

**BEFORE THE WASHINGTON UTILITIES  
AND TRANSPORTATION COMMISSION**

In the Matter of the Application of )  
PACIFICORP for an Order ) Docket No. - \_\_\_\_\_  
Approving the Sale of its Interest )  
in Distribution Assets Serving Certain ) **APPLICATION**  
Yakama Nation Accounts Within the )  
Yakama Indian Reservation, Washington )

**November 2005**

Application

Docket No. \_\_\_\_\_

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of  
PACIFICORP for an Order Approving the  
Sale of its Interest in Distribution Assets  
Serving Certain Yakama Nation Accounts  
Within the Yakama Indian Reservation,  
Washington

Docket No. \_\_\_\_\_

**APPLICATION**

1           PacifiCorp (“PacifiCorp” or “the Company”) files this Application requesting an order approving the proposed transfer of certain PacifiCorp distribution assets (“Distribution Assets”) and development assets (“Development Assets”) to Yakama Nation, a federally recognized Indian tribe (“Yakama Nation” or “Nation”), and Yakama Power, a wholly-owned instrumentality created by and of the Yakama Nation (“Yakama Power”) (collectively, Yakama Nation and Yakama Power are the “Acquirer”) as described in the Asset Transfer Agreement, a copy of which is attached as Exhibit 1. The Distribution Assets and Development Assets listed on Exhibit 2 (collectively, the “Yakama Distribution Facilities”) are located on the trust allotments listed in the Asset Transfer Agreement (“Trust Allotments”) within the Yakama Indian Reservation, Washington (the “Reservation”). The Yakama Distribution Facilities serve only certain tribally-owned residential, commercial and industrial customer accounts. These accounts include the Yakama Tribal Cultural Center, Wanity Park Development (a housing project of Yakama Housing Development, a department of the Nation (the “Development”)), Yakama Tribal Retirement Center, and other administration buildings and tribal accounts; Yakama Tribal Legends Casino and Events Center (all at Toppenish, Washington); and Yakama Forest Products located at White Swan, Washington (collectively, the “Yakama Tribal Customer Accounts”) located on certain Trust Allotments within the Reservation.

2           The provisions of RCW 80.12.020 and WAC 480-143-120 and –140 require the  
approval of the Washington Utilities and Transportation Commission (“Commission”) for any  
transaction to sell, lease, assign, or otherwise dispose of public service company property  
necessary or useful in the performance of the public service company’s duties to the public.

## I. INTRODUCTION

### A. The Parties

#### 1. The Applicant: PacifiCorp

3           PacifiCorp is a public service company within the meaning of RCW 80.12.020 and  
serves approximately 1.5 million retail customers in six western states. In Washington, the  
Company provides electric service to approximately 120,000 customers in Benton, Columbia,  
Garfield, Kittitas, Walla Walla, and Yakima Counties. The full and correct name and business  
address for PacifiCorp are as follows:

PacifiCorp  
825 NE Multnomah Street  
Portland, OR 97232

4           PacifiCorp requests that all notices, correspondence and pleadings with respect to this  
Application be sent to:

For PacifiCorp:

Jeffrey K. Larsen  
Managing Director, Regulation  
PacifiCorp  
One Utah Center Suite 2300  
201 S. Main Street  
Salt Lake City, UT 84111  
Telephone: (801) 220-4907  
Facsimile: (801) 220-2798  
jeff.larsen@pacificorp.com

With a copy to:

James M. Van Nostrand  
Stoel Rives LLP  
900 SW Fifth Avenue, Suite 2600  
Portland, OR 97204  
Telephone: (503) 294-9679  
Facsimile: (503) 220-2480  
jmvannostrand@stoel.com

Please also send electronic copies of data requests to [datarequest@pacificorp.com](mailto:datarequest@pacificorp.com).

## **2. The Acquirer**

5 Yakama Nation is a federally recognized tribal government and a party to the Yakama Treaty of 1855 with the United States (12 Stat. 951). On October 12, 2004, the Nation created Yakama Power, an instrumentality of the Nation, by issuing a Charter, a copy of which is attached as Exhibit 3. The Charter of Yakama Power authorizes Yakama Power to undertake electric utility projects approved by the Yakama Tribal Council. The Nation has advised PacifiCorp that (a) the Nation has a contract to acquire electric power from the Bonneville Power Administration (“BPA”), and (b) the Yakama Tribal Council has authorized Yakama Power to provide electric service with BPA or other electric power to the Yakama Tribal Customer Accounts. In furtherance of this goal, the Nation and Yakama Power have advised PacifiCorp that the Nation and Yakama Power desire to acquire PacifiCorp’s Yakama Distribution Facilities serving the Yakama Tribal Customer Accounts in order to avoid duplication of facilities.

### **B. The Yakama Distribution Facilities**

6 The Yakama Distribution Facilities are located exclusively on Trust Allotments within the Reservation. In general, the Yakama Distribution Facilities listed on Exhibit 2 consist of poles, transformers, meters, pads, vaults, wires, conduits, and secondary conductors to serve the Yakama Tribal Customer Accounts, plus primary voltage distribution “tap lines” which run from PacifiCorp’s main distribution feeder to the transformers. The Yakama Distribution Facilities do not serve other PacifiCorp customers within or outside the Trust Allotments.

## **II. PROPOSED TRANSACTION**

7 PacifiCorp proposes to transfer to Acquirer the Yakama Distribution Facilities listed on Exhibit 2. The transfer price for the Yakama Distribution Facilities is \$575,000, PacifiCorp’s estimated depreciated replacement cost for the Yakama Distribution Facilities. In addition, PacifiCorp will charge Acquirer:

- (a) the actual costs of conducting the inventory of the Yakama Distribution Facilities, \$8,760,
- (b) the actual costs of construction to separate the Yakama Distribution Facilities, currently estimated to be \$46,736, plus
  - (i) actual transfer costs related to any additional construction expenditures incurred by PacifiCorp related to the transfer of the Yakama Distribution Facilities, and
  - (ii) termination costs incurred by PacifiCorp in the event of a reimbursed termination, both pursuant to Section 2.06 of the Asset Transfer Agreement,
- (c) actual costs of interconnecting with Acquirer's facilities in Toppenish and White Swan, including but not limited to
  - (i) costs of establishing new points of delivery including new switching and system protection required and any necessary upgrades, and
  - (ii) rearrangement of facilities at Yakama Forest Products in White Swan to accommodate Yakama Power's need to cross over, under, or around PacifiCorp's feeder in order to serve Yakama Forest Products from Yakama Power's new feeder,
- (d) the amount of the receivables listed on Schedule 2.09 of the Asset Transfer Agreement,
- (e) the assumed liabilities set forth in Schedule 2.04 of the Asset Transfer Agreement, and
- (f) PacifiCorp's actual legal fees for the transaction, currently estimated to be \$10,000.

The final transfer price will also be adjusted to include the actual installed cost of the Development Assets, the PacifiCorp facilities currently being designed and installed to serve

additional Tribal housing at the Development on the Tribal Campus, currently estimated to be \$10,240.

8           PacifiCorp will transmit power and energy to Acquirer or BPA at two points of delivery at 12.5kV on PacifiCorp's distribution system at Toppenish, and to one point of delivery at 115 kV to the Benton Rural Electric Association substation in White Swan for delivery to Acquirer or BPA, or to Benton Rural Electric Association for delivery to the Acquirer, at PacifiCorp's standard calculated distribution charge ("Transmission Service"). BPA has submitted a timely request for the Transmission Service in accordance with PacifiCorp's Open Access Transmission Tariff.

9           The Yakama Nation and Yakama Power filed a petition in Yakama Tribal Court to condemn the Yakama Distribution Facilities; a copy of this petition is attached as Exhibit 4. PacifiCorp filed an answer together with affirmative defenses on behalf of its electrical distribution facilities named as a respondent in the Yakama Tribal Court petition; a copy of PacifiCorp's answer is attached as Exhibit 5. Among other matters, PacifiCorp asserted that as the Yakama Distribution Facilities are dedicated to public use and under the Commission's jurisdiction, and that PacifiCorp may not sell, lease, assign or otherwise dispose of the Yakama Distribution Facilities without an order from the Commission under RCW 80.12.020. PacifiCorp also has asserted that the Yakama Tribal Court lacks jurisdiction to condemn the Yakama Distribution Facilities.

