provision of any security issued by [*ultimate parent of Seller*] or any of its Affiliates or any material agreement, instrument or undertaking to which either [*ultimate parent of Seller*] or any of its Affiliates is a party or by which [*ultimate parent of Seller*]'s or any of its Affiliates' property is bound; or

3.2.4.4 require Seller to be licensed under the Utah Construction Trades Licensing Act.

3.2.5 Valid and Enforceable Agreement. This Agreement is a valid and legally binding obligation of Seller, enforceable against Seller in accordance with its terms (except as the enforceability of this Agreement may be limited by bankruptcy, insolvency, bank moratorium or similar laws affecting creditors' rights generally and laws restricting the availability of equitable remedies and except as the enforceability of this Agreement may be subject to general principles of equity, whether or not such enforceability is considered in a proceeding at equity or in law).

3.2.6 Litigation. No litigation, arbitration, investigation or other proceeding is pending or, to the best of Seller's knowledge, threatened against either Seller, its parent(s), or any Affiliate with respect to this Agreement and the transactions contemplated hereby and thereby.

3.2.7 Accuracy of Information. To the knowledge of Seller, no exhibit, contract, report or document furnished by Seller to Buyer in connection with this Agreement, or the negotiation or execution of this Agreement contains any

material misstatement of fact or omits to state a material fact or any fact necessary to make the statements contained therein not misleading.

3.2.8 Required Facility Documents. All Required Facility Documents are set forth in **Exhibit C** attached hereto. To Seller's knowledge, no unusual or burdensome conditions are expected by Seller to be placed upon, or created by, any of the Required Facility Documents. The anticipated use of the Facility complies with all applicable restrictive covenants affecting the Premises and all Requirements of Law. The representation made in this Section 3.2.8 shall be deemed to be given throughout the entire Term.

3.2.9 Taxes. Seller has filed or caused to be filed all tax returns which were required to be filed and has paid all taxes shown to be due and payable on said returns or on any assessments made against it or any of its property including the Premises, and all other taxes, fees or other charges imposed on it or any of its property by any Governmental Authority, and no tax liens have been filed and no claims are being asserted with respect to any such taxes, fees or other charges, except where such taxes, fees or other charges are being contested in good faith by Seller through appropriate proceedings with adequate reserves set aside in the event of an adverse determination.

3.2.10 Seller's Intent. Seller intends:

3.2.10.1 To construct and operate the Facility in accordance with Prudent Electrical Practices, and in accordance with, and subject to the terms of this Agreement;

3.2.10.2 To supply the Contract Capacity and Net Energy of the Facility throughout the Term of this Agreement in accordance with the provisions of this Agreement; and

3.2.10.3 *[if Seller will be a single purpose vehicle, that its sole business shall be the ownership and operation of the Facility.]*

3.2.11 No Collusion. Neither Seller nor any of its representatives has entered into any form of collusive arrangement with any person or entity which directly or indirectly has to any extent lessened competition between Seller and any other person or entity for the supply of Capacity and energy sought by Buyer.

3.2.12 Solvency. Seller, its parent(s) and their Affiliates are Solvent. As used herein, "Solvent" and "Solvency" means with respect to any person or entity on any date of determination, that on such date (a) the book value of the property of such person or entity is greater than the total amount of book liabilities, including contingent liabilities that are probable and estimable, of such person or entity, (b) such person or entity is able to pay its debts as they become absolute and matured, taking into account the possibility of refinancing such obligations and selling assets, (c) such person or entity does not intend to, and does not believe that it will, incur debts or liabilities beyond such person's or entity's ability to pay such debts and liabilities as they mature taking into account the possibility of refinancing such obligations and selling assets and (d) such person or entity is not engaged in business

or a transaction, and is not about to engage in business or a transaction, for which such person's or entity's property would constitute an unreasonably small capital. The amount of contingent liabilities at any time shall be computed as the amount that are probable and estimable in the light of all the facts and circumstances existing at such time, and that can reasonably be expected to become an actual or matured liability.

3.3 Notice. If at any time during the Term, any Party obtains actual knowledge of any event or information which would have caused any of the representations and warranties made by it in this Section 3 to have been materially untrue or misleading when made, such Party shall provide the other Party with notice in accordance with Section 17.12 of the event or information, the representations and warranties affected, and the action, if any, which such Party intends to take to make the representations and warranties true and correct. The notice required pursuant to this Section 3 shall be given as soon as practicable after the occurrence of each such event.

SECTION 4

SALE AND PURCHASE OBLIGATIONS

4.1 Sale and Purchase of Contract Capacity, Capacity Rights, Net Energy and Ancillary Services.

4.1.1 Subject to the terms and conditions of this Agreement, on and after the Commercial Operation Date and for the balance of the Term, Seller shall make available to Buyer from the Facility the Contract Capacity and the Capacity Rights, and all Net Energy and Ancillary Services associated with such Contract Capacity that is Scheduled by Buyer for delivery in accordance with the Dispatch Procedures and Section 6.5.2.

4.1.2 Subject to Section 5.1, Buyer shall purchase the Contract Capacity of the Facility and pay a monthly Capacity Payment to Seller.

4.1.3 Seller shall provide Ancillary Services and Capacity Rights to Buyer without additional charge or expense.

4.1.4 Buyer shall be under no obligation to purchase any Capacity under this Agreement other than Contract Capacity.

4.1.5 For each quantity of Net Energy that Buyer has Scheduled for delivery in any hour from the Facility, Buyer shall deliver the requisite Fuel Supply Requirement to Seller during such hour, comprised of any applicable Startup Fuel Quantity and the applicable Operating Fuel Quantity. As more fully described in Section 6.5.3, the Operating Fuel Quantity shall include: (i) the sum of the Baseload Fuel Supply Requirement for each hour in which Buyer desires to have Seller provide any Scheduled quantity of Net Energy or Ancillary Services utilizing part or all of the Baseload Capacity of Buyer's Contract Capacity, (ii) the sum of the Peakload Fuel

Supply Requirements for each hour in which Buyer desires to have Seller provide any Scheduled quantity of Net Energy or Ancillary Services utilizing part or all of the Peakload Capacity of Buyer's Contract Capacity, and (iii) the Simple Cycle Fuel Supply Requirement for each hour in which Buyer desires to have Seller provide any Scheduled quantity of Net Energy or equivalent quantity of Ancillary Services to be delivered from the Facility in Simple Cycle mode utilizing part of Buyer's Contract Capacity.

4.1.6 For each quantity of Ancillary Services that Buyer has Scheduled for delivery in any hour from the Facility that requires Seller to consume Fuel in the Facility, Buyer shall deliver a quantity of Fuel to Seller equal to the Fuel Supply Requirement applicable to an equivalent quantity of Net Energy. Seller and Buyer shall specify in the Operating Procedures the means by which Seller and Buyer shall determine the precise quantity of the Fuel Supply Requirement applicable to various types of Ancillary Services that Buyer may Schedule from time to time under this Agreement.

4.1.7 In addition to Buyer providing the applicable Fuel Supply Requirement to Seller, Buyer shall also pay the amounts specified in Section 5, and Seller shall then provide to Buyer without additional charge or expense all Net Energy and Ancillary Services that have been Scheduled by Buyer.

4.1.8 Seller shall provide to Buyer from the Facility the Contract Capacity, and associated quantities of Net Energy or Ancillary Services as Scheduled by Buyer in accordance with this Agreement. Subject to Section 4.3, the Contract Capacity, and the Net Energy and Ancillary Services associated with such Contract Capacity, shall be made available exclusively to Buyer and Seller shall be free to sell the Remaining Capacity of the Facility, and the Net Energy and Ancillary Services associated with such Remaining Capacity, to any third party. Seller shall have absolute discretion over the operation of the Facility to generate the quantities of Capacity, Net Energy and Ancillary Services to be delivered to Buyer in compliance with the provisions of this Agreement. In addition, Seller shall have absolute discretion over the use of the Remaining Capacity in sales to any third party(s).

4.2 Deliveries; Title and Risk of Loss. All Net Energy and Ancillary Services that have been, at Buyer's option, Scheduled by Buyer shall be delivered by Seller to Buyer at the Electricity Delivery Point. Seller shall be deemed to be in exclusive control of, and responsible for any damage or personal injury caused by, Net Energy or Ancillary Services delivered hereunder up to the Electricity Delivery Point; and Buyer shall be deemed to be in exclusive control of, and responsible for any damages or injury caused by, such Net Energy or Ancillary Services from the Electricity Delivery Point. Seller warrants and agrees that it will transfer and deliver Contract Capacity, Capacity Rights, Ancillary Services and Net Energy to Buyer free and clear of all liens or other encumbrances and rights of third parties. Title to and risk of loss of all Net Energy or Ancillary Services shall transfer from Seller to Buyer upon delivery to Buyer at the Electricity Delivery Point. Buyer shall be deemed to be in exclusive control of, and responsible for any damage or personal injury caused by, Fuel delivered hereunder up to the Fuel Delivery Point; and Seller shall be deemed to be in exclusive control of, and responsible for any

damages or injury caused by, such Fuel at and from the Fuel Delivery Point. Buyer warrants that it will deliver Fuel to Seller free and clear of all liens or other encumbrances. Title to and risk of loss of all Fuel shall transfer from Buyer to Seller upon delivery to the Fuel Delivery Point.

4.3 Dispatching Deliveries from the Contract Capacity versus the Remaining Capacity.

4.3.1 Seller shall exclusively make available to Buyer the Contract Capacity of the Facility, and Seller shall deliver to Buyer, and Buyer shall receive, the quantities of Net Energy and Ancillary Services that were Scheduled by Buyer from such Contract Capacity in accordance with this Agreement. Seller retains absolute discretion as to which items of the Major Equipment of the Facility are operated to generate and deliver (i) the quantities of Net Energy and Ancillary Services to be delivered to Buyer from the Contract Capacity and (ii) the quantities of Net Energy and Ancillary Services to be delivered to any third party purchaser from the Remaining Capacity.

4.3.2 During any Excused Outage or Unexcused Outage of the Facility, as defined in Section 5.1.2, which causes a partial outage of the Facility, but not a complete shutdown of the Facility, Buyer's right to the Contract Capacity shall not be affected by any reduction in the Facility Capacity, and to the extent there is a reduction of Facility Capacity, Seller shall make available to Buyer all of such reduced Facility Capacity up to the Contract Capacity. Subject to the foregoing, Seller shall, at all times, have the right to make available for sale to any third party purchasing any of the Remaining Capacity no more than the actual available Capacity of the Facility less the Contract Capacity.

4.3.3 At any time that the Contract Capacity is available, Buyer may elect to Schedule any of the quantities of Net Energy, and equivalent quantities of Ancillary Services, specified in the range of dispatchable quantities of Net Energy on **Exhibit Q** and the quantity of Fuel required to be provided by Buyer with respect to each such Scheduled quantity of Net Energy, or equivalent quantity of Ancillary Services, shall be determined by the Baseload Heat Rates, Peakload Heat Rates, and Simple Cycle Heat Rates, corresponding to such Scheduled quantity of Net Energy, or equivalent quantity of Ancillary Services, as set forth on such **Exhibit Q**.

4.4 Curtailment Due to Failure to Comply with Interconnection Agreement. Buyer shall not be obligated to purchase Contract Capacity or receive or pay for Net Energy to the extent generation or transmission curtailment is required as a result of Seller's non-compliance with the Interconnection Agreement. Nothing in this Section 4.4 shall relieve Seller of its duty to comply with the Interconnection Agreement and Net Energy curtailed as provided under this Section 4.4 shall not be deemed to be an Excused Outage, or credited toward the achievement of Net Energy, as the case may be.

4.5 Sale of Test Energy. During the period between the Effective Date and the Commercial Operation Date, Seller shall sell and make available to Buyer, and Buyer shall purchase and accept, all energy produced by the Facility during such period (the "Test Energy")

as if it were Net Energy. Seller shall provide the necessary Fuel, and Buyer shall pay Seller the price specified in Section 5.3, for such Test Energy.