10           Included as Schedule 8.07 to the Asset Transfer Agreement is the proposed Yakama Tribal Court order confirming the condemnation to the Yakama Distribution Facilities. The proposed order acknowledges that PacifiCorp does not concede the Yakama Tribal Court's personal and subject matter jurisdiction. The proposed order also acknowledges that PacifiCorp does not contest the Court's jurisdiction for purposes of entering a final judgment and order of condemnation of the Yakama Distribution Facilities, therein described as the Electrical Distribution Facilities, consistent with the Asset Transfer Agreement and an order of approval by this Commission.

### III. JURISDICTION AND AUTHORITY

#### A. Transfer of Utility Property

11 A public service company must receive Commission approval for any transaction to sell, lease, assign, or otherwise dispose of property that is necessary or useful in the company's performance of its duties to the public. Specifically, RCW 80.12.020 provides:

“No public service company shall sell, lease assign or otherwise dispose of the whole or any part of its franchises, properties or facilities whatsoever, which are necessary or useful in the performance of its duties to the public, and no public service company shall, by any means whatsoever, directly or indirectly, merge or consolidate any of its franchises, properties or facilities with any other public service company, without having secured from the commission an order authorizing it so to do: . . . .”

12 If the Nation elects to provide electric service to itself, the Yakama Distribution Facilities would be surplus and unneeded to provide electric service to the Yakama Nation. In this circumstance, Commission authorization may not have been necessary under WAC 480-143-180(2). Where, as here, the proposed transfer of the Yakama Distribution Facilities is necessary to enable the Nation to provide such service, Commission authorization appears necessary. As a result, in order to assure the legitimacy of the transfer, PacifiCorp files this application to secure Commission approval for the transfer of the Yakama Distribution Facilities.

#### B. Satisfaction of the Public Interest Standard

13 The standard for approval of a transfer is whether the proposed transaction is consistent with the public interest. WAC 480-143-170 provides:

If, upon the examination of any application and accompanying exhibits, or upon a hearing concerning the same, the commission find the proposed transaction is not consistent with the public interest, it shall deny the application.

PacifiCorp submits that the proposed transfer satisfies this public interest standard.



14           The proposed transfer would recover the estimated depreciated replacement cost of the Yakama Distribution Facilities and other costs of separating those facilities from PacifiCorp's remaining facilities. As a sovereign, the Nation can provide electric service to itself on the Reservation by building its own facilities. If the Nation elects to build its own facilities, the Yakama Distribution Facilities will not be necessary or useful in the provision of service to the Nation, and will be stranded, as the Yakama Distribution Facilities are not necessary for PacifiCorp to provide its retail electric service in Washington to customers other than the Yakama Tribal Customer Accounts.

15           Furthermore, the proposed transfer resolves the condemnation petition filed by Yakama Nation and Yakama Power in Yakama Tribal Court without substantial litigation costs and other risks, one of which is that the Tribal Court could decide that the proper value of the Yakama Distribution Facilities is salvage value, a position once taken by the Nation. Therefore, due to the elimination of the risk of stranded assets, the elimination of the risk of a valuation based on salvage value, and the avoidance of substantial litigation costs, the transfer of the Yakama Distribution Facilities at depreciated replacement cost ultimately benefits the Company's retail customers.

#### **IV. EXHIBITS TO APPLICATION**

16           The exhibits that accompany this Application are as follows:

1.     Application Exhibit No. 1: a copy of the Asset Transfer Agreement for the transfer of the Yakama Distribution Facilities among PacifiCorp, Yakama Nation, and Yakama Power;
2.     Application Exhibit No. 2: a list of the Yakama Distribution Facilities to be transferred to the Nation and Yakama Power;
3.     Application Exhibit No. 3: Charter of Yakama Power;
4.     Application Exhibit No. 4: The Yakama Nation and Yakama Power petition in Yakama Tribal Court to condemn PacifiCorp's electric distribution facilities named as a respondent in the Yakama Tribal Court petition; and
5.     Application Exhibit No. 5: Answer together with affirmative defenses filed by PacifiCorp on behalf of its electrical distribution facilities named as a respondent in the Yakama Tribal Court petition.

17

WAC 480-143-120 requires property transfer applicants to submit recent financial statements. On or about February 11, 2005, PacifiCorp filed its Financial and Operating Reports for the Quarter Ending December 31, 2004. The submittal was assigned Docket No. UE-050229 and includes PacifiCorp financial statements (specifically Company balance sheet, income statement, statement of retained earnings and statement of capitalization). PacifiCorp respectfully requests that the Commission, pursuant to the provisions of WAC 480-09-750, take official notice of PacifiCorp's financial statements submitted in Docket No. UE-050229.

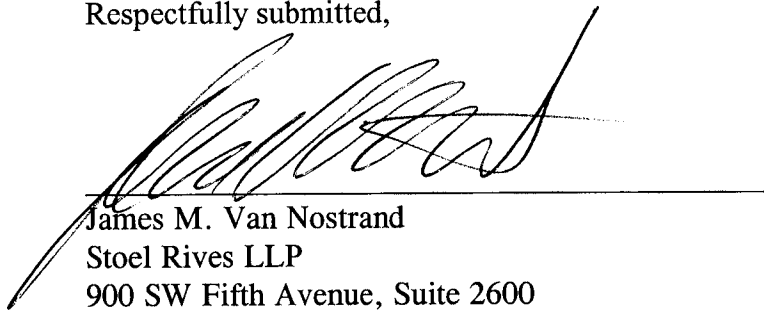
#### V. REQUEST

18

PacifiCorp requests a Commission order approving the proposed transfer of the Company's interests in the Yakama Distribution Facilities as described in this Application and Exhibits and the granting of such other relief as the Commission deems necessary and proper.

DATED: November 23, 2005.

Respectfully submitted,



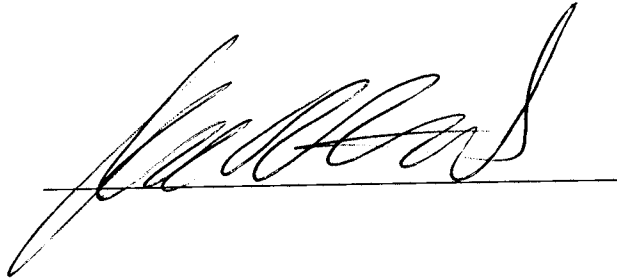
James M. Van Nostrand  
Stoel Rives LLP  
900 SW Fifth Avenue, Suite 2600  
Portland, OR 97204-1268  
Telephone: (503) 294-9246  
Facsimile: (503) 220-2480

Of Attorneys for PacifiCorp

**VERIFICATION**

The undersigned hereby certifies that the information set forth in the foregoing Application is true and correct to the best of the signer's information and belief under penalty of perjury as set forth in RCW 9A.72.085.

Dated: November 23, 2005.

A handwritten signature in black ink, written over a horizontal line. The signature is cursive and appears to be the name of the undersigned.

Application Exhibit No. 1  
Docket No. \_\_\_\_\_



BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of  
PACIFICORP for an Order Approving the  
Sale of its Interest in Distribution Assets  
Serving Certain Yakama Nation Accounts  
Within the Yakama Indian Reservation,  
Washington

Docket No. \_\_\_\_\_

**PACIFICORP**

**APPLICATION EXHIBIT NO. 1**

**Asset Transfer Agreement**

November 2005

ASSET TRANSFER AGREEMENT

AMONG

YAKAMA NATION,

YAKAMA POWER

AND

PACIFICORP

*October 12, 2005*

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## Exhibits

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A	Separation Costs Estimate

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Agreement	Preamble
Assets	Section 1.01
Assumed Liabilities	Section 1.02
Bureau of Indian Affairs	Section 2.03(a)
Buyer	Preamble
Closing	Section 11.01
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Development	Section 2.05
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First Party	Section 14.01(c)
Interconnection	Section 5.02
Interconnection Agreement	Section 5.02
Losses	Section 14.01(b)
Non-Assignable Rights	Section 2.03(b)
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Purchase Price	Section 2.02
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<u>Term</u>	<u>Location of Definition</u>
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Transfer Costs	Section 2.06(a)(ii)
Transmission Agreement	Section 8.12
Transmission Service	Section 8.12
Trust Allotments	Section 1.33

## ASSET TRANSFER AGREEMENT

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This Asset Transfer Agreement (the “Agreement”), dated this 12th day of October, 2005, is among the Yakama Nation, a federally recognized Indian tribe, Yakama Power, a nonprofit incorporated under the laws of the Yakama Nation (collectively, Yakama Nation and Yakama Power are the “Buyer”), and PacifiCorp, an Oregon corporation (“PacifiCorp”).

### SECTION I DEFINITIONS

For purposes of this Agreement, the following terms used herein but not otherwise defined herein will have the following meaning when used with initial capitalization, whether singular or plural:

1.01 “Assets” means the assets and properties owned or leased by PacifiCorp as described on **Schedule 1.01** which are located within the boundaries of the Trust Allotments. The Assets do not include the Excluded Assets nor the Development Assets.

1.02 “Assumed Liabilities” means the liabilities of PacifiCorp to be assumed by Buyer pursuant to Section 2.04.

1.03 “Bureau of Indian Affairs” has the meaning given in Section 2.03(a).

1.04 “Closing” has the meaning given in Section 11.01.

1.05 “Closing Date” means the date of the Closing of this Agreement as provided for in Section 11.01.

1.06 “Development” has the meaning given in Section 2.05.

1.07 “Development Assets” has the meaning given in Section 2.05.

1.08 “Effective Time of Closing” has the meaning given in Section 11.01.

1.09 “Excluded Assets” means the items listed on **Schedule 1.09**.

1.10 “First Party” has the meaning given in Section 14.01(c).

1.11 “Interconnection” has the meaning given in Section 5.02.

1.12 “Interconnection Agreement” has the meaning given in Section 5.02.

1.13 “Losses” has the meaning given in Section 14.01(b).

1.14 “Non-Assignable Rights” has the meaning given in Section 2.03(b).

1.15 “Open Access Transmission Tariff” has the meaning given in Section 5.02.

1.16 “PacifiCorp” means PacifiCorp and any corporation, partnership, limited liability company or other entity controlling, controlled by or under common control with PacifiCorp.

1.17 “PacifiCorp Mortgage” means the Mortgage and Deed of Trust from PacifiCorp to The Chase Manhattan Bank (as successor Trustee to Morgan Guaranty Trust Company of New York), dated January 9, 1989, as amended and supplemented.

1.18 “Permitted Liens” means (a) those items and contractual obligations set forth in **Schedule 1.18**; (b) obligations under similar contracts and agreements relating to the Assets or Development Assets entered into by PacifiCorp between the date hereof and the Closing in the ordinary course of business in compliance with the terms of this Agreement; and (c) imperfections of title and encumbrances which, individually and in the aggregate, do not materially detract from the value of the Assets or interfere with their use by Buyer to provide electric service in the manner currently provided by PacifiCorp.

1.19 “Prudent Utility Practice” means those practices, methods and acts which (a) when engaged in are commonly used in prudent engineering and operations to operate electric equipment and associated mechanical and civil facilities lawfully and with safety, reliability, efficiency and expedition or (b) in the exercise of reasonable judgment considering the facts known when engaged in, could have been expected to achieve the desired result consistent with applicable law, safety, reliability, efficiency and expedition. Prudent Utility Practice is not limited to the optimum practiced method or act, but rather a spectrum of possible practices, methods or acts.

1.20 “Purchase Price” has the meaning given in Section 2.02.

1.21 “Receivables” has the meaning given in Section 2.09.

1.22 “Regulatory Approvals” means approval by the Washington Utilities and Transportation Commission.

1.23 “Reimbursed Termination” has the meaning given in Section 12.02.

1.24 “Reimbursed Termination Date” has the meaning given in Section 12.02.

1.25 “Second Party” has the meaning given in Section 14.01(c).

1.26 “Separation” has the meaning given in Section 2.06(a)(i).

1.27 “Separation Costs” has the meaning given in Section 2.06(a)(i).

1.28 “Separation Costs Estimate” has the meaning given in Section 2.06(b)(i).

1.29 “Termination Costs” has the meaning given in Section 2.06(a)(iii).

1.30 “Transfer Costs” has the meaning given in Section 2.06(a)(ii).

1.31 “Transmission Agreement” has the meaning given in Section 8.12.

1.32 “Transmission Service” has the meaning given in Section 8.12.

1.33 “Trust Allotments” means the trust allotments set forth on **Schedule 1.33**.

## SECTION II SALE AND PURCHASE OF ASSETS AND PAYMENT FOR DEVELOPMENT ASSETS

2.01 Assets to be Sold. Subject to all terms and conditions of this Agreement, PacifiCorp agrees to sell and Buyer agrees to buy all of PacifiCorp’s right, title and interest in the Assets and the Development Assets. PacifiCorp will retain all right, title and interest in the Excluded Assets.

### 2.02 Purchase Price.

(a) The purchase price for the Assets will be \$575,000 plus the amount of the Receivables set forth on Schedule 2.09, the actual cost of the Development Assets (including but not limited to installation, cost of the facilities and all other improvements installed to provide electric service to the Development) and the Assumed Liabilities set forth in **Schedule 2.04** (the “Purchase Price”). PacifiCorp shall notify Buyer of the actual cost and description of the Development Assets in writing at least five business days prior to the Closing. The cash portion of the Purchase Price will be paid by Buyer at Closing.

(b) All payments will be by wire transfer to the following account of PacifiCorp or such other account as PacifiCorp may designate in writing prior to the time of transfer:

PacifiCorp  
Bank One  
Chicago, IL  
ABA 071000013  
Account 5531896

### 2.03 Instruments of Conveyance and Transfer.

(a) At Closing, PacifiCorp will deliver to Buyer such bills of sale, endorsements, assignments, consents and other good and sufficient instruments of conveyance and assignment as will be effective to vest in Buyer title in and to the Assets and the Development Assets and will assign to Buyer PacifiCorp’s interest in the contracts, permits, authorizations, easements and rights-of-way which are capable of assignment and which are included in the Assets and the Development Assets, including any rights of way with or without Bureau of Indian Affairs (“BIA”) approval.

(b) To the extent PacifiCorp does not obtain, by Closing, consents required under contracts and agreements included in the Assets and the Development Assets; PacifiCorp will provide to Buyer a list of consents not yet obtained and PacifiCorp and Buyer will, after Closing, use diligent efforts to obtain such consents. Nothing in this Agreement will be construed as a transfer of any of the Assets or Development Assets or any claims or rights arising thereunder or resulting therefrom which, as a matter of law or by their terms, cannot be so transferred without

the approval or consent of the issuer or the other party or parties thereto unless such approval or consent will have been obtained (collectively, "Non-Assignable Rights"). In connection with such Non-Assignable Rights, PacifiCorp will:

- (i) apply for and use all reasonable efforts to obtain all consents or approvals of the issuer or other parties thereto for the assignment of such Assets or Development Assets;
- (ii) cooperate with Buyer in any reasonable and lawful arrangements designed to effectively make available to Buyer the benefits of such Non-Assignable Rights with the intent that Buyer will be in the same economic position as if such Non-Assignable Rights were transferred to it, including acting as agent for Buyer;
- (iii) enforce, at Buyer's expense, such Non-Assignable Rights against the issuer thereof or the other party or parties thereto;
- (iv) take all such actions in its name or otherwise, including payment of sums due (after receipt of such sums from Buyer, unless such sums are due by reason of PacifiCorp's operations prior to the Effective Time of Closing, in which case PacifiCorp shall be responsible for payment of such sums), and do, or cause to be done, all such things at the request of Buyer as will reasonably be necessary and proper in order that the value of any Non-Assignable Rights will be preserved and will inure to the benefit of Buyer; and
- (v) pay over to Buyer, all monies collected by or paid to PacifiCorp after Closing in respect of such Non-Assignable Rights, net of out-of-pocket expenses.