SECTION 5

PAYMENTS; COSTS

5.1 Capacity Payments. Commencing on the last day of the month in which the Commercial Operation Date occurs, Buyer shall, subject to Section 5.1.4, pay to Seller in arrears a Capacity Payment equal to the greater of (i) the Monthly Capacity Payment as determined in Section 5.1.2, or (ii) the Minimum Monthly Capacity Payment as determined in Section 5.1.3.

5.1.1 All Capacity Payments shall be billed on a calendar month basis. In the event that Commercial Operation Date does not occur at the start of a calendar month, the first month's Capacity Payment shall be prorated to reflect the actual number of days of Commercial Operation in such month.

5.1.2 Monthly Capacity Payment. The "Monthly Capacity Payment" shall be computed based upon the following formula:

Monthly Capacity Payment = $(CC \times 1000 \times CPR \times MAAF) - CPS$, where:

CC = the Contract Capacity;

CPR = Capacity Payment Rate;

CPS = Capacity Payment Shortfall, if any; and

MAAF = Availability Adjustment Factor for that month, computed as follows:

a. If $CAF_m \geq 96\%$, $MAAF = 1$

b. If $CAF_m < 96\%$, $MAAF = 1 - 2 \times (.96 - CAF_m)$

Provided, however, MAAF cannot be less than zero (0).

CAF_m = Average Capacity Availability Factor for a month shall equal the sum of the hourly Capacity Availability Factors (" CAF_h ") determined for each hour of such month, divided by the total number of hours in such month; and

CAF_h = $(AD + DD) / AFCE$

Provided, however, CAF_h cannot be more than one (1).

where:

“AD” (Actual Deliveries) means, for any hour, the actual quantity of energy generated by the Facility and delivered by Seller to Buyer at the Electricity Delivery Point;

“DD” (Deemed Deliveries) means, for any hour, (i) a quantity of energy equal to the amount of energy that could have been generated by that portion of the Ambient Facility Capacity that was set forth in the Availability Notice (a) that was not dispatched by Buyer in such hour, unless such failure to dispatch was caused during times and to the extent that Transmission Provider curtails Network Integration Transmission Service (as defined in the Tariff) to Buyer pursuant to the terms of the Tariff, (b) that was not generated and delivered due to a Potential Event of Default or an Event of Default by Buyer, or (c) that was not operated to generate and deliver Net Energy or Ancillary Services to Buyer due to any failure by Buyer, including any failure of Buyer to deliver Fuel to the Facility to the extent Seller’s operations are affected by such complete and/or partial failure to deliver Fuel; (ii) any amount of energy that was not available from the Facility for dispatch and receipt by Buyer, during the relevant hour, due to any outage or derating that meets the requirements for Scheduled Maintenance established in **Exhibit I**; and (iii) any amount of energy that was not available from the Facility for Dispatch and receipt by Buyer, during the relevant hour, due to any Force Majeure event. The unavailability of Capacity for any of the reasons set forth in clauses (i)(c), (ii) or (iii) shall be considered an “**Excused Outage**.” To the extent that the Capacity of the Facility, up to the Contract Capacity, is unavailable to Buyer for any reason other than an Excused Outage shall be considered an “**Unexcused Outage**.”

“AFCE” (Ambient Facility Capacity Energy) means the quantity of energy that could be produced from the Ambient Facility Capacity during such hour.

5.1.3 Minimum Monthly Capacity Payment. During any month, the “**Minimum Monthly Capacity Payment**” shall equal the amount determined by the following formula:

Minimum Monthly Capacity Payment = $CC \times 1000 \times CPR \times [\bullet\%]$, where:

CC = the Contract Capacity;

CPR = Capacity Payment Rate; and

% = $[\bullet]$.

5.1.4 Carry-Over Provisions. With respect to any month in which the calculated Monthly Capacity Payment is less than the Minimum Monthly Capacity Payment, the difference between the two payment amounts shall be set forth in a separate account (the amount in such account is referred to herein as the “**Capacity Payment Shortfall**”). The Capacity Payment Shortfall shall be increased by interest at the Prime Rate divided by 365 on the maximum amount of the Capacity Payment Shortfall on that day and shall be recovered by Buyer as a credit against the

otherwise applicable Monthly Capacity Payment owed to Seller for such month and by drawing on the Carry-Over-Letter of Credit as provided below. That portion of any Capacity Payment Shortfall which is not recovered in any month shall be carried over to each subsequent month thereafter until recovered by Buyer in full from Seller. If the Capacity Payment Shortfall exceeds \$[●], then Seller shall provide a Letter of Credit for the benefit of Buyer, in form reasonably acceptable to Buyer, with a face amount equal to the full amount of the Capacity Payment Shortfall amounts (“**Carry-Over Letter of Credit**”). The amount of such Carry-Over Letter of Credit shall be adjusted thereafter, at the end of each month, to equal the then-outstanding Capacity Payment Shortfall. At the end of each Contract Year, Buyer shall be entitled to draw down against the Carry-Over Letter of Credit for the amount the Capacity Payment Shortfall that has not been recovered as of that date.

5.2 Energy Payment. Commencing on the last day of the month in which the Commercial Operation Date occurs, Buyer shall pay to Seller in arrears a Variable Energy Payment as set forth in **Exhibit F** for Net Energy.

5.3 Test Energy. For the period between the Effective Date and the Commercial Operation Date, Seller shall sell and deliver Net Energy to Buyer at the Electricity Delivery Point as Test Energy. Buyer shall pay Seller for Test Energy delivered at the Electricity Delivery Point, an amount per MWh equal to eighty-five percent (85%) of the settled price for the applicable hour in the daily (i) firm on-peak, (ii) firm-off peak or (iii) 24-hour firm (on Sundays and NERC holidays) Dow JonesTM Palo Verde Electricity Price Index; *provided, however*, that the amount to be paid by Buyer for such Test Energy shall in no event exceed seventy-five percent (75%) of the price per MWh specified on **Exhibit M** for the first Contract Year. If the Dow JonesTM Palo Verde Index ceases to be published during the Term, Buyer shall select as a replacement electricity price index or component, an index acceptable to Buyer in its discretion that, after any necessary adjustments, provides the most reasonable substitute quotation of the daily price of firm on-peak, firm off-peak or 24-hour firm energy at Palo Verde for the applicable periods.

5.4 Costs and Charges. Seller shall be responsible for all costs or charges imposed in connection with the delivery of Net Energy at the Electricity Delivery Point, including transmission costs and charges. Without limiting the generality of the foregoing, except to the extent otherwise provided in the Interconnection Agreement, Seller shall bear all costs associated with the modifications to Transmission Provider’s interconnection facilities or electric system (including system upgrades) caused by or related to (a) the interconnection of the Facility with Transmission Provider’s system, (b) any increase in Capacity of the Facility, and (c) any increase of delivery of energy from the Facility.

5.5 Station Service. Seller shall be responsible for arranging and obtaining, at its sole risk and expense, any station service required by the Facility that is not provided by the Facility itself.

SECTION 6

OPERATION AND CONTROL

6.1 As-Built Supplement. Upon completion of construction of the Facility, Seller shall provide Buyer the As-built Supplement. The As-built Supplement shall be deemed effective and shall be added to **Exhibit A** of this Agreement when it has been reviewed and approved by Buyer. Buyer shall not unreasonably withhold, condition or delay its approval of the As-built Supplement.

6.2 Measurement and Quality of Net Energy. All Net Energy shall be measured at the Electricity Delivery Point and shall meet all requirements in the Interconnection Agreement and the specifications set forth in **Exhibit Q**. Seller shall instruct the Transmission Provider in writing that Buyer is entitled to receive, directly from Transmission Provider, any and all data associated with the Facility and/or the production of Net Energy that the Transmission Provider has in its possession.

6.3 Standard of Facility Operation.

6.3.1 General.

6.3.1.1 At Seller's sole cost and expense, Seller shall operate, maintain and repair the Facility and the Electrical Interconnection Facilities in accordance with (i) the standards, criteria and formal guidelines of FERC, NERC, any RTO, and any successors to the functions thereof; (ii) the Required Facility Documents; (iii) the Interconnection Agreement; (iv) all Requirements of Law; (v) the requirements of this Agreement; and (vi) Prudent Electrical Practice. During the Term, Seller shall be the sole owner of the Electrical Interconnection Facilities. Seller shall defend, indemnify and hold Buyer harmless from and against any requirements to comply with FERC Open Access requirements respecting the Electrical Interconnection Facilities caused by Seller's act or omission. Seller acknowledges that it shall have no claims under this Agreement against Buyer, acting in its merchant function capacity, with respect to any requirements imposed by or damages caused by Buyer, acting in its transmission function capacity, in connection with the Interconnection Agreement or otherwise.

6.3.1.2 Without limiting the generality of Section 6.3.1.1, Seller shall:

6.3.1.2.1 At all times, employ qualified and trained personnel for managing, operating and maintaining the Facility and for coordinating such managing, operating and maintenance with Buyer. Seller shall ensure that prior to or on the first Day Seller delivers energy to the Electricity Delivery Point such qualified and trained personnel are available to Buyer at all times, twenty-four (24) hours per Day during the Term.

6.3.1.2.2 Operate and maintain the Facility with due regard for the safety, security and reliability of the System and Buyer's customers and in compliance with the general specifications contained in **Exhibit I**.

6.3.1.2.3 Comply with operating and maintenance standards recommended by the Facility's equipment suppliers.

6.3.1.2.4 Coordinate the Facility's relaying and protection to conform with Prudent Electrical Practice.

6.3.1.2.5 Furnish and install, at Seller's sole expense, a manually operable disconnecting device that can be locked by Buyer in the open position and visually checked to be in the open position, so as to be able to electrically isolate the Facility from the System. This device(s) shall be installed at a location at or near the Electricity Delivery Point.

6.3.1.2.6 Have the Facility's protective relays calibrated and operationally checked, at least annually by a person qualified to perform such service and provide Buyer with a written confirmation of the calibration.

6.3.1.2.7 Operate the Facility in such a manner so as not to have an adverse effect on Buyer's voltage level or voltage waveform.

6.3.1.2.8 Operate the Facility in a manner and consistent with the Operating Procedures so as to permit Buyer to dispatch individual items of Major Equipment required to generate energy Scheduled by Buyer.

6.3.2 Interconnection. Pursuant to the Interconnection Agreement, Seller shall be responsible for the costs and expenses associated with interconnection of the Facility at its Facility Capacity at the Electricity Delivery Point, including the costs of any System upgrades beyond the Electricity Delivery Point necessary to interconnect the Facility with System and to allow the delivery of energy to the Electricity Delivery Point.

6.3.3 Coordination with System. Pursuant to the Interconnection Agreement, Seller shall be responsible for the coordination and synchronization of the Facility's equipment with the System, and shall be solely responsible for (and shall defend and hold Buyer harmless against) any damage that may occur as a direct result of Seller's improper coordination or synchronization of such equipment with the System.

6.4 Operating Procedures and Compliance.

6.4.1 Without limiting the generality of Section 6.2, during the Term, the Parties shall observe the Operating Procedures.

6.4.2 In the Operating Procedures, each Party has designated an authorized representative (an "**Authorized Representative**") and an alternate representative (an "**Alternate Representative**") to act in the Authorized Representative's absence. A Party's appointment of an Authorized Representative and Alternate Representative shall remain in full force and effect until the Party delivers written notice of substitution to the other Party. The Authorized Representatives and Alternate Representatives shall be managers well-experienced with regard to matters relating to the implementation of the Parties' rights and obligations under this Agreement.

6.4.3 Operational Compliance.

6.4.3.1 Required Facility Documents. Seller shall maintain in full force and effect and available for inspection by Buyer during the Term all Required Facility Documents now or hereafter required.

6.4.3.2 Hazardous Substances. Seller shall operate the Facility in compliance with all Environmental Laws and permits, licenses, rules or orders promulgated, issued or otherwise required by a Governmental Authority having jurisdiction or enforcement power over any Environmental Law and Seller. Seller shall immediately notify Buyer if Seller or any Affiliate of Seller receives or obtains any actual knowledge of or actual notice of any past, present or future actions or plans which may interfere with or prevent compliance or continued compliance with Environmental Laws, affect the construction or operation of the Facility, or may give rise to any material liability under any Environmental Laws or to any common law or legal liability or otherwise form the basis of any claim, action, demand, suit, proceeding, hearing, study or investigation under Environmental Laws.