2.04 Assumption of Liabilities. At Closing, Buyer will assume the following debts, liabilities and obligations (whether arising from contract, tort, or otherwise) associated with the Assets or the Development Assets ("Assumed Liabilities") consisting of (a) liabilities listed on **Schedule 2.04**, (b) liabilities disclosed to and agreed to in writing by Buyer prior to the Closing Date, (c) obligations under any contract, permit or lease listed on **Schedule 2.04** or entered into in accordance with PacifiCorp's past practices and consistent with Prudent Utility Practices, or miscellaneous obligations under authorizations, easements and rights-of-way assigned to Buyer pursuant to Section 2.03 hereof, and (d) the obligations and liabilities with respect to the ownership and operation of the Assets and the Development after the Effective Time of Closing. PacifiCorp shall hold Buyer harmless for all claims or liabilities (except Assumed Liabilities) relating to the Assets and the Development for periods prior to the Effective Time of Closing. Buyer shall hold PacifiCorp harmless for all claims or liabilities relating to Assumed Liabilities.

2.05 Development Assets. Yakama Housing Development (a department of the Yakama Indian Nation) informed PacifiCorp that it is in the process of constructing new housing units on the Yakama Nation Tribal Campus commonly referred to as the Wanity Development (the "Development"). Buyer has requested PacifiCorp construct the facilities necessary to provide electrical service to the Development and PacifiCorp agrees to construct the facilities necessary to provide electric service to the Development (the "Development Assets").

2.06 Costs.

(a) Costs to be Reimbursed. Buyer will reimburse PacifiCorp for:

(i) costs (“Separation Costs”) related to the separation of the PacifiCorp and Buyer electric systems (including, but not limited to rearrangement of PacifiCorp’s facilities at the mills located in White Swan to accommodate Buyer’s need to cross over, under or around the PacifiCorp feeder to serve the mills from Buyer’s new feeder, new tie lines and inventory, construction costs, accounting, billing and legal costs in connection with the transactions contemplated by this Agreement) (the “Separation”);

(ii) costs (“Transfer Costs”) related to any additional construction expenditures, including but not limited to equipment and labor, incurred by PacifiCorp related to the transfer of the Assets to Buyer; and

(iii) upon the occurrence of a Reimbursed Termination, all reasonable costs (“Termination Costs”) incurred by PacifiCorp to reinstate the Assets to their original condition and placement as a result of termination of this Agreement.

(b) Payment Schedule.

(i) An estimate of the Separation Costs is attached hereto as Exhibit A, and upon execution of this Agreement, Buyer shall pay the total amount set forth on Exhibit A to PacifiCorp (the “Separation Costs Estimate”).

(ii) Prior to Closing or a Reimbursed Termination, as the case may be, PacifiCorp will inform Buyer in writing of the amount of Separation Costs, Transfer Costs and Termination Costs if applicable, PacifiCorp has incurred prior to the Closing Date or the Reimbursed Termination Date. Pursuant to the requirements of 2.06(a)(i), if such amount is greater than the Separation Costs Estimate, such excess amount shall be paid to PacifiCorp in cash by wire transfer of immediately available funds in U.S. dollars to the account specified in Section 2.02 or such other account as PacifiCorp may designate in writing prior to the time of transfer at Closing or upon the occurrence of a Reimbursed Termination.

(iii) Within 45 days after the Closing Date or the Reimbursed Termination Date, as the case may be, PacifiCorp will inform Buyer in writing of the total actual Separation Costs, Transfer Costs and Termination Costs, if any. Buyer shall pay to PacifiCorp all such costs not previously paid, in cash by wire transfer of immediately available funds in U.S. dollars not later than the tenth business day after Buyer’s receipt of PacifiCorp’s notice of the amount due, to the account specified in Section 2.02 or such other account as PacifiCorp may designate in writing prior to the time of transfer. If Buyer’s prepayment exceeds the actual costs, PacifiCorp shall refund such excess amounts to Buyer in cash by wire transfer of immediately available funds in U.S. dollars not later than the tenth business day after Buyer’s receipt of PacifiCorp’s notice of the amount due, to such account as Buyer may designate in writing prior to the time of transfer.



2.07 Property Taxes. The property taxes and assessments relating to the Assets for the current tax year shall be pro-rated between PacifiCorp and Buyer at Closing, such that PacifiCorp is responsible for all such taxes up to the Effective Time of Closing and Buyer is responsible for all such taxes thereafter.

2.08 Transfer Fees. If, as a condition to obtaining the required consent of any third party to the assignability of any franchise, license, permit, right-of-way, easement or similar right to Buyer, a third party requires payment of a transfer or administration fee, Buyer will pay any such transfer or administration fee including any such fee that is assessed in lieu of periodic rentals or periodic fees which would otherwise accrue after Closing.

2.09 Receivables. At Closing, Buyer will acquire from PacifiCorp all loan receivables consisting of principle plus accrued interest as of the Closing Date for loans by PacifiCorp to its customers served by the Assets or the Development Assets and advances for line extensions as set forth on **Schedule 2.09** (the "Receivables").

### **SECTION III REPRESENTATIONS AND WARRANTIES OF PACIFICORP**

PacifiCorp represents and warrants as follows:

3.01 Organization and Powers of PacifiCorp. PacifiCorp is an Oregon corporation, duly organized and legally existing under the laws of the State of Oregon. PacifiCorp has all requisite corporate power and authority to own the Assets and to operate the business conducted with the Assets as now being conducted.

3.02 Authority Relative to Agreement. PacifiCorp has the corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly and validly authorized, executed and delivered in accordance with the requirements of applicable law and constitutes the valid and binding obligation of PacifiCorp enforceable in accordance with its terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and except that the availability of the equitable remedies of specific performance and injunctive relief are subject to the discretion of the court before which any proceeding may be brought.

3.03 Condition of Assets. The Assets and the Development Assets will be sold to Buyer "AS IS, WHERE IS" and with no representations or warranties of any kind or character, including any warranty of quality, merchantability, fitness for a particular purpose or condition, except as specifically set forth herein or in the conveyance document to be delivered to Buyer at Closing. BUYER ACKNOWLEDGES THAT EXCEPT AS EXPRESSLY STATED HEREIN, PACIFICORP HAS NOT MADE, AND PACIFICORP EXPRESSLY DISCLAIMS AND NEGATES, ANY IMPLIED OR EXPRESS WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, RELATING TO THE ASSETS AND THE DEVELOPMENT ASSETS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BUYER WAIVES ALL RIGHTS TO CONTRIBUTIONS, OFFSETS AND

DAMAGES WHICH IN ANY MANNER RELATE TO THE COMPLIANCE OF THE ASSETS WITH ANY LAW OR REGULATION APPLICABLE THERETO.

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3.04 Approvals; Non-Contravention. Except for the consents and approvals set forth in **Schedule 3.04**, and consents and approvals required under the terms of easements, rights of way and permits, the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not violate, conflict with or result in a breach of any provision of, or constitute a default under, any agreement to which PacifiCorp is now a party, the result of which would impair Buyer's title to or use of the Assets and the Development Assets.

3.05 Title to the Assets. Except for the Permitted Liens, PacifiCorp or a PacifiCorp Affiliate has good and defensible title to the personal property (including utility poles) included in the Assets and the Development Assets, free and clear of all liens, mortgages, pledges, security interests or other similar encumbrances. At Closing, PacifiCorp will transfer its right, title and interest to the real property included in the Assets, consisting of easements, free and clear of all liens, mortgages, pledges, security interest or other similar encumbrances created or suffered by PacifiCorp except for Permitted Liens, but with no other warranties of title.

3.06 Tax Matters. PacifiCorp has duly filed with the appropriate governmental agencies all material tax returns and tax reports due and required to be filed by PacifiCorp with respect to the Assets and the Development Assets and has or will have paid or provided for the payment of all such taxes accruing through the Closing Date.

3.07 Legal Proceedings. Except as set forth on **Schedule 3.07**, claims, actions, suits, inquiries, investigations or proceedings pending, or to the best knowledge of PacifiCorp, threatened relating to the Assets or the Development Assets, before any federal, state or local court or other governmental or regulatory body currently exist.

3.08 Environmental Liabilities. To the knowledge of PacifiCorp, its ownership and use of the Assets and the Development Assets in material compliance with applicable federal, state and local laws, ordinances and regulations relating to pollution, environmental protection and hazardous substances. In addition, prior to Closing, PacifiCorp will disclose to Buyer all toxic substances and hazardous materials which (1) currently are known by PacifiCorp to be in or on the Assets, or (2) have to the knowledge of PacifiCorp been released or disbursed from the Assets within the last three years and shall provide Buyer access to its records regarding PCB testing and disposal which relate to the Assets.

## SECTION IV REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants as follows:

4.01 Organization and Powers of Buyer. Yakama Indian Nation is a federally recognized Indian tribe under Section 104 of the Federally Recognized Indian Tribe List Act of 1994 and Yakama Power is a non-profit utility incorporated under the laws of the Yakama Indian Nation. Buyer has all requisite power and authority to own, operate and purchase the Assets.

4.02 Authority Relative to Agreement. Buyer has the power and authority under applicable law, and has complied with all applicable laws and tribal requirements including approvals by Yakama Indian Nation's Tribal Council and Yakama Power's Board of Directors necessary to execute and deliver this Agreement and to consummate the transactions, including the acquisition of the Assets and the Development as contemplated hereby. This Agreement has been duly and validly authorized, executed and delivered in accordance with the requirements of applicable law and constitutes the valid and binding obligation of Buyer enforceable in accordance with its terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and except that the availability of the equitable remedies of specific performance and injunctive relief are subject to the discretion of the court before which any proceeding may be brought.

4.03 Buyer Financing. Buyer has allocated sufficient funds to finance the purchase of the Assets and the Development Assets, including all Separation Costs.

4.04 Allottees. The Assets are only located on the Trust Allotments set forth on **Schedule 1.33.**

## SECTION V MUTUAL COVENANTS

5.01 Press Releases. Prior to Closing, no press releases or other public announcements concerning the transactions contemplated by this Agreement will be made by either party without the consent of the other party, which consent shall not be unreasonably withheld; *provided, however,* that nothing herein will operate to prevent a party from supplying such information or making statements as required by governmental authority or in order for a party to satisfy its legal obligations (prompt prior notice of which shall in any such case be given to the other party).

5.02 Interconnection Agreement. Prior to Closing, Buyer and PacifiCorp will enter into an interconnection agreement ("Interconnection Agreement") to connect Buyer's distribution facilities to PacifiCorp's distribution feeder located in Toppenish (the "Interconnection"). Buyer will submit a timely request for the Interconnection in accordance with PacifiCorp's Open Access Transmission Tariff ("OATT"). The Interconnection Agreement will include the following provisions:

(a) Buyer will supply metering suitable for delivery of wholesale power and energy to points of delivery for the Legends Casino and Events Center located on Robbins Road south of Fort Road and for the Tribal Headquarters Campus located north of the intersection of Fort Road and Robbins Road;

(b) Buyer will reimburse PacifiCorp for the actual cost of designing and establishing the points of delivery described in Section 5.02(a), including but not limited to the switching and system protection required for any lines upgrades determined necessary by PacifiCorp and any administrative or legal costs;

(c) the interconnection points will be at the locations described in Section 5.02(a) and locations approved in advance by PacifiCorp; and the interconnection facilities will meet reasonable standards established by PacifiCorp that apply to customers of a similar type and circumstance as Buyer;

(d) Buyer and PacifiCorp will work together to design the facilities required for the interconnection.

## **SECTION VI COVENANTS OF PACIFICORP**

PacifiCorp covenants and agrees as follows:

6.01 Insurance; Risk of Loss. Until the Effective Time of Closing, PacifiCorp will continue to self-insure or carry insurance currently in effect related to the Assets, insuring the Assets in accordance with its past practices. PacifiCorp will bear the risk of loss or damage to the Assets prior to transfer of the Assets to Buyer at the Effective Time of Closing.

6.02 Conditions and Best Efforts. Subject to the terms of this Agreement, PacifiCorp will use its reasonable best efforts to effectuate the transactions contemplated by this Agreement and to fulfill all of the conditions of the parties' obligations under this Agreement and will do all such acts and things as reasonably may be required to carry out PacifiCorp's obligations hereunder and to consummate and complete this Agreement, including without limitation of the foregoing promptly making application for Regulatory Approvals. Notwithstanding the foregoing, PacifiCorp will not be required in connection with any necessary approval or consent to agree to any payment or agree to any conditions of approval that are unacceptable to PacifiCorp.

6.03 Maintain Properties. Prior to Closing, PacifiCorp will maintain the Assets, consistent with past practices, including, but not limited to, maintenance, repair, replacement or changes to the Assets; and will not enter into any contract or financing arrangement that in any way limits PacifiCorp's ability to sell the Assets to Buyer; or terminate or amend, in any material fashion, any contract or agreement included in the Assets, which is material to the ownership or operation of the electric distribution system in the Service Territory, without Buyer's consent.

## SECTION VII COVENANTS OF BUYER

Buyer covenants and agrees as follows:

7.01 Conditions and Best Efforts. Subject to the terms of this Agreement, Buyer will use its reasonable best efforts to effectuate the transactions contemplated by this Agreement and to fulfill all of the conditions of the parties' obligations under this Agreement and will do all such acts and things as reasonably may be required to carry out Buyer's obligations hereunder and to consummate and complete this Agreement, including without limitation of the foregoing, promptly making application for Regulatory Approvals in cooperation with PacifiCorp and assisting PacifiCorp in seeking approval of its filings.

Buyer will not prior to Closing, without PacifiCorp's prior consent, make any filing with, or initiate any discussion or proceeding with, any non-tribal governmental body having regulatory authority over the sale by PacifiCorp, or the purchase by Buyer, of the Assets. Prior to filing applications, prefiled testimony or responses to data requests in the course of obtaining Regulatory Approval, Buyer will provide such materials to PacifiCorp for its information. Notwithstanding the foregoing, Buyer will not be required in connection with any regulatory approval to agree to any conditions of approval that are unacceptable to Buyer.

7.02 Confidentiality. To the maximum extent allowed by law, all material nonpublic information requested and obtained by Buyer from PacifiCorp will be kept confidential by Buyer and used by Buyer solely for the purposes of evaluation of the transactions contemplated by this Agreement and the operation of the Assets.

7.03 Non-Assignable Rights. In connection with Non-Assignable Rights and consistent with Section 2.03(b), Buyer will:

(a) cooperate with PacifiCorp's efforts to obtain all consents or approvals of the issuer or other parties thereto for the assignment of such rights;

(b) pay to PacifiCorp all sums due to third parties for performance rendered after Closing under or pursuant to the Non-Assignable Rights as and when due under the Non-Assignable Rights; and

(c) comply with all of the terms and conditions of, and perform all obligations imposed on PacifiCorp under the Non-Assignable Rights.

## SECTION VIII CONDITIONS PRECEDENT TO PACIFICORP'S OBLIGATIONS

All of the obligations of PacifiCorp to be discharged prior to or at Closing are subject to the fulfillment, prior to or at Closing, of each of the following conditions:

8.01 Authorization. The performance of the transactions provided for in this Agreement will have been duly authorized and approved by the Investment Committee of Power

Delivery under the authority delegated by the Board of Directors of PacifiCorp which authorization and approval shall not have been revoked, rescinded or superseded in any way.

8.02 Transmission and Interconnection Agreements. The parties shall have executed the Transmission Agreement and the Interconnection Agreement, the Interconnection shall have been completed, and Transmission Service will be available to deliver power and energy to Buyer.

8.03 All Necessary Action. At Closing, Buyer will have taken all actions necessary to fully serve customers in the Service Territory.