6.4.4 Taxes. Seller shall pay when due or reimburse Buyer for all existing and any new sales, use, excise, ad valorem, and any other similar taxes, imposed or levied by any Governmental Authority on the sale of Net Energy to Buyer under this Agreement regardless of whether such taxes are payable by Buyer or Seller under Requirements of Law.

6.4.5 Fines and Penalties.

6.4.5.1 Seller shall pay when due, and in no event later than thirty (30) days of assessment, all fines, penalties, or legal costs incurred by Seller or for which Seller is legally responsible for noncompliance by Seller, its agents, employees, contractors or subcontractors, with any provision of this Agreement, any agreement, commitment, obligation or liability incurred in connection with this Agreement or the Facility or any Requirements of Law, except where such fines, penalties or legal costs are being contested in good faith by Seller, its agents or contractors through appropriate proceedings with (i) adequate reserves set aside, or (ii) if requested by Buyer, the posting of adequate security, in the event of an adverse determination.

6.4.5.2 Subject to Section 6.4.4, if fines, penalties, or legal costs are assessed against Buyer by any Governmental Authority due to noncompliance by Seller with any Requirements of Law, or if the performance of Seller is delayed or stopped by order of any Governmental Authority due to Seller's noncompliance with any Requirements of Law, Seller shall indemnify and hold harmless Buyer against any and all losses, liabilities, damages, and claims suffered or incurred by Buyer.

6.4.5.3 Seller shall reimburse Buyer for all fees, damages, or penalties imposed by any Governmental Authority, other person or to other utilities for violations to the extent caused by a Potential Event of Default or an Event of Default by Seller or a failure of performance by Seller under this Agreement.

6.5 Scheduling Procedures.

6.5.1 Availability Notices and Updates.

6.5.1.1 By 5:00 A.M. Pacific Prevailing Time on the Business Day immediately preceding the next three (3) Days on which energy is to be delivered by Seller to Buyer, Seller shall provide Buyer with an hourly forecast of the Capacity of the Facility expected to be available to Buyer, up to the Contract Capacity, and for each hour of the next three (3) Days (as set forth in the form of **Exhibit L**, an “**Availability Notice**”); *provided, however*, that an Availability Notice provided on a Day before any non-Business Day shall include forecasts for each Day to and including the next Business Day. Delivery of an Availability Notice by Seller to Buyer with respect to any item of Major Equipment declared Available shall be deemed a declaration that all Ancillary Services capable of being provided from such Major Equipment are available for the Days for which such Availability Notice shall be effective. Seller shall promptly update Availability Notices any time information becomes available indicating a change in the forecast of generation of energy from the then current forecast; and in any event within 15 minutes of each time it becomes aware of a change (favorable or unfavorable) in the availability, or projected availability, of the Facility or electric transmission capacity, *provided* that such changes to the daily Availability Notices may be delivered by telephone within the fifteen (15) minute initial period and then later confirmed in writing within the hour. To the extent commercially reasonable, the parties shall cooperate to implement and use automatic forecast updates.

6.5.1.2 Availability Notices shall specify any known limitations on the availability of electric transmission capacity made known to Seller that may affect the ability of the Facility to generate and deliver Scheduled Energy to the Electricity Delivery Point. Seller will also provide Buyer with a monthly Availability Notice six Business Days before the commencement of each such month, and a weekly Availability Notice on each Friday for the next week. Availability Notices identifying reductions in availability will include a short description of the nature of the problem, steps taken or being taken to resolve it and Seller’s estimate of the time by which a reduction in availability will be resolved. Availability Notices identifying projected restorations of Capacity availability will specify the time and extent that such restoration is projected to occur, and Seller will issue a further notice after restoration of availability is complete. Without limiting the foregoing, Seller will inform Buyer of any major limitations, restrictions, deratings or outages known to Seller affecting the ability to generate Facility Capacity for the following Day and will promptly update Seller’s notice to the extent of any material changes in this information.

6.5.1.3 Availability Notices will be used by and relied upon by Buyer to establish and adjust electric transmission schedules. If Seller has provided notice to Buyer of a reduction in availability affecting transmission schedules, then prior to increasing Facility generation for delivery to Buyer as a result of restored availability, Seller will provide Buyer timely notice so as to enable Buyer sufficient time to reestablish its transmission schedules. The failure by Seller to provide revised Availability Notices is not a breach of this Agreement, but rather places Seller at risk for electric imbalance penalties or charges incurred by Buyer due to its lack of notice; *provided, however*, the failure to provide such notices more than [●] times a

Contract Year shall constitute the failure to perform a material obligation hereunder that is not capable of being cured.

6.5.2 Dispatch Notice.

6.5.2.1 No later than 5:00 P.M. Pacific Prevailing Time on each Business Day, Buyer shall deliver to Seller a statement (which may be communicated by fax, e-mail or other electronic medium or a recorded telephone line) setting forth the estimated quantity of Net Energy to be Scheduled during each hour of the immediately following Day(s) at the Electricity Delivery Point. These estimates shall not be binding upon Buyer and Buyer may subsequently revise its estimates. The foregoing estimates by Buyer shall not be construed to permit Seller to limit the availability of the Facility such that Buyer is restricted from Dispatching Contract Capacity unless the Facility Capacity is physically unavailable due to Force Majeure, Planned Outage or Unplanned Outage, as the case may be. Buyer's written statement may request the delivery of energy to be Scheduled during any or all hours of any Day.

6.5.2.2 Each Dispatch Notice submitted by Buyer shall specify (i) the quantities of Net Energy or Ancillary Services being Scheduled from the Baseload Capacity component of the Contract Capacity, (ii) the quantities, if any, of Net Energy or Ancillary Services being Scheduled from the Peakload Capacity component of the Contract Capacity, and (iii) the quantities, if any, of Net Energy or Ancillary Services being Scheduled from the Facility in Simple Cycle mode. In order to be included on any Dispatch Notice, each quantity of Net Energy, and each equivalent quantity of Ancillary Services, being Scheduled by Buyer from the Baseload Capacity component of the Contract Capacity, or from the Peakload Capacity component of the Contract Capacity, or in Simple Cycle mode, must be shown as a dispatchable quantity on **Exhibit P**. Any amount not shown on **Exhibit P**, but which falls between listed numbers on **Exhibit P** and is explicitly within the range of allowed dispatch, shall be interpolated from the numbers immediately above and below that amount which are listed on **Exhibit P**, including applicable heat rates. An example of a hypothetical Dispatch Notice is attached hereto as **Exhibit S**.

6.5.2.3 Seller shall be obligated to accept a request for Net Energy that has been provided to Seller in accordance with the requirements of Sections 6.5.2.1 and 6.5.2.2 except to the extent (i) such request exceeds the Contract Capacity or the Scheduling Constraints or (ii) Seller declares that the Facility is not available as a result of a previously declared Planned Outage, a Forced Outage, or an event of Force Majeure. Seller shall promptly notify Buyer if Seller determines that it will not accept a Schedule submitted by Buyer for any of the foregoing reasons.

6.5.2.4 Buyer shall pay or reimburse Seller for all Scheduling Fees charged by any third parties, if any, associated with the Scheduling of Net Energy or Ancillary Services generated by the Facility for delivery to Buyer hereunder or, if applicable, any fees charged by an independent third party for providing Ancillary Services required to deliver Net Energy or Ancillary Services generated by the Facility to Buyer.

6.5.2.5 From time to time during the Term, Buyer may designate a third party to Schedule quantities of Net Energy on behalf of Buyer in accordance with any

Requirements of Law. Buyer may also wish to change the designated entity acting in such capacity from time to time. Accordingly, upon request of Buyer, Seller shall make such arrangements in accordance with the Requirements of Law at Buyer's cost as may be reasonably necessary to facilitate the re-designation of the Person who may Schedule quantities of Net Energy on Buyer's behalf.

6.5.2.6 As shown in the Scheduling Constraints set forth for the Facility in **Exhibit Q**, the ramp rates applicable to the various items of Major Equipment comprising the Facility are faster for the Facility operating in Simple Cycle mode than in combined cycle mode. To the extent that Buyer elects to Schedule the delivery of Net Energy, and any equivalent quantity of Ancillary Services, from the Facility in Simple Cycle mode the Scheduling Constraints applicable to Simple Cycle mode shall be applicable to such Scheduling by Buyer. For any Scheduling by Buyer of Net Energy or Ancillary Services from the Baseload Capacity component or the Peakload Capacity component of the Contract Capacity, the Scheduling Constraints applicable to combined cycle mode shall be applicable to such Scheduling by Buyer.

6.5.2.7 Buyer may Dispatch energy and Ancillary Services on a real time basis, subject to the Operating Procedures. Seller shall be obligated to accept a request for a change to the applicable schedule for energy and Ancillary Services.

6.5.3 Fuel Arrangements.

6.5.3.1 Seller shall be responsible for providing for the construction, operation and maintenance of, at its sole cost and expense, all Fuel delivery and interconnection facilities specified in **Exhibit N**.

6.5.3.2 Commencing as of the Commercial Operation Date, Buyer shall at all times arrange, procure, supply, nominate, balance and deliver to Seller at the Fuel Delivery, and Seller will accept from Buyer (except as otherwise excused herein) at the Fuel Delivery Point, all of the Fuel Supply Requirement described herein for the quantity of Net Energy and Ancillary Services that Buyer has Scheduled in accordance with the amounts specified in this Section 6.5.3, less the amounts of such Scheduled Net Energy and Ancillary Services which Seller is not obligated to deliver to Buyer, e.g., due to the unavailability of Capacity. Seller shall notify Buyer from time to time of any expected material deviation of the Standard Heat Rate of the Facility from the Guaranteed Heat Rate so that Buyer is able to nominate its Fuel to match the requirements of the Facility.

6.5.3.3 All Fuel required to be delivered under this Agreement shall be delivered by Buyer to the Fuel Delivery Point at no cost to Seller. Subject to Section 6.5.3.1, Buyer shall have the right to supply Fuel utilizing any or all of the Fuel Delivery Points as specified in **Exhibit N**, and shall have the right to change the quantities nominated and received from each pipeline on a daily basis, or more frequently, to the extent permitted by the Fuel Transporter so long as such changes do not disrupt Seller's operations.

6.5.3.4 On and after the Commercial Operation Date, and subject to Section 6.5.3.6, Buyer shall be responsible for the cost of Fuel and all other costs associated with

the supply and transportation of all Fuel necessary to generate the Requested Net Energy as Dispatched pursuant to Section 6.5.2.

6.5.3.5 Seller shall pay for and deliver the Fuel required during Start-Up Testing to reach the minimum load of the Facility.

6.5.3.6 Imbalances associated with Fuel transportation and any balancing penalties or costs resulting from failure to accept delivery of the confirmed quantity of Fuel shall be the responsibility of Buyer. Payment for any balancing penalties or costs shall be in accordance with the procedures of Section 9.

6.5.3.7 All Fuel to be supplied by Buyer shall be measured at the Fuel Metering Point set forth in **Exhibit N**, and shall meet the specifications set forth in **Exhibit N**.

6.5.3.8 The Fuel Supply Requirement applicable to any hour, which Buyer shall be obligated to deliver to Seller at the Fuel Delivery Points, shall consist of the Operating Fuel Quantity and any applicable Start-Up Fuel Quantity for such hour, which shall be determined as follows:

(i) The Operating Fuel Quantity for any hour may include Baseload Fuel Supply Requirement, Peakload Fuel Supply Requirement, and Simple Cycle Fuel Supply Requirement.

(ii) For each quantity of Net Energy, or equivalent quantity of Ancillary Services, that may be Scheduled by Buyer in such hour from the Baseload Capacity component of the Contract Capacity, Buyer shall deliver a quantity of Fuel equal to the Baseload Fuel Supply Requirement, which shall be equal to such quantity of Net Energy, or equivalent quantity of Ancillary Services, multiplied by the applicable Baseload Heat Rate. The “**Baseload Heat Rate**” applicable to different quantities of Net Energy, or equivalent quantities of Ancillary Services, that may be Scheduled by Buyer from time to time from the Baseload Capacity component of the Contract Capacity are set forth in **Exhibit R**. Any amount not shown on **Exhibit R**, but which falls between listed numbers on **Exhibit R** and is explicitly within the range of allowed dispatch, shall be interpolated from the numbers immediately above and below that amount which are listed on **Exhibit R**, including applicable heat rates.

(iii) For each quantity of Net Energy, or equivalent quantity of Ancillary Services, that may be Scheduled by Buyer in such hour from the Peakload Capacity component of the Contract Capacity, Buyer shall deliver a quantity of Fuel equal to the Peakload Fuel Supply Requirement, which shall equal such quantity of Net Energy, or equivalent quantity of Ancillary Services, multiplied by the applicable Peakload Heat Rate. The “**Peakload Heat Rate**” applicable to different quantities of Net Energy, or equivalent quantities of Ancillary Services, that may be Scheduled by Buyer from time to time from the Peakload Capacity component of the Contract Capacity are set forth in **Exhibit R**. Any amount not shown on **Exhibit R**, but which falls between listed numbers on **Exhibit R** and is explicitly within the range of allowed dispatch, shall be interpolated from the numbers immediately above and below that amount which are listed on **Exhibit R**, including applicable heat rates.

(iv) For each quantity of Net Energy, or equivalent quantity of Ancillary Services, that may be Scheduled by Buyer in such hour from the Facility in Simple Cycle mode, Buyer shall deliver a quantity of Fuel equal to the Simple Cycle Fuel Supply Requirement, which shall be equal to such quantity of Net Energy, or equivalent quantity of Ancillary Services, multiplied by the applicable Simple Cycle Heat Rate. The “**Simple Cycle Heat Rate**” applicable to different quantities of Net Energy, or equivalent quantities of Ancillary Services, that may be Scheduled by Buyer from time to time from the Facility in the Simple Cycle mode are set forth in **Exhibit R**. Any amount not shown on **Exhibit R**, but which falls between listed numbers on **Exhibit R** and is explicitly within the range of allowed dispatch, shall be interpolated from the numbers immediately above and below that amount which are listed on **Exhibit R**, including applicable heat rates.

6.5.3.9 Each Party shall cooperate reasonably with the other Party to coordinate the supply and transportation of Fuel for the Facility with the operation of the Facility (x) by providing the other Party such information as the first Party shall reasonably request relating to the supply and transportation of the Fuel to the Facility (on both an historical and estimated future basis) and (y) by maintaining personnel available at all times to address scheduling of Fuel supply and transportation.

6.6 Outages.

6.6.1 Planned Outages. No Planned Outage may be scheduled to occur during any portion of the time period commencing on May 15 and concluding on September 15.

6.6.2 Maintenance Outages. If Seller reasonably determines that it is necessary to schedule a Maintenance Outage, Seller shall notify Buyer of the proposed Maintenance Outage at least five (5) days before the outage begins (or such shorter period to which Buyer may reasonably consent in light of then existing conditions). Upon such notice, the Parties shall plan the Maintenance Outage to mutually accommodate the reasonable requirements of Seller and the service obligations of Buyer; *provided, however*, that, unless Buyer otherwise consents, such consent not to be unreasonably withheld, no Maintenance Outage may be scheduled between the hour ending 0700 through the hour ending 2200, Monday through Saturday, during the time period commencing on May 15 and concluding on September 15. Notice of a proposed Maintenance Outage shall include the expected start date and time of the outage, the amount of Capacity of the Facility that will not be available, and the expected completion date and time of the outage. Seller shall give Buyer notice of the Maintenance Outage as soon as Seller determines that the Maintenance Outage is necessary. Buyer shall promptly respond to such notice and may request reasonable modifications in the schedule for the outage. Seller shall use all reasonable efforts to comply with any request to modify the schedule for a Maintenance Outage. Seller shall notify Buyer of any subsequent changes in Capacity available to Buyer or any changes in the Maintenance Outage completion date and time. As soon as practicable, any notifications given orally shall be confirmed in writing. Seller shall take all reasonable measures and exercise its best efforts to minimize the frequency and duration of Maintenance Outages.

6.6.3 Forced Outages. Seller shall promptly provide to Buyer an oral report of any Forced Outage of the Facility. This report shall include the amount of the Capacity of the Facility that will not be available because of the Forced Outage and the expected return date of such Capacity. Seller shall promptly update the report as necessary to advise Buyer of changed circumstances. As soon as practicable, if the Forced Outage resulted in more than five percent (5%) of the Facility Capacity being unavailable, the oral report shall be confirmed in writing. Seller shall take all reasonable measures and exercise its best efforts to avoid Forced Outages and to minimize their duration.

6.6.4 Notice of Deratings and Outages. Without limiting the foregoing, Seller will inform Buyer of any major limitations, restrictions, deratings or outages known to Seller affecting the Facility for the following day and will promptly update Seller's notice to the extent of any material changes in this information, with "major" defined as affecting more than five percent (5%) of the Facility Capacity.

6.7 Schedule Coordination. If, as a result of this Agreement, Buyer is deemed by an RTO to be financially responsible for Seller's performance under the Interconnection Agreement, due to Seller's lack of a "scheduling coordinator" or other RTO recognized standing or otherwise, then (a) Seller shall use commercially reasonable and diligent efforts to acquire such RTO recognized standing such that Buyer is no longer responsible for Seller's performance under the Interconnection Agreement, and (b) Seller shall defend, indemnify and hold Buyer harmless against any liability arising due to Seller's performance or failure to perform under the Interconnection Agreement.

6.8 Electronic Communications.

6.8.1 Telemetry. Seller shall provide telemetrying equipment and facilities capable of transmitting the following information concerning the Facility pursuant to the Interconnection Agreement and to Buyer on a real-time basis and will operate such equipment when requested by Buyer to indicate:

6.8.1.1 instantaneous MW output at the Electricity Delivery Point;

6.8.1.2 Net Energy; and

6.8.1.3 Facility Capacity.

Seller shall also transmit to Buyer any other data from the Facility that Seller receives on a real time basis. Seller shall provide such real time data to Buyer on the same basis as the basis on which Seller receives the data (e.g., if Seller receives the data in four second intervals, Buyer shall also receive the data in four second intervals).

6.8.2 Dedicated Communication Circuit. Seller shall install a dedicated direct communication circuit (which may be by common carrier telephone) between Buyer and the control center in the Facility's control room or such other communication equipment as the Parties may agree.

6.9 Reports and Records.

6.9.1 Monthly Reports. Within thirty (30) days after the end of each calendar month during the Term (each, a “**Reporting Month**”), Seller shall provide to Buyer a report in electronic format, which report shall include (a) summaries of the Facility’s output data for the Reporting Month in intervals not to exceed one hour (or such shorter period as is reasonably possible with commercially available technology), including information from the Facility’s Computer Monitoring System; (b) summaries of any other significant events related to the construction or operation of the Facility for the Reporting Month; and (c) any supporting information that Buyer may from time to time reasonably request (including historical data for the Facility).

6.9.2 Electronic Fault Log. Seller shall maintain an electronic fault log of operations of the Facility during each hour of the Term beginning as of the Commercial Operation Date. Seller shall provide Buyer with a copy of the electronic fault log within thirty (30) days after the end of the calendar month to which the fault log applies.

6.9.3 Other Information to Be Provided to Buyer. Seller shall provide to Buyer the following information concerning the Facility:

6.9.3.1 Upon the request of Buyer, the manufacturers’ guidelines and recommendations for maintenance of the Facility equipment;

6.9.3.2 A detailed report summarizing the results of maintenance performed during each Planned Outage and any Forced Outage, and upon request of Buyer any of the technical data obtained in connection with such maintenance; and

6.9.3.3 A detailed report describing the facts, circumstances and events that caused and arose out of, or related to, any Forced Outage, failed Start-Up or other item of Major Equipment being taken off-line or tripping for any reason other than in connection with a Planned Outage.

6.9.4 Information to Any Governmental Authority. Seller shall, promptly upon written request from Buyer, provide Buyer with all data which is collected by Seller related to the Facility reasonably required for reports to and information requests from any Governmental Authority. Along with said information, Seller shall provide to Buyer copies of all submittals to any Governmental Authority directed by Buyer and related to the operation of the Facility with a certificate that the contents of the submittals are true and accurate to the best of Seller’s knowledge. Seller shall use best efforts to provide this information to Buyer soon enough so that Buyer has time to review such information and meet any submission deadlines imposed by the requesting organization or entity. After the sending or filing any statement, application, and report or any document with any Governmental Authority relating to operation and maintenance of the Facility, Seller shall promptly provide to Buyer with a copy of the same.

6.9.5 Information to Any Intervenor. Seller shall, promptly upon written request from Buyer, provide Buyer with data reasonably required for information requests from any state or federal agency intervenor or any other party achieving intervenor status in any Buyer rate proceeding or other proceeding before any Governmental Authority. Seller shall use best efforts to provide this information to Buyer soon enough so that Buyer has time to review such information and meet any submission deadlines imposed by the requesting organization or entity.

6.9.6 Environmental Information. Seller shall, promptly upon written request from Buyer, provide Buyer with all data reasonably requested by Buyer relating to environmental information under the Required Facility Documents.

6.9.7 Information Relating to Facility Performance. Seller shall provide Buyer monthly operational reports in a form and substance acceptable to Buyer and Seller shall, promptly upon written request from Buyer, provide Buyer with all operational data requested by Buyer with respect to the performance of the Facility and delivery of energy therefrom.

6.9.8 Audited Financial Statements. Seller shall provide Buyer within ninety (90) days after the end of each calendar year, its audited financial statements together with the audited financial statements of any guarantor providing Credit Support, in each case prepared in accordance with generally accepted accounting principles by an accounting firm of nationally recognized standing in the electric power industry reasonably acceptable to Buyer.

6.9.9 Notice of Default. Seller shall promptly notify Buyer of receipt of written notice or actual knowledge of the occurrence of any event of default under any material agreement to which Seller is a party and of any other development, financial or otherwise, which would have a material adverse effect on Seller, the Facility or Seller's ability to develop, construct, operate, maintain or own the Facility as provided in this Agreement.

6.9.10 Notice of Litigation. Following its receipt of written notice or actual knowledge of the commencement of any action, suit, and proceeding before any court or Governmental Authority which would, if adversely determined, adversely affect Seller, the Premises or the Facility, Seller shall promptly give notice to Buyer of the same.

6.9.11 Additional Information. Seller shall provide to Buyer such other information respecting the condition or operations of Seller and the Facility as Buyer may, from time to time, reasonably request.

6.10 Access Rights. Upon reasonable prior notice and subject to the safety rules and regulations of Seller, Seller shall provide Buyer and its authorized agents, employees and inspectors with reasonable access to the Facility: (a) for the purpose of reading or testing metering equipment, (b) as necessary to witness any required Capacity tests necessary to determine the amount of Capacity associated with the Facility, (c) in connection with the

operation and maintenance of the Electrical Interconnection Facilities for the Facility, (d) to provide tours of the Facility to customers and other guests of Buyer (not more than twelve (12) times per year), (e) for purposes of implementing Section 9.5, and (f) for other reasonable purposes at the reasonable request of Buyer.

6.11 EWG. Seller shall provide Buyer with copies of Seller's applications to FERC for EWG status and for authority to sell energy under this Agreement within ten (10) days of filing such application(s). During the Term, Seller shall either (i) maintain its EWG status and its authority to sell power under this Agreement or (ii) otherwise cause Seller to be exempt from federal and state regulations as an electric utility.

6.12 Facility Images. Buyer shall be free to use any and all images from or of the Facility for promotional purposes. Upon Buyer's request and at Buyer's expense, Seller shall install equipment as Buyer may request, including without limitation video and or web-based imaging equipment. Buyer shall use its discretion with respect to how images from or of the Facility are presented by Buyer, including without limitation associating images of the Facility with Buyer's corporate logo but not the corporate logo of Seller.