8.04 Representations, Warranties and Covenants of Buyer. All representations and warranties made in this Agreement by Buyer will be true and correct in all material respects as of the Closing Date as fully as though such representations and warranties had been made on and as of the Closing Date and Buyer will have complied in all material respects with all covenants made by it in this Agreement to be performed prior to Closing. At Closing, Buyer will provide to PacifiCorp a certificate dated as of the date of Closing and signed by the Chairman of the Yakama Nation's Tribal Council and the Chair of the Board of Directors of Yakama Power confirming the accuracy of the matters stated in this Section.

8.05 Third Party Releases and Consents.

(a) PacifiCorp will have obtained the release of the Assets from the PacifiCorp Mortgage, and

(b) PacifiCorp or Buyer will have obtained the written consent of third parties, including government agencies, in form and substance satisfactory to PacifiCorp and its counsel, necessary for consummation of the transactions contemplated by this Agreement, other than (1) those which, if not obtained, would not, in the aggregate, have a material adverse effect on the value of the Assets or the Development Assets, and (2) consents from railroads and government agencies with respect to easements, rights of way and similar rights that are normally processed in the ordinary course.

8.06 Regulatory Approvals. The Regulatory Approvals will have been obtained and be in effect at the Closing Date on terms acceptable to PacifiCorp.

8.07 Litigation. At the Closing Date, there will not be in effect any order, decree or injunction of a court of competent jurisdiction restraining, enjoining or prohibiting the consummation of the transactions contemplated by this Agreement (each party agreeing to use its best efforts, including appeals to higher courts, to have any such order, decree or injunction set aside or lifted), and no action will have been taken and no statute, rule or regulation will have been enacted by any state or federal government or governmental agency in the United States which would prevent the consummation of such transactions. At Closing, Buyer shall have delivered to PacifiCorp an order in the matter of Yakama Nation and Yakama Power v. Electrical Distribution Facilities, Yakama Tribal Court No. 05-031, as set forth in **Schedule 8.07**.

8.08 Separation Completed. All Separation will have been completed prior to the Effective Time of Closing.

8.09 Development Assets. The Development Assets shall be installed pursuant to the terms of the Service Line Agreement.

8.10 Reimbursement for Costs. At Closing, Buyer will have reimbursed PacifiCorp for all costs billed to Buyer pursuant to this Agreement on or before the Closing Date.

8.11 Exemption Certificate. Prior to Closing, Buyer shall provide to PacifiCorp an exemption certificate for sale and use taxes as a federally recognized Indian tribe.

8.12 Transmission Agreement. Prior to Closing, BPA and PacifiCorp will enter into an agreement to purchase transmission service from PacifiCorp ("Transmission Agreement"). PacifiCorp will transmit power and energy to BPA at the two points of delivery described in Section 5.02(a) at 12.5 kV on PacifiCorp's distribution system at PacifiCorp's standard calculated distribution charge ("Transmission Service"). BPA will submit a timely request for the Transmission Service in accordance with PacifiCorp's OATT.

## **SECTION IX CONDITIONS PRECEDENT TO BUYER'S OBLIGATIONS**

All of the obligations of Buyer to be discharged prior to or at the Closing are subject to the fulfillment, prior to or at the Closing, of each of the following conditions:

9.01 Authorization. The performance of the transactions provided for in this Agreement will have been duly authorized and approved by the Yakama Indian Nation Tribal Council and Yakama Power Board of Directors in accordance with all applicable laws and tribal requirements, which authorization and approval shall not have been revoked, rescinded or superseded in any way.

9.02 Transmission and Interconnection Agreements. The parties shall have executed the Transmission Agreement and the Interconnection Agreement, the Interconnection shall have been completed, and Transmission Service will be available to deliver power and energy to Buyer.

9.03 Representations, Warranties and Covenants of PacifiCorp. All representations and warranties made in this Agreement by PacifiCorp will be true and correct in all material respects as of the Closing Date as fully as though such representations and warranties had been made on and as of the Closing Date. As of the Closing Date, PacifiCorp will have complied in all material respects with all covenants made by it in this Agreement to be performed prior to Closing. At Closing, PacifiCorp will provide to Buyer a certificate dated as of the date of Closing and signed by an authorized officer of PacifiCorp confirming the accuracy of the matters stated in this Section.

9.04 Third Party Consents. PacifiCorp or Buyer will have obtained the written consent of third parties, including government agencies, in form and substance satisfactory to Buyer and its counsel, necessary for consummation of the transactions contemplated by this Agreement, other than (a) those which, if not obtained, would not, in the aggregate, have a material adverse effect on the value of the Assets on the Development Assets, and (b) consents from railroads and

government agencies with respect to easements, rights of way and similar rights that are normally processed in the ordinary course.

9.05 Litigation. At the Closing Date, there will not be in effect any order, decree, or injunction of a court of competent jurisdiction restraining, enjoining or prohibiting the consummation of the transactions contemplated by this Agreement (each party agreeing to use its best efforts, including appeals to higher courts, to have any such order, decree or injunction set aside or lifted), and no action will have been taken and no statute, rule or regulation will have been enacted by any state or federal government or governmental agency in the United States which would prevent the consummation of such transactions.

9.06 Development Assets. The Development Assets shall be installed pursuant to the terms of the Service Line Agreement.

9.07 Transmission Agreement. Prior to Closing, BPA and PacifiCorp will enter into an agreement to purchase transmission service from PacifiCorp Transmission Agreement. PacifiCorp will transmit power and energy to BPA at the two points of delivery described in Section 5.02(a) at 12.5 kV on PacifiCorp's distribution system at PacifiCorp's standard calculated distribution charge Transmission Service. BPA will submit a timely request for the Transmission Service in accordance with PacifiCorp's OATT.

## **SECTION X NOTICES OF DEVELOPMENT**

10.01 Notice. PacifiCorp will notify the Buyer in writing of any circumstance known to PacifiCorp prior to Closing which at the time of notification causes any of the representations and warranties in this Agreement to be materially inaccurate. Unless Buyer terminates this Agreement pursuant to Section 12.01, the written notice pursuant to this Section 10.01 will be deemed to have qualified the representations and warranties, to have amended any schedule referenced in such Sections, and to have caused any representation or breach of warranty that otherwise might have existed hereunder by reason of the circumstance to be cured.

10.02 Asset Description. Buyer acknowledges that changes in the Assets and liabilities relating to the Assets and the Development Assets or other information shown on the Schedules may occur after the date of this Agreement and prior to Closing. PacifiCorp may, prior to Closing, deliver to Buyer updated Schedules. Unless Buyer terminates this Agreement pursuant to Section 12.01, the updated Schedules delivered pursuant to this section will be deemed to replace the applicable Schedule attached hereto.

## **SECTION XI CLOSING**

11.01 Time and Place. The closing of the transactions contemplated by this Agreement (the "Closing") will take place at 10:00 a.m., Pacific time, on the date that is the later of (i) ten (10) days after Buyer has demonstrated to PacifiCorp's reasonable satisfaction that it has the capability to provide service equivalent to that currently being provided by PacifiCorp to all customers in the Service Territory and the Separation has been completed, (ii) ten (10) days following receipt of Regulatory Approvals, or (iii) such other date as may be mutually agreed



upon by the parties (the "Closing Date"). The transfer of the Assets and the Development Assets and the assumption of the Assumed Liabilities will be effective as of 11:59:59 p.m., Pacific time, on the Closing Date (the "Effective Time of Closing"). The Closing will be held at the offices of Stoel Rives LLP, 900 SW Fifth Avenue, Suite 2600, Portland, Oregon, or at such other place as the parties may mutually agree and may be conducted by exchange of documents by facsimile and overnight courier service.

11.02 Further Assurances. From time to time after the Closing, each party, upon the request of the other party, will without further consideration execute, deliver and acknowledge all such further instruments of transfer and conveyance and do and perform all such other acts and things as either party may reasonably require to more effectively carry out the intent of this Agreement.

11.03 Meter Readings. PacifiCorp and Buyer will read the meters for its accounts in the Service Territory within 10 days before the Closing Date and will estimate the final customer bill as necessary to include services provided by PacifiCorp up to and including the Closing Date.