6.13 Financial and Accounting Information. If Buyer or one of its Affiliates determines that, under the Financial Accounting Standards Board's revised Interpretation No. 46, Consolidation of Variable Interest Entities ("FIN 46"), it may hold a variable interest in Seller, but it lacks the information necessary to make a definitive conclusion, Seller hereby agrees to provide sufficient financial and ownership information so that Buyer or its Affiliate may confirm whether a variable interest does exist under FIN 46. If Buyer or one of its affiliates determines that, under FIN 46, it holds a variable interest in Seller, Seller hereby agrees to provide sufficient financial and other information to Buyer or its Affiliate so that Buyer may properly consolidate the entity in which it holds the variable interest and/or present the disclosures required by FIN 46.

SECTION 7

SECURITY AND CREDIT SUPPORT

7.1 Credit Support. If at any time during the Term, Seller maintains a Credit Rating of (1) "Aa2" or higher by Moody's and (2) "AA" or higher by S&P, then Seller will not be required to post any Credit Support Security. If Seller does not meet the Credit Rating requirements of (1) and (2) in the preceding sentence, it may have to post Credit Support Security in the amounts outlined on the Credit Matrix based upon its' Credit Rating or that of the entity providing a guaranty as Credit Support Security on behalf of the Seller, and the size of the project. If Seller has a published Credit Rating from each of S&P and Moody's, the lower rating will be used to determine the level of Credit Support in the Credit Matrix. If Seller, or the entity providing a guaranty as Credit Support Security on behalf of the Seller, has no published Credit Rating, an equivalent Credit Rating will be determined by Buyer through the application of Buyer's proprietary credit scoring model developed in conjunction with S&P, and the amount of Credit Support for Seller (as shown on the Credit Matrix) will be based upon this equivalent Credit Rating. If the required Credit Support is greater than zero dollars (\$0.00), upon the request of Buyer, Seller shall within five (5) Business Days provide one of the following in the

amount of the Credit Support: (x) a guaranty, in form and substance acceptable to Buyer in its sole discretion from a Person acceptable to Buyer in its sole discretion, (y) a Letter of Credit, or (z) a Cash Escrow.

7.2 Subordinated Security Interests.

7.2.1 Security Interests. Concurrently with the execution of this Agreement and simultaneously with the acquisition by Seller after the Effective Date of any real property in connection with the Facility (including land and water or rights thereto), Seller shall execute, file and record such agreements, documents, instruments, deeds of trust and other writings as Buyer may request, all in form and substance satisfactory to Buyer, to give Buyer a perfected security interest in and lien on the Facility, the Premises and all other assets necessary or in Buyer's opinion desirable for the development, construction, ownership, operation or maintenance of the Facility as security for Seller's performance and any amounts owed by Seller to Buyer pursuant to this Agreement (collectively the "**Security Interests**"). The Security Interests shall be subordinate in right of payment, priority and remedies only to the interests of the financiers for the Facility contemplated by Section 2.2.3 and approved by Buyer.

7.2.2 Pledge of Ownership Interests. [*Note to bidders: This section is applicable only if Seller is a special purpose entity.*] Concurrently with the execution of this Agreement, Seller's equity holders shall execute and file such agreements, documents, instruments, and other writings as Buyer may request, all in form and substance satisfactory to Buyer, to give Buyer a perfected security interest in and lien on all ownership interests in Seller as security for Seller's performance and any amounts owed by Seller to Buyer pursuant to this Agreement (the "**Pledge Interest**"). The Pledge Interest shall be subordinate in right of payment, priority and remedies only to the interests of the financiers for the Facility contemplated by Section 2.2.3 and approved by Buyer.

7.2.3 Maintenance of Security Interests. Seller shall execute and file and record (or cause to be executed and filed and recorded) such Uniform Commercial Code financing statements and deeds of trust and shall take such further action and execute such further instruments and other writings as shall be required by Buyer to confirm and continue the validity, priority, and perfection of the Security Interests [and the Pledge Interest]. The granting of the Security Interests [and the Pledge Interest] shall not be to the exclusion of, nor be construed to limit the amount of any further claims, causes of action or other rights accruing to Buyer by reason of any breach or default by Seller under this Agreement or the termination of this Agreement prior to the expiration of the Term.

7.2.4 Transfer of Required Facility Documents. The Security Interests shall provide that if Buyer acts to obtain title to the Facility pursuant to the interests provided by Seller pursuant to Section 7.2.1, Seller shall take all steps necessary to transfer all Required Facility Documents necessary to operate the Facility to Buyer, and shall diligently prosecute and cooperate in such transfers.

7.3 Quarterly Financial Statements. If requested by Buyer, Seller shall within thirty (30) days provide Buyer with copies of its most recent quarterly financial statements, together with the audited financial statements of any guarantor providing Credit Support, in each case prepared in accordance with generally accepted accounting principles.

7.4 Security is Not a Limit on Seller's Liability. The Credit Support and Security Interests contemplated by this Section 7: (a) constitutes security for, but is not a limitation of, Seller's obligations under this Agreement, and (b) shall not be Buyer's exclusive remedy for Seller's failure to perform in accordance with this Agreement. To the extent that Buyer draws on the Credit Support, Seller shall within five (5) Business Days reinstate the security to the full amount required by this Section 7.

7.5 Escrow Account. With respect to any Cash Escrow established pursuant to this Section 7 as Credit Support, Seller hereby grants Buyer a security interest in the escrow account and all moneys and other amounts in the account to secure payment and performance of Seller's obligations under this Agreement. Buyer shall have, and Seller agrees to take all further action required or reasonably requested by Buyer to ensure that Buyer has, all rights of a secured party under Article 9 of the Uniform Commercial Code and applicable law with respect to the escrow account and all moneys and other amounts in the escrow account. The escrow agreement shall be in form and substance acceptable to Buyer in its discretion and shall contain the following language: "Escrow Agent acknowledges that Seller has granted Buyer a security interest in the amounts held by Escrow Agent in the [*describe escrow accounts and all moneys and other amounts in the account*] (collectively, the "Collateral"). Escrow Agent acknowledges that it (a) has received and holds possession of the Collateral for the benefit of Buyer and not as the agent of or on behalf of Seller and (b) shall continue to hold possession of the Collateral for Buyer's benefit until Escrow Agent receives notice in an authenticated record from Buyer that Buyer's security interest in the Collateral has been terminated. Escrow Agent acknowledges that it has no rights in and to the Collateral other than its right to receive payment of its fees and expenses pursuant to the Escrow Agreement."

SECTION 8

METERING

8.1 Net Energy. Meter equipment shall be installed, owned, operated, maintained and tested in accordance with the terms of the Interconnection Agreement and shall automatically account for line losses between such meter equipment and the Electricity Delivery Point (collectively, the "**Electric Metering Equipment**"). The Electric Metering Equipment shall be capable of metering Net Energy delivered at the Electricity Delivery Point on a continuous real time basis.

8.1.1 Seller Electric Metering. Seller shall be responsible for the maintenance, testing and calibration of the Electric Metering Equipment and the maintenance and testing of the electrical facilities and Protective Apparatus, including any transmission equipment and related facilities, necessary to interconnect the Facility at the Electricity Delivery Point. Such installation shall be completed, and the delivery of such data shall be commenced, as promptly as possible but in no event

later than one month prior to the commencement of Net Energy deliveries. Seller shall bear all costs and expenses of installing, maintaining and testing all Electric Metering Equipment.

8.1.2 Fuel Meters. Fuel delivered by Buyer to Seller shall be metered at the Fuel Delivery Point by the meters owned by the respective interstate pipelines delivering such Fuel to each of the Fuel delivery points identified in **Exhibit O** (the “**Fuel Metering Point(s)**”).

8.1.3 Check Meters. Buyer may at its option and expense install and operate one or more check meters to check Seller’s meters. Such check meters shall be for check purposes and shall not be used in the measurement of Net Energy or Ancillary Services for the purposes of this Agreement. The check meters shall be subject at all reasonable times to inspection and examination by the Seller or its designee. The installation and operation thereof shall, however, be done entirely by Buyer at no cost or expense to Seller. The Seller shall grant to Buyer, at no cost or expense, the right to install such check meters at the Electricity Delivery Point and the right to access such check meters at reasonable times as requested by Buyer if such check meters are located on the Premises.

8.1.4 Change in Measurement Method. If, at any time during the Term a new method or technique is developed with respect to electricity measurement, or the determination of the factors used in electricity measurement, such new method or technique may be substituted for the method set forth in this Section 8.1 when in the opinion of the Parties, employing such new method or technique is advisable, and they so agree in writing.

8.1.5 Industry Standards. All Electric Metering Equipment, whether owned by the Seller or by a third party, shall be operated, maintained and tested by and/or on behalf of the Seller in accordance with Prudent Electrical Practices.

8.1.6 Access. Each Party shall have the right to receive reasonable advance notice with respect to, and to be present at the time of, any installing, cleaning, changing, repairing, inspecting, testing, calibrating or adjusting of Electric Metering Equipment. The records from such Electric Metering Equipment shall be the property of the Seller, but upon reasonable advance notice, the Seller shall make available to Buyer all data, records and charts relating to the Electric Metering Equipment, together with calculations therefrom, for inspection and verification.

8.1.7 Installations. Any installations of Electric Metering Equipment required pursuant to this Agreement shall be scheduled by the Seller; provided, however, that no installation which shall or could affect deliveries of Net Energy shall be made without the prior written consent of Buyer, which shall not be unreasonably withheld. Any installations of check meters by Buyer shall be scheduled by Buyer; provided, however that the installation shall not unreasonably interfere with the operation and maintenance of the Facility by the Seller.

8.1.8 Estimates. During the period after the Effective Date and prior to the installation and commencement of operation of the meters contemplated by this Section 8.1.8, the Net Energy generated and delivered shall be estimated in good faith by the Seller and the Parties shall prepare and submit invoices on the basis of such estimates. Any such invoice shall be adjusted retroactively based on the performance of the Facility during the three month period immediately following the installation of such meters.

8.1.9 Inspection. Seller, at its sole cost and expense, shall inspect and calibrate, or cause to be inspected and calibrated, all Electric Metering Equipment periodically, but not less frequently than annually. When any test, in the case of Electric Metering Equipment, shall show a measurement error of more than one-quarter percent (1/4%), correction shall be made for the period during which the measurement instruments were in error, first, by using the registration of Buyer's check meter, if installed and registering accurately; if no check meter is installed and registering accurately, or if the period cannot be ascertained, correction shall be made for one-half (1/2) of the period elapsed since the last date of test; and the measuring instrument shall be adjusted immediately to measure accurately.

8.2 Records. The Parties shall, for five (5) years or such longer period as may be required by the applicable Governmental Authority, each keep and maintain accurate and detailed records relating to the Facility's hourly deliveries of Net Energy and Fuel consumption. Such records shall be made available for inspection by either Party or any Governmental Authority having jurisdiction with respect thereto during normal business hours upon reasonable notice. If either Party (the "Notifying Party") shall propose to discard any records theretofore required to be retained by this Section 8.2, it shall give notice to the other Party thereof and the other Party may within thirty (30) days elect to take possession of such records by notice to the Notifying Party, and in such case the Notifying Party shall promptly, and in any event, no later than five (5) days following receipt of such notice, deliver such records to the other Party at its expense. If the Party receiving a Notice pursuant to this Section 8.2 shall not respond within such thirty (30) days, the Notifying Party may discard such records without any further obligation hereunder. Upon written request by Buyer, Seller promptly shall request that the Transmission Provider provide in writing any and all meter or other data associated with the Facility and Net Energy directly to Buyer. Notwithstanding any other provision of this Agreement, Buyer shall have the right to provide such meter data to any RTO or generation tracking service.

8.3 Adjustment to Loss Factors. If Buyer or Seller has a reasonable basis for concluding that the Electric Metering Equipment is not accurately measuring losses between the Electric Metering Equipment and the Electricity Delivery Point, it may propose an adjustment to the Electric Metering Equipment by notice to the other Party. Such an adjustment shall be prospective only. The notice will include information explaining in reasonable detail why the loss factor appears to be incorrect. The other Party shall have thirty (30) days in which to approve or disapprove of the proposed adjustment, which approval may not be unreasonably withheld, conditioned or delayed. A proposed loss factor adjustment that is not disapproved by notice to Seller given within the thirty (30) day period shall be deemed approved. The Parties

shall cooperate in causing PacifiCorp Transmission to make an appropriate adjustment to the Electric Metering Equipment pursuant to the Interconnection Agreement.

SECTION 9

BILLINGS, COMPUTATIONS AND PAYMENTS

9.1 Monthly Invoices. On or before the tenth (10th) day following the end of each month, Seller shall deliver to Buyer a proper invoice showing Seller's computation of the Variable Energy Payment, MAAF and the Capacity Payment for such month. If such invoice is delivered by Seller to Buyer, Buyer shall send to Seller payment for Seller's deliveries in respect thereof on or before the thirtieth (30th) day following the end of each month.

9.2 Offsets. Buyer may offset any payment due under this Agreement against amounts owing from Seller to Buyer pursuant to this Agreement, any other agreement between the Parties or otherwise.

9.3 Interest on Late Payments. Any amounts that are not paid when due under this Agreement shall bear interest at the Prime Rate plus two hundred (200) basis points from the date due until paid; provided, however, that this interest rate shall at no time exceed the maximum rate allowed by applicable law.

9.4 Disputed Amounts. If either Party, in good faith, disputes any amount due pursuant to an invoice rendered under this Agreement, such Party shall notify the other Party of the specific basis for the dispute and, if the invoice shows an amount due, shall pay that portion of the statement that is undisputed, on or before the due date. Any such notice shall be provided within two (2) years of the date of the invoice in which the error first occurred. If any amount disputed by such Party is determined to be due the other Party, or if the Parties resolve the payment dispute, the amount due shall be paid within five (5) days of such determination or resolution, along with interest accrued at the rate determined under Section 9.3 from the date due until the date paid.

9.5 Audit Rights. Buyer, through its authorized representatives, shall have the right, at its sole expense and during normal business hours, to examine and copy the records of Seller to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made hereunder or to verify the Seller's performance of its obligations hereunder. Upon request, Seller shall provide to Buyer statements evidencing the quantities of energy delivered at the Electricity Delivery Point. If any statement is found to be inaccurate, a corrected statement shall be issued and any amount due thereunder will be promptly paid and shall bear interest calculated at the rate determined under Section 9.3 from the date of the overpayment or underpayment to the date of receipt of the reconciling payment. Notwithstanding the above, no adjustment shall be made with respect to any statement or payment hereunder unless Buyer questions the accuracy of such payment or statement within two (2) years after the date of such statement or payment.

SECTION 10

DEFAULTS AND REMEDIES

10.1 Defaults. The following events are defaults (each, an “Event of Default”) under this Agreement:

10.1.1 Events of Default by Either Party.

10.1.1.1 A Party’s failure to make a payment when due under this Agreement if the failure is not cured within ten (10) days after the non-defaulting Party gives the defaulting Party a notice of the default.

10.1.1.2 A Party (a) makes an assignment for the benefit of its creditors; (b) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy or similar law for the protection of creditors, or has such a petition filed against it and such petition is not withdrawn or dismissed within sixty (60) days after such filing; (c) becomes insolvent; or (d) is unable to pay its debts when due.

10.1.1.3 A Party’s breach of a representation or warranty made by that Party in this Agreement if the breach is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party a notice of the default.

10.1.1.4 A Party otherwise fails to perform any material obligation imposed upon that Party by this Agreement if the failure is not cured within thirty (30) days after the non-defaulting Party gives the defaulting Party notice of the default; provided, however, that, upon written notice from the defaulting Party, this thirty (30) day period shall be extended by an additional sixty (60) days if (a) the failure cannot reasonably be cured within the thirty (30) day period despite diligent efforts, (b) the default is capable of being cured within the additional sixty (60) day period, and (c) the defaulting Party commences the cure within the original thirty (30) day period and is at all times thereafter diligently and continuously proceeding to cure the failure.

10.1.2 Events of Default by Seller.

10.1.2.1 Seller’s failure to post or increase the Carry-Over Letter of Credit within ten (10) Business Days after the end of each month as may be required under Section 5.1.4.

10.1.2.2 Seller’s failure to cause the Facility to achieve (a) an average of the applicable CAF_ms of at least [●%] in any three (3) consecutive quarters in a Contract Year or (b) achieve an average of the applicable CAF_ms of at least [●%] in three (3) out of any five (5) consecutive Contract Years.

10.1.2.3 Seller’s failure to post and maintain Credit Support as required by Section 7 if the failure is not cured within five (5) days after Buyer gives Seller a notice of the default.

10.1.2.4 Seller's failure to achieve a milestone by the date set forth for the achievement of that milestone in Section 2.2 (other than the failure to achieve the Commercial Operation Date by the Guaranteed Commercial Operation Date) if the failure is not cured within thirty (30) days after Buyer gives Seller a notice of the default.

10.1.2.5 Seller's failure to cause the Facility to achieve the Commercial Operation Date on or before the Guaranteed Commercial Operation Date.

10.1.2.6 Seller's failure to cure any default under any Required Facility Documents (including the Interconnection Agreement) within the time allowed for a cure under such agreement or instrument.

10.1.2.7 Seller's sale of energy from the Facility to a Party other than Buyer in breach of this Agreement if Seller does not permanently cease such sale and compensate Buyer for the damages arising from the breach within ten (10) days after Buyer gives Seller a notice of default.

10.1.2.8 For reasons other than an event of Force Majeure or an Event of Default by Buyer, the Facility being unavailable to provide energy for ninety (90) consecutive days or one hundred twenty (120) non-consecutive days in any three hundred sixty-five (365) day period commencing on the Commercial Operation Date and prior to end of the Term.

10.2 Termination and Remedies.

10.2.1 Upon the occurrence of, and during the continuation of, an Event of Default, the non-defaulting Party shall be entitled to all remedies available at law or in equity, and may terminate this Agreement by notice to the other Party designating the date of termination and delivered to the defaulting Party no less than ten (10) days before such termination date. Further, during the continuation of an Event of Default by Seller, and until it has recovered all damages incurred on account of such Event of Default by Seller, without exercising its termination right, Buyer may offset its damages against any payment due Seller.

10.2.2 In the event of a termination of this Agreement:

10.2.2.1 The Parties' respective obligations under this Agreement shall terminate (other than those obligations which expressly are to be performed after termination).

10.2.2.2 Each Party shall pay to the other all amounts due the other under this Agreement for all periods prior to termination subject to offset by the non-defaulting Party against damages incurred by such Party.

10.2.2.3 The amounts due pursuant to Section 10.2.3.2 shall be paid within thirty (30) days of the billing date for such charges plus interest thereon at the Prime Rate from the date of termination until the date paid.

10.2.2.4 The provisions of Sections 6.4.4, 6.9.4, 6.9.5, 8.2, 9.3, 9.4, 9.5, 10.7, 10.9, 11 and 14 shall survive the termination of this Agreement.

10.3 Specific Performance. Buyer shall be entitled to seek and obtain a decree compelling specific performance or granting injunctive relief 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 Seller under this Agreement. Seller agrees that in view of the nature of the bid procedure that caused Seller to be selected, and the importance of the Facility and the Buyer's requirement for Capacity and energy, specific performance (including temporary and preliminary relief) and injunctive and other equitable relief, including access to all records of Seller, are proper in the event of any actual or threatened breach of any material obligation by Seller under this Agreement, and that any liability limits contained in this Agreement shall not operate to limit the exercise of Buyer's remedies in equity to cause Seller to perform its obligations under this Agreement. In any action for specific performance or injunctive relief or other equitable relief, all expenses incurred by the prevailing party in such proceeding, including reasonable counsel fees, shall be awarded to the prevailing party in such proceeding. Seller agrees that it will not assert as a defense to Buyer's action for specific performance of, or injunctive relief or other equitable relief relating to, Seller's obligations hereunder that the amounts payable or paid by Seller in respect of liquidated damages or actual damage constitute an adequate remedy for the breach of such obligation, and Seller hereby conclusively waives such defense.

10.4 Failure to Meet Availability. If an Event of Default by Seller described in Section 10.1.2.2 shall occur, Buyer shall have the right to enter the Facility and do all such things as Buyer may consider necessary or desirable to remedy such situation or to improve the availability of the Contract Capacity, including making any repairs to the Major Equipment or the Facility. Seller shall reimburse Buyer for and shall indemnify and hold harmless Buyer from and against all losses, costs, charges and expenses incurred by Buyer in connection with exercise of its rights under this Section 10.4 other than due to the gross negligence or willful misconduct of Buyer. In connection with the exercise of the rights under this Section 10.4, Buyer shall have the right to recoup and set off all such losses, costs, charges and expenses against amounts otherwise owed by Buyer under this Agreement.

10.5 License to Operate Facility. During the occurrence and continuance of an Event of Default by Seller, Seller hereby irrevocably grants to Buyer the right, license, and authority to enter the Premises, operate the Facility, and to perform Seller's obligations under this Agreement for the Term of this Agreement. Notwithstanding the license granted to Buyer in this Section 10.5, so long as no Event of Default by Seller which would entitle Buyer to terminate this Agreement has occurred and is continuing, Buyer agrees that Seller may operate the Facility and provide the energy and Capacity in accordance with its obligations under this Agreement. Upon the occurrence of an Event of Default and the expiration of all applicable opportunities to cure, Buyer may, but shall not be obligated to, exercise its rights as licensee under this Section 10.5 in lieu of termination. Buyer's right to operate the Facility pursuant to the license granted in this Section 10.5 shall be effective for a period not to exceed 365 days from the date Buyer first exercises its license rights. During any period in which Buyer is operating the Facility pursuant to the license granted in this Section 10.5, Seller shall, upon request from Buyer, reimburse Buyer for all reasonable costs and expenses incurred by Buyer to operate and maintain the Facility. In connection with the exercise of the rights under this Section 10.5, Buyer shall have the right to recoup and set off all such losses, costs, charges and expenses against amounts otherwise owed by Buyer under this Agreement.

10.6 Termination of Duty to Buy. If this Agreement is terminated because of Seller's default, Seller may not require Buyer to purchase energy from the Facility before the date on which the Term would have ended had this Agreement remained in effect. Seller hereby waives its rights to require Buyer to do so.

10.7 Net Replacement Power Costs. If this Agreement is terminated because of Seller's default, Seller shall pay Buyer the positive difference, if any, obtained by subtracting (a) the result of (1) the energy, stated in MWh, that Seller was obligated to provide to Buyer during the remainder of the Term, multiplied by (2) the price per MWh specified in **Exhibit F** for the remaining Contract Years, from (b) the Replacement Price for any energy that Seller was obligated to provide during the remainder of the Term. Amounts owed by Seller pursuant to this Section 10.7 shall be due within five (5) Business Days after Buyer gives Seller notice of the amount due.

10.8 Default Security. Buyer may apply the Credit Support Security at any time to reduce amounts due from Seller to Buyer under this Agreement which are not paid when due.

10.9 Cumulative Remedies. The rights and remedies provided to Buyer under this Agreement are cumulative and not exclusive of any rights or remedies which Buyer would otherwise have.

SECTION 11

INDEMNIFICATION AND LIABILITY

11.1 Indemnities.

11.1.1 Indemnity by Seller. Seller hereby releases, indemnifies and holds harmless Buyer, its directors, officers, agents, and representatives against and from any and all losses, claims, actions or suits, including costs and attorney's fees, resulting from, or arising out of or in any way connected with (a) the energy delivered by Seller under this Agreement to and at the Electricity Delivery Point, (b) the Fuel delivered by Buyer under this Agreement at and after the Fuel Delivery Point, (c) any facilities on Seller's side of the Electricity Delivery Point, (d) Seller's operation and/or maintenance of the Facility, or (e) arising from this Agreement, including any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to Buyer, Seller or others, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of Buyer, its directors, officers, employees, agents or representatives.

11.1.2 Indemnity by Buyer. Buyer hereby releases, indemnifies and holds harmless Seller, its directors, officers, agents, and representatives against and from any and all losses, claims, actions or suits, including costs and attorney's fees, resulting from, or arising out of or in any way connected with (a) the energy delivered by Seller under this Agreement after the Electricity Delivery Point, and (b) the Fuel prior to delivery at the Fuel Delivery Point under this Agreement, including any loss,

claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property, excepting only such loss, claim, action or suit as may be caused solely by the fault or gross negligence of Seller, its directors, officers, employees, agents or representatives.