## **SECTION XII TERMINATION**

12.01 Termination. This Agreement may be terminated and abandoned at any time prior to the Closing:

(a) if the parties agree in writing to terminate this Agreement by mutual consent;

(b) by Buyer if Buyer delivers a written notice to PacifiCorp to the effect that (1) one or more of the conditions to the obligations of Buyer set forth in Section 9 (which will be specified in detail in such notice) cannot be met on or before December 31, 2005 (or such later date to which the term of this Agreement may be extended pursuant to Subsection 12.01(f)); or (2) PacifiCorp has defaulted in a material respect under one or more of its covenants and agreements contained herein (which will be specified in detail in such notice) and such condition or conditions have not been satisfied or such default or defaults have not been remedied (or waived by Buyer) within 30 days after the date such notice is delivered by Buyer to PacifiCorp; or (3) Buyer is terminating the Agreement as a result of a notice under Section 10.01 or a revised Schedule under Section 10.02, and such termination occurs within ten (10) days of Buyer's receipt after such notice or revised Schedule;

(c) by PacifiCorp if PacifiCorp delivers a written notice to Buyer to the effect that (1) one or more of the conditions to the obligations of PacifiCorp set forth in Section 8 (which will be specified in detail in such notice) cannot be met on or before December 31, 2005 (or such later date to which the term of this Agreement may be extended pursuant to Subsection 12.01(f)); or (2) Buyer has defaulted in a material respect under one or more of its covenants and agreements contained herein (which will be specified in detail in such notice), and such condition or conditions have not been satisfied or such default or defaults have not been remedied (or waived by PacifiCorp) within 30 days after the date such notice is delivered by PacifiCorp to Buyer; provided however, that any breach of Section 5.01 shall not be considered grounds for termination.

(d) by either party if any governmental or regulatory body, the consent of which is a condition to the obligations of Buyer and PacifiCorp to consummate the transactions contemplated by this Agreement, will have determined not to grant its consent and all appeals of such determination will have been taken and have been unsuccessful;

(e) by either party if any court of competent jurisdiction in the United States or Yakama Indian Nation or state will have issued an order, judgment or decree (other than a temporary restraining order) restraining, enjoining or otherwise prohibiting the purchase of the Assets from PacifiCorp by Buyer and such order, judgment or decree will have become final and nonappealable; or

(f) by either party if the Closing does not occur on or before December 31, 2005 (other than by virtue of a default by one of the parties), or such later date to which the term of this Agreement may be extended pursuant to mutual agreement of the parties, provided that one of the parties gives written notice to the other so terminating this Agreement.

**12.02 Effect of Termination.** Except as provided below and in Section 2.05, any termination pursuant to this Section 12 will relieve both the parties hereto of all of their obligations set forth herein and any liability with respect thereto; provided that termination of this Agreement does not relieve either party of liability for breach of the Agreement. In the event of termination by Buyer pursuant to Section 12.01(b)(2), Buyer shall not be responsible for reimbursement of any Separation Costs, Transfer Costs or Termination Costs incurred by PacifiCorp pursuant to Section 2.06, and PacifiCorp shall reimburse Buyer such amounts paid in advance by Buyer to Seller. In the event of termination by PacifiCorp pursuant to Section 12.01(c)(2) or by Buyer, unless pursuant to Section 12.01(b)(2), reimbursement for Separation Costs, Transfer Costs or Termination Costs incurred by PacifiCorp pursuant to Section 2.06 shall be paid by Buyer (a "Reimbursed Termination," and the date of such Reimbursed Termination, the "Reimbursed Termination Date"). In the event of termination by PacifiCorp or by Buyer, PacifiCorp will refund to Buyer amounts paid to PacifiCorp by Buyer pursuant to Section 2.06 only to the extent such amounts are in excess of the total Separation Costs, Transfer Costs and Termination Costs.

### **SECTION XIII ASSIGNMENT**

**13.01 Assignment.** Neither party may assign its rights under this Agreement to any third party without the written consent of the other party to this Agreement which consent shall not be unreasonably withheld.

**13.02 No Discharge.** No assignment of this Agreement will operate to discharge the assignor of any duty or obligation hereunder without the written consent of the other party.

### **SECTION XIV MISCELLANEOUS**

**14.01 Indemnification.** From and after the Effective Time of Closing, PacifiCorp and Buyer will each indemnify and hold harmless the other party from and against any Losses, as defined below, incurred by reason of any breach or inaccuracy of a representation or warranty or

breach of covenant of a party in this Agreement. Any claims for indemnification shall not exceed fifty percent of the Purchase Price in the aggregate and all indemnification claims must be brought within one year after the Closing Date.

(a) After Closing, the indemnification provided by this section shall be the sole and exclusive remedy for any Losses of a party with respect to any breach or inaccuracy of any representation or warranty or breach of any covenant contained in this Agreement.

(b) “Losses” shall include actual loss, liability, damage or expense (including reasonable legal fees and expenses but excluding incidental, consequential or punitive damages).

(c) A party (for purposes of this Section 14.01(c), the “First Party”) shall not have any liability under any provision of this Agreement for any Loss to the extent that the proximate cause for such Loss is or was action taken by the other party to this Agreement (for purposes of this Section 14.01(c), the “Second Party”) after the Closing Date, or action taken by the Second Party after the Closing Date outside the ordinary course of business to the extent such action exacerbates a Loss caused by the First Party’s breach of any of its representations, warranties or covenants.

(d) Each party entitled to indemnification hereunder shall take all reasonable steps to mitigate all Losses after becoming aware of any event which could reasonably be expected to give rise to any Losses that are indemnifiable or recoverable hereunder or in connection herewith.

14.02 Franchises, Ordinances, Resolutions and Permits. Nothing in this Agreement shall modify in any way any existing franchises, ordinances or Buyer resolution, specifically including the permit process that currently governs service by PacifiCorp to new customers or modification of PacifiCorp’s facilities located within the Buyer’s reservation.

14.03 Allocation of Purchase Price. The Purchase Price will be allocated among the Assets in accordance with Section 1060 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder. Neither PacifiCorp nor Buyer will take any action that would be inconsistent with such allocation.

14.04 Post-Closing Access. Buyer will allow PacifiCorp reasonable access after Closing to the Assets and the Development Assets to enable PacifiCorp to retrieve any Excluded Assets including, without limitation, communications equipment retained by PacifiCorp.

14.05 Termination of Use of Name and Logo. Buyer will not use PacifiCorp’s name, logo, trade names or trademarks other than use of equipment purchased under this Agreement bearing PacifiCorp’s name or logo prior to Closing, and as soon as practicable after the Closing, but in any event within six months after Closing, will obliterate, cover or remove PacifiCorp’s logo and name from the Assets. In the case of meters containing such information on the interior, Buyer may add an exterior sticker containing Buyer’s name and contact information.

14.06 Amendment. This Agreement may be amended only by an instrument in writing executed by the parties which expressly refers to this Agreement and states that it is an amendment hereto.

14.07 Section and Paragraph Headings. The section and subsection headings contained in this Agreement are for reference purposes only and will not in any way affect the meaning or interpretation of this Agreement.

14.08 Waiver. Any of the terms or conditions of this Agreement may be waived at any time and from time to time, in writing, by the party entitled to the benefit of such terms or conditions.

14.09 Choice of Law. This Agreement will be subject to and be construed under the laws of the State of Washington, provided that Buyer's authority to enter this Agreement will be subject to and construed under the laws of the Yakama Nation.

14.10 Prevailing Party Costs. If a party commences an action against the other party because of a breach by that party of its obligations under this Agreement or any documents executed in consummation with the transaction contemplated by this Agreement, the prevailing party in any such action shall be entitled to recover from the losing party its expenses, including reasonable attorneys' fees, incurred in connection with the prosecution or defense of such action, and any appeal thereof.