11.2 No Dedication. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent individual or entity.

11.3 Consequential Damages. Buyer shall not be liable to Seller for special, punitive, indirect, exemplary or consequential damages, whether such damages are allowed or provided by contract, tort (including negligence), strict liability, statute or otherwise.

SECTION 12

INSURANCE

12.1 Required Policies and Coverages. Without limiting any liabilities or any other obligations of Seller under this Agreement, Seller shall secure and continuously carry with an insurance company or companies rated not lower than "A" by the A.M. Best Company the insurance coverage specified on **Exhibit J** during the periods specified on **Exhibit J**.

12.2 Certificates and Certified Copies of Policies. Seller shall provide Buyer with a certified "true and correct" copy of the insurance policies, provisions and endorsements contemplated by **Exhibit J** within ten (10) days after the date by which such policies are required to be obtained (as set forth in **Exhibit J**). If any coverage is written on a "claims-made" basis, the certification accompanying the policy shall conspicuously state that the policy is "claims made."

SECTION 13

FORCE MAJEURE

13.1 Definition of Force Majeure. As used in this Agreement, "**Force Majeure**" or "**an event of Force Majeure**" means an event (a) is not anticipated as of the date of this Agreement, (b) is not within the reasonable control of the Party affected by the event, (c) is not the result of such Party's negligence or failure to act, and (d) could not be overcome by the affected Party's use of due diligence in the circumstances. Force Majeure includes, but is not restricted to, events of the following types (but only to the extent that such an event, in consideration of the circumstances, satisfies the tests set forth in the preceding sentence): acts of God; fire; explosion; civil disturbance; sabotage; action or restraint by court order or public or government authority (as long as the affected Party has not applied for or assisted in the application for, and has opposed to the extent reasonable, such court or government action). Notwithstanding the foregoing, none of the following constitute Force Majeure: (i) Seller's

ability to sell, or Buyer's ability to purchase energy at a more advantageous price than is provided under this Agreement; (ii) economic hardship including lack of money; (iii) the imposition upon Seller of costs or taxes allocated to Seller under Sections 5 or 6; (iv) delay or failure by Buyer to obtain any Required Facility Document; (v) strikes or labor disturbances occurring at the Facility, the Premises or any of Buyer's or Seller's facilities; (vi) changes in, or costs of compliance with, Environmental Laws enacted after the date of this Agreement; and [(vii) the failure of the Transmission Provider for any reason to transmit Contract Capacity or energy.] *[Note to bidders: clause (vii) to be added if PacificCorp Transmission is not the Transmission Provider.]*

13.2 Suspension of Performance. If either Party is rendered wholly or in part unable to perform its obligations under this Agreement because of an event of Force Majeure, both Parties shall be excused from the performance affected by the event of Force Majeure, provided that:

13.2.1 the Party affected by the Force Majeure, shall, within two (2) weeks after the occurrence of the event of Force Majeure, give the other Party written notice describing the particulars of the event; and

13.2.2 the suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure; and

13.2.3 the affected Party shall use diligent efforts to remedy its inability to perform.

13.3 Force Majeure Does Not Affect Other Obligations. No obligations of either Party that arose before the Force Majeure causing the suspension of performance or that arise after the cessation of the Force Majeure shall be excused by the Force Majeure.

13.4 Right to Terminate. If a Force Majeure event prevents a Party from substantially performing its obligations under this Agreement for a period exceeding one hundred eighty (180) days, then Buyer may terminate this Agreement by giving ten (10) days' prior notice to Seller. Upon such termination, neither Party will have any liability to the other with respect to the period following the effective date of such termination; *provided, however*, that this Agreement will remain in effect to the extent necessary to facilitate the settlement of all liabilities and obligations arising under this Agreement before the effective date of such termination.

SECTION 14

CONFIDENTIALITY

14.1 Confidential Business Information. The Parties' proposals and negotiations prior to the date hereof concerning this Agreement, the terms of this Agreement, and the actual charges billed to Buyer under this Agreement, constitute the "Confidential Business Information" of both Parties. Seller and Buyer each agree to hold such Confidential Business Information wholly confidential.

14.2 Duty to Maintain Confidentiality. Confidential Business Information may only be used by the Parties for purposes related to the approval, administration or enforcement of this

Agreement and for no other purpose. Each Party agrees not to disclose Confidential Business Information to any other person (other than its affiliates, counsel, consultants, lenders, prospective lenders, buyers, prospective buyers, contractors constructing or providing services to the Facility, employees, officers and directors who agree to be bound by the provisions of this Section), without the prior written consent of the other Party, provided that either Party may disclose Confidential Business Information, if such disclosure is required by law, required in order for Buyer to receive regulatory recovery of expenses related to the Agreement or pursuant to an order of a court or regulatory agency or in order to enforce this Agreement or to seek approval of this Agreement. In the event a Party is required by law or by a court or regulatory agency to disclose Confidential Business Information, such Party shall to the extent possible notify the other Party at least three (3) Business Days in advance of such disclosure.

14.3 Irreparable Injury; Remedies. Each Party agrees that violation of the terms of this Section 14 constitutes irreparable harm to the other, and that the harmed Party may seek any and all remedies available to it at law or in equity, including injunctive relief.

14.4 News Releases and Publicity. Before issuing any news release or promotional material regarding the Facility, Seller shall contact Buyer for language that credits Buyer as purchasing the Net Energy and shall use such language in such news releases and promotional material.

SECTION 15

DISAGREEMENTS

15.1 Negotiations. The Parties shall attempt in good faith to resolve all disputes arising out of or related to or in connection with this Agreement promptly by negotiation, as follows. Any Party may give the other Party written notice of any dispute not resolved in the normal course of business. Executives of both Parties at levels one level above the personnel who have previously been involved in the dispute shall meet at a mutually acceptable time and place within ten (10) days after delivery of such notice, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days from the referral of the dispute to senior executives, or if no meeting of such senior executives has taken place within fifteen (15) days after such referral, either Party may initiate litigation as provided hereinafter if neither Party has requested that the dispute be mediated in accordance with Section 15.2 below. All negotiations pursuant to this clause are confidential.

15.2 Mediation. If the dispute is not resolved within thirty (30) days from the referral of the dispute to senior executives, or if no meeting of senior executives has taken place within fifteen (15) days after such referral, either Party may request that the matter be submitted to nonbinding mediation. If the other Party agrees, the mediation will be conducted in accordance with the Construction Industry Arbitration Rules and Mediation Procedures (Including Procedures for Large, Complex Construction Disputes) of the American Arbitration Association (the "AAA"), as amended and effective on July 1, 2003 (the "**Mediation Procedures**"), notwithstanding any Dollar amounts or Dollar limitations contained therein.

15.2.1 The Party requesting the mediation, may commence the mediation process with AAA by notifying AAA and the other Party in writing (“**Mediation Notice**”) of such Party’s desire that the dispute be resolved through mediation, including therewith a copy of the Dispute Notice and the response thereto, if any, and a copy of the other Party’s written agreement to such mediation.

15.2.2 The mediation shall be conducted through, by and at the office of AAA located in Salt Lake City, Utah.

15.2.3 The mediation shall be conducted by a single mediator. The Parties may select any mutually acceptable member from the panel of retired judges at AAA as a mediator. If the parties cannot agree on a mediator within five (5) days after the date of the Mediation Notice, then the AAA’s Arbitration Administrator shall send a list and resumes of three (3) available mediators to the parties, each of whom shall strike one name, and the remaining person shall be appointed as the mediator. If more than one name remains, either because one or both parties have failed to respond to the AAA’s Arbitration Administrator within five (5) days of receiving the list or because one or both parties have failed to strike a name from the list or because both parties strike the same name, the AAA’s Arbitration Administrator will choose the mediator from the remaining names. If the designated mediator shall die, become incapable or, unwilling to, or unable to serve or proceed with the mediation, a substitute mediator shall be appointed in accordance with the selection procedure described above in this Section 15.2.3, and such substitute mediator shall have all such powers as if he or she has been originally appointed herein.

15.2.4 The mediation shall consist of one or more informal, nonbinding meetings between the Parties and the mediator, jointly and in separate caucuses, out of which the mediator will seek to guide the Parties to a resolution of the dispute. The mediation process shall continue until the resolution of the dispute, or the termination of the mediation process pursuant to Section 15.2.7.

15.2.5 The mediator’s fees and expenses, shall be borne equally by the Parties. Each Party shall bear its own expenses incurred in connection with such mediation; provided, however, that if any dispute hereunder is not fully resolved as a result of such mediation, the prevailing party shall be awarded its reasonable attorney fees in any subsequent dispute resolution proceedings.

15.2.6 All verbal and written communications between the parties and issued or prepared in connection with this Section 15.2 shall be deemed prepared and communicated in furtherance, and in the context, of dispute settlement, and shall be exempt from discovery and production, and shall not be admissible in evidence (whether as admission or otherwise) in any arbitration or other proceedings for the resolution of the dispute.

15.2.7 The initial mediation meeting between the Parties and the mediator shall be held within twenty (20) days after the Mediation Notice. Either

Party may terminate the mediation process upon the earlier to occur of (A) the failure of the initial mediation meeting to occur within twenty (20) days after the date of the Mediation Notice, (B) the passage of thirty (30) days from the date of the Mediation Notice without the dispute having been resolved, or (C) such time as the mediator makes a finding that there is no possibility of resolution through mediation. The mediation shall follow and be governed by the laws of the State of Oregon.

15.2.8 All deadlines specified in this Section 15.2 may be extended by mutual agreement.

15.3 Choice of Forum. Each Party irrevocably consents and agrees that any legal action or proceeding arising out of this Agreement or the actions of the Parties leading up to the Agreement shall be brought exclusively in the United States District Court for the District of Oregon, Portland Division. By execution and delivery of this Agreement, each Party (a) accepts the exclusive jurisdiction of such court and waives any objection that it may now or hereafter have to the exercise of personal jurisdiction by such court over each Party, (b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court arising out of such documents or actions, (c) irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceedings arising out of such documents brought in such court (including any claim that any such suit, action or proceeding has been brought in an 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, postage prepaid, to such Party at its address as set forth in this Agreement, and (e) agrees that nothing in this Agreement shall affect the right to effect service of process in any other manner permitted by law.

15.4 Settlement Discussions. The Parties agree that no statements of position or offers of settlement made in the course of the dispute process described in this Section will be offered into evidence for any purpose in any litigation or arbitration between the Parties, nor will any such statements or offers of settlement be used in any manner against either Party in any such litigation or arbitration. Further, no such statements or offers of settlement shall constitute an admission or waiver of rights by either Party in connection with any such litigation or arbitration. At the request of either Party, any such statements and offers of settlement, and all copies thereof, shall be promptly returned to the Party providing the same.

15.5 Waiver of Jury Trial. EACH PARTY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND IRREVOCABLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON THIS AGREEMENT, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY TO THIS AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO EACH OF THE PARTIES FOR ENTERING INTO THIS AGREEMENT. EACH PARTY HEREBY WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT AND ANY OTHER AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION

WITH THIS AGREEMENT, OR ANY MATTER ARISING HEREUNDER OR THEREUNDER IN WHICH A JURY TRIAL HAS NOT OR CANNOT BE WAIVED.

15.6 Equitable Remedies. In any action for specific performance or injunctive relief or other equitable relief, all expenses incurred by the prevailing party in such proceeding, including reasonable counsel fees, shall be awarded to the prevailing party in such proceeding. Seller agrees that it will not assert as a defense to Buyer's action for specific performance of, or injunctive or other equitable relief relating to, Seller's obligations hereunder that the amounts payable or paid by Seller in respect of liquidated damages constitute an adequate remedy for the breach of such obligation, and Seller hereby conclusively waives such defense. Seller shall at all times during the Term, own, lease, control, hold in its own name or be signatory to all Required Facility Documents (as the case may be) relating to the Facility to the extent necessary to prevent a material adverse effect on Buyer's right to specific performance or injunctive relief.

SECTION 16

GUARANTEED PERFORMANCE PARAMETERS

16.1 Guaranteed Heat Rate. Seller shall operate and maintain the Facility so as to achieve the Guaranteed Heat Rate in accordance with the provisions of **Exhibit R**.

16.2 Guaranteed Start-Up Time. Seller shall operate and maintain the Facility so as to achieve the Guaranteed Start-Up Time in accordance with the provisions of **Exhibit R**.

16.3 Guaranteed Ramp Rate. Seller shall operate and maintain the Facility so as to achieve the Guaranteed Ramp Rate in accordance with the provisions of **Exhibit R**.

SECTION 17

MISCELLANEOUS

17.1 Several Obligations. Nothing contained in this Agreement shall be construed to create an association, trust, partnership or joint venture or to impose a trust, partnership or fiduciary duty, obligation or liability on or between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

17.2 Choice of Law. This Agreement shall be interpreted and enforced in accordance with the laws of the state of Oregon, excluding any choice of law rules that may direct the application of the laws of another jurisdiction.

17.3 Partial Invalidity. The Parties do not intend to violate any Requirements of Law governing the subject matter of this Agreement. If any of the terms of this Agreement are finally held or determined to be invalid, illegal or void as being contrary to any Requirements of Law or public policy, all other terms of the Agreement shall remain in effect. The Parties shall use best efforts to amend this Agreement to reform or replace any terms determined to be invalid, illegal or void, such that the amended terms (a) comply with and are enforceable under Requirements of

Law, (b) give effect to the intent of the Parties in entering into this Agreement, and (c) preserve the balance of the equities contemplated by this Agreement in all material respects.

17.4 Waiver. No waiver of any provision of this Agreement shall be effective unless the waiver is set forth in a writing that (a) expressly identifies the provision being waived, and (b) is signed by the Party waiving the provision. A Party's waiver of one or more failures by the other Party in the performance of any of the provisions of this Agreement shall not be construed as a waiver of any other failure or failures, whether of a like kind or different nature.

17.5 Governmental Jurisdiction and Authorizations. This Agreement is subject to the jurisdiction of those Governmental Authorities having control over either Party or this Agreement. Buyer's duty to comply with this Agreement is conditioned on Seller's submission to Buyer before the Commercial Operation Date and maintaining thereafter copies of all Required Facility Documents.

17.6 Restriction on Assignments. Except as expressly provided in Section 17.7, neither Party shall assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of the other Party.

17.7 Permitted Assignments. The Buyer may assign its rights, delegate its duties or otherwise transfer its interests hereunder, in whole or in part to another entity having a long-term credit rating assigned thereto by a "nationally recognized statistical rating organization" (as that term is used in Rule 15c3-1(c)(2)(vi)(F) under the Securities Exchange Act of 1934) that equals or exceeds the Buyer's long term credit rating as of the date of such assignment.

17.8 Entire Agreement. This Agreement (including all attached Exhibits, which are incorporated by this reference) supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding the subject matter of this Agreement. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

17.9 Amendments. This Agreement shall not be altered or amended except by an instrument in writing specifically identifying the provisions to be amended and executed by authorized representatives of both parties.

17.10 No Third Party Beneficiaries. This Agreement does not confer any rights upon any person other than the parties and their respective successors and permitted assigns. There are no third party beneficiaries of this Agreement.

17.11 Agents and Subcontractors. This Agreement may be performed by Buyer through the use of agents and subcontractors (but such use shall not relieve Buyer of any obligation hereunder).

17.12 Notices. All notices, requests, statements or payments shall be (a) made to the addresses set forth below, (b) in writing, and (c) delivered by letter, facsimile or other documentary form. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day during which the notice is received or hand delivered. Notice

by overnight mail or courier shall be deemed to have been received upon delivery as evidenced by the delivery receipt.

To Seller: _____

with a copy to: _____

To Buyer: PacifiCorp
825 NE Multnomah, Suite 2000
Portland, Oregon 97232-2315
Attn: Sr. Vice President, Commercial & Trading

with copies to: PacifiCorp
825 NE Multnomah, Suite 600
Portland, Oregon 97232-2315
Attn: Director of Contract Administration, C&T

Jeremy Weinstein, Esq.
Senior Counsel
PacifiCorp
825 NE Multnomah, Suite 1800
Portland, Oregon 97232-2315

The Parties may change any of the persons to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section.

17.13 Mobile-Sierra. The rates for service specified in this Agreement shall remain in effect until expiration of the Term, and shall not be subject to change for any reason, including regulatory review, absent agreement of the parties. Neither Party shall petition FERC pursuant to the provisions of sections 205 or 206 of the Federal Power Act (16 U.S.C. § 792 et seq.) to amend such prices or terms, or support a petition by any other person seeking to amend such prices or terms, absent the agreement in writing of the other Party. Further, absent the agreement in writing by both Parties, the standard of review for changes to this Agreement proposed by a Party, a non-party or the 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). To the extent that the FERC adopts specific language that parties must incorporate into agreements in order to bind FERC, third parties and themselves to a public interest standard of review, the Parties hereby incorporate such language herein by reference.

17.14 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which is an original and all of which taken together constitute one and the same instrument.

[SIGNATURES ON NEXT PAGE]

EXHIBIT A

DESCRIPTION OF SELLER'S FACILITY

Seller's Facility consists of a [_____] generator manufactured by [_____]. More specifically, the Facility *[provide description of Facility, etc]*.

Facility Capacity: [_____] MW, under the following conditions: *[describe manufacturer's stated operating conditions]*.

Identify the maximum output of the generator(s) and describe any differences between that output and the Facility Capacity:

Station service requirements are described as follows: [_____
_____].

Location of the Facility: The Facility is to be constructed in the vicinity of [_____] in [_____] County, Utah. The real property on which the Facility is to be constructed (the "Premises") is more particularly described as follows:

[legal description of parcel]

Power factor requirements: *[insert]*

EXHIBIT B

ELECTRICITY DELIVERY POINT/ELECTRICAL INTERCONNECTION FACILITIES

[Note to Bidders: Please include a description of the point of metering]

EXHIBIT C

REQUIRED FACILITY DOCUMENTS

EXHIBIT D

HOURLY SCALARS

EXHIBIT E

START-UP TESTING

[Note to Bidders: To be determined following evaluation of proposed resource]

EXHIBIT F

VARIABLE ENERGY PAYMENT

The Variable Energy Payment (“VEP”) for each [] shall be \$[] per MWh, adjusted as follows:

$$\text{VEP} = \$[] \times \text{CPIA} \times \text{NEO}$$

Where:

VEP is the Variable Energy Payment to be determined for a [].

$$\text{CPIA} = \frac{(I_n - I_{\text{Base}})}{I_{\text{Base}}}$$

Where:

I_n is the CPI-U Index most recently published as of the last Day of the applicable [].

I_{Base} is the CPI-U Index most recently published as of [].

NEO is the Net Energy delivered during the [].

EXHIBIT G

EXAMPLES

EXHIBIT H

EVENT TYPES

The outages in the following table are arranged in order of priority - from most urgent to least urgent. The add screen in the AIS system will only accept these standardized NERC event types.

Event Type	Description of Outages
U1	<u>Unplanned (Forced) Outage - Immediate</u> - An outage that requires immediate removal of a unit from service, another outage state or a Reserve Shutdown state. This type of outage results from immediate mechanical/electrical/hydraulic control systems trips and operator-initiated trips in response to unit alarms.
U2 ¹	<u>Unplanned (Forced) Outage - Delayed</u> - An outage that does not require immediate removal of a unit from the in-service state but requires removal within six (6) hours. This type of outage can only occur while the unit is in service.
U3 ¹	<u>Unplanned (Forced) Outage - Postponed</u> - An outage that can be postponed beyond six hours but requires that a unit be removed from the in-service state before the end of the next weekend. This type of outage can only occur while the unit is in service.
SF ¹	<u>Startup Failure</u> - An outage that results from the inability to synchronize a unit within a specified startup time period following an outage or Reserve Shutdown. A startup period begins with the command to start and ends when the unit is synchronized. An SF begins when the problem preventing the unit from synchronizing occurs. The SF ends when the unit is synchronized or another SF occurs.
MO	<u>Maintenance Outage</u> - An outage that can be deferred beyond the end of the next weekend, but requires that the unit be removed from service before the next planned outage. (Characteristically, a MO can occur any time during the year, has a flexible start date, may or may not have a predetermined duration and is usually much shorter than a PO.)
ME	<u>Maintenance Outage Extension</u> - An extension of a maintenance outage (MO) beyond its estimated completion date. This is typically used where the original scope of work requires more time to complete than originally scheduled. Do not use this where unexpected problems or delays render the unit out of service beyond the estimated end date of the MO.
PO	<u>Planned Outage</u> - An outage that is scheduled well in advance and is of a predetermined duration, lasts for several weeks and occurs only once or twice a year. (Boiler overhauls, turbine overhauls or inspections are typical planned outages.)
PE	<u>Planned Outage Extension</u> - An extension of a planned outage (PO) beyond its estimated completion date. This is typically used where the original scope of work requires more time to complete than originally scheduled. Do not use this where unexpected problems or delays render the unit out of service beyond the estimated end date of the PO.

The deratings in the following table are arranged in order of priority - from most urgent to least urgent. The add screen in the AIS system will only accept these standardized NERC event types.

Event Type	Description of Deratings – Restrictions
D1	<u>Unplanned (Forced) Derating - Immediate</u> - A derating that requires an immediate reduction in capacity.
D2 ²	<u>Unplanned (Forced) Derating - Delayed</u> - A derating that does not require an immediate reduction in capacity but requires a reduction in capacity within six (6) hours.
D3 ²	<u>Unplanned (Forced) Derating - Postponed</u> - A derating that can be postponed beyond six hours but requires a reduction in capacity before the end of the next weekend.
D4	<u>Maintenance Derating</u> - A derating that can be deferred beyond the end of the next weekend but requires a reduction in capacity before the next Planned Outage (PO). A D4 can have a flexible start date and may or may not have a predetermined duration.
PD	<u>Planned Derating</u> - A derating that is scheduled well in advance and is of a predetermined duration. (Periodic derating for tests, such as weekly turbine valve tests, should not be reported as PD's. Report deratings for these types as Maintenance Deratings (D4).

The other reportable events listed in the table below are in no particular order. Although these events are reportable, they have no reducing impact on the Equivalent Availability Factor.

Event Type	Description of Other Reportable Events
RS	<u>Reserve Shutdown</u> - An event that exists whenever a unit is available for load but is not synchronized due to lack of demand. This type of event is sometimes referred to as an economy outage or economy shutdown. If a unit is shut down due to any equipment-related problems, whether or not the unit was needed by the system, report an Unplanned (Forced) Outage, Maintenance Outage, or Planned Outage, <u>not</u> a Reserve Shutdown.
NC	<u>Noncurtailing Event</u> - An event that exists whenever equipment or major components are removed for maintenance, testing, or other purposes that does not result in a unit outage or derating.
	<u>Noncurtailing Event</u> - An event that exists whenever a unit is being intentionally dispatched at a level less than its full capacity, when the designated capacity would otherwise be at full capacity, because of lack of demand on the system.

EXHIBIT I

MAJOR EQUIPMENT ANN MAINTENANCE SCHEDULE

EXHIBIT J

REQUIRED INSURANCE

[Note to Bidders: To be determined by PacifiCorp insurance group based on project and market conditions]

EXHIBIT K

OPERATING PROCEDURES

EXHIBIT L

AVAILABILITY NOTICE

EXHIBIT M

AMBIENT FACILITY CAPACITY CORRECTION ALGORITHMS

EXHIBIT N

BUYER'S INITIAL DESIGNATED REPRESENTATIVES

1. Authorized Representatives

2. Alternates

EXHIBIT O

FUEL SPECIFICATIONS AND FUEL DELIVERY POINT

[Note to Bidders: Please include a description of the point of metering]

EXHIBIT P

DISPATCH PROCEDURES

EXHIBIT Q

NET ENERGY SPECIFICATIONS AND DISPATCHABLE
QUANTITIES OF NET ENERGY

EXHIBIT R

GUARANTEED PERFORMANCE PARAMETERS; BASELOAD HEAT RATES,
PEAKLOAD HEAT RATES AND SIMPLE CYCLE HEAT RATES



EXHIBIT S

DISPATCH NOTICE