14.11 Notices. All notices, requests, demands and other communications given by Buyer or PacifiCorp will be in writing and will be deemed to have been given when telecopied with confirmed transmission, when hand delivered, when delivered by overnight courier or four business days after deposit into the United States mail, to the following addresses:

If to Yakama Nation, to:      Yakama Indian Nation  
Louis Cloud  
Chair, Tribal Council  
PO Box 151  
Toppenish, WA 98948  
Fax: (509) 865-5528  
Phone: (509) 865-5121

With a copy to:              Office of Legal Counsel  
PO Box 151  
Toppenish, WA 98948  
Attn: Tribal Attorney  
Fax: (509) 865-4713  
Phone: (509) 865-5121

If to Yakama Power, to:      Yakama Power  
Ray Wiseman  
PO Box 1279  
Toppenish, WA 98948  
Fax: (509) 865-7698  
Phone: (509) 865-POWR

With a copy to: J.D. Williams  
Attorney at Law  
521 SW Clay St.  
Portland, OR 97201  
Fax: (503) 226-1321  
Phone: (503) 295-1020

If to PacifiCorp, to: PacifiCorp  
825 NE Multnomah Street,  
Room 485  
Portland, OR 97232  
Attn: George Schreck  
Fax: (503) 813-7190  
Phone: (503) 813-7211

With a copy to: Stoel Rives LLP  
900 SW Fifth Avenue, Suite 2600  
Portland, OR 97204-1268  
Attn: Kimberly A. Medford  
Fax: (503) 220-2480  
Phone: (503) 294-9659

or to such other address as Buyer or PacifiCorp may designate in writing.

14.12 Integrated Agreement. This Agreement, the schedules and exhibits hereto, when executed, constitute the entire agreement between the parties hereto and supersedes all prior agreements and understandings, oral and written, between the parties with respect to the subject matter hereof.

14.13 Counterparts. This Agreement may be executed in two or more counterparts, each of which will for all purposes be deemed to be an original and both of which will constitute one and the same instrument.

14.14 Disclosure. Disclosure of any fact or item in any schedule or exhibit hereto shall be deemed to have been so disclosed in any other schedule, exhibit or representation or warranty made by PacifiCorp herein, provided disclosure of such fact or item on such schedule or exhibit contains disclosure of facts that would otherwise be required to be disclosed in such other schedules, exhibit or representation or warranty. Matters reflected in the schedules and exhibits hereto are not necessarily limited to matters required by this Agreement to be disclosed. Such additional matters are provided for information purposes only and shall not be deemed to be an admission or acknowledgement by PacifiCorp that such information is material or outside the ordinary course of the business of PacifiCorp.

14.15 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision

of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be construed as nearly as possible to give effect to the original intent of the parties.

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14.16 No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended or shall be construed to confer upon or give to a person, firm, corporation or municipality other than the parties hereto any rights or remedies under or by reason of this Agreement or any transaction contemplated herein.

**[SIGNATURE PAGE FOLLOWS]**

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IN WITNESS WHEREOF, the parties have signed this Agreement as of the date first above written.

**BUYER:**

**YAKAMA NATION**

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

Name: Louis Cloud

Title: Chair, Tribal Council

**YAKAMA POWER**

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

Name: Louis Cloud

Title: Chair, Board of Directors

**PACIFICORP:**

**PACIFICORP**

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

Name: Matthew Wright

Title: Executive Vice President

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date first above written.

**BUYER:**

**YAKAMA NATION**

By: *Louis Cloud*  
Name: Louis Cloud  
Title: Chair, Tribal Council

**YAKAMA POWER**

By: *Louis Cloud*  
Name: Louis Cloud  
Title: Chair, Board of Directors

**PACIFICORP:**

**PACIFICORP**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



## Exhibit A

### **Separation Costs Estimate**

Estimated Inventory Costs	\$8,760
Estimated Construction Costs	\$46,736
Estimated Legal Costs	<u>\$10,000</u>
Total Estimated Separation Costs	\$62,496

This Separation Cost Estimate does not include an estimate of the costs that will be incurred by PacifiCorp in order to rearrange its facilities at the mills in White Swan to accommodate Buyer's need to cross over, under or around PacifiCorp's feeder to serve the mills from Buyer's new feeder. The cost estimate for this work will be determined after meetings between PacifiCorp's and Buyer's engineers and development of a mutually satisfactory design. Such costs will be paid to PacifiCorp upon determination.

**Schedule 1.01  
Description of Assets**

**Easement across Allotment 1042 (individual allotment)**

<b>Vintage</b>	<b>Unit Qty Meas.</b>	<b>Description</b>
1978	1 EA	POLE 45 FT
1980	3 EA	POLE 35 FT
1981	1 EA	POLE 40 FT
1991	1 EA	POLE 45 FT
2002	5 EA	POLE 45 FT
1999	1 EA	POLE 45 FT
1980	160 FT	WIRE ALUM/ACSR 6 THRU 2
1981	110 FT	WIRE ALUM/ACSR 1 THRU 4/0
1997	240 FT	WIRE ALUM/ACSR 6 THRU 2
2000	50 FT	WIRE ALUM/ACSR 1 THRU 4/0
1980	600 FT	CONDUIT PLASTIC 2 IN
1981	30 FT	CONDUIT PLASTIC 4 IN
1990	1250 FT	CONDUIT PLASTIC 4 IN
1991	2872 FT	CONDUIT PLASTIC 2 IN
1993	4115 FT	CONDUIT PLASTIC 2 IN
1999	1470 FT	CONDUIT PLASTIC 2 IN
2000	5070 FT	CONDUIT PLASTIC 2 IN
1995	2 EA	3 PH CONCRETE TRANSFORMER VAULT
1995	3 EA	1 PH CONCRETE SECTIONALIZER VAULT
1995	1 EA	3 PH CONCRETE TRANSFORMER VAULT
1995	5 EA	1 PH CONCRETE TRANSFORMER VAULT
1995	9 EA	1 PH CONCRETE TRANSFORMER VAULT
1995	1 EA	3 PH CONCRETE SECTIONALIZER VAULT
1997	1 EA	3 PH CONCRETE TRANSFORMER VAULT
1999	7 EA	1 PH CONCRETE TRANSFORMER VAULT
2000	12 EA	1 PH CONCRETE TRANSFORMER VAULT
1980	2 EA	1 PH SECTIONALIZING CABINET
1990	1 EA	3 PH SECTIONALIZING CABINET
1991	3 EA	3 PH SECTIONALIZING CABINET
1993	3 EA	3 PH SECTIONALIZING CABINET
1995	1 EA	3 PH SECTIONALIZING CABINET
1999	3 EA	1 PH SECTIONALIZING CABINET
2000	4 EA	3 PH SECTIONALIZING CABINET
1993	4 EA	CONCRETE 1 PH TRANSFORMER PAD
1998	5 EA	CONCRETE 1 PH TRANSFORMER PAD
1976	240 FT	CABLE INS 1/C 600V 250 THRU 499 MCM
1980	6025 FT	CABLE INS PRIMARY 15 KV #2
1981	90 FT	CABLE INS PRIMARY 15 KV 4/0
1990	1750 FT	CABLE INS PRIMARY 15 KV 4/0
1991	5527 FT	CABLE INS PRIMARY 15 KV #2
1993	10110 FT	CABLE INS PRIMARY 15 KV #2
1999	1870 FT	CABLE INS PRIMARY 15 KV #2

Vintage	Unit Qty Meas.	Description
2000	13860 FT	CABLE INS PRIMARY 15 KV #2
1976	80 FT	CABLE INS 1/C 600V 500 MCM & LARGER
1993	720 FT	CABLE INS 1/C 600V 500 MCM & LARGER
1999	1440 FT	CABLE INS 1/C 600V 500 MCM & LARGER
1999	3 EA	POLE-1PH , <=25 KVA
1980	2 EA	PAD-1PH , <=50 KVA
1993	3 EA	PAD-1PH , <=50 KVA
1999	2 EA	PAD-1PH , <=50 KVA
2000	1 EA	PAD-1PH , <=50 KVA
1980	1 EA	PAD-1PH , >=51 THRU <=100 KVA
1993	4 EA	PAD-1PH , >=51 THRU <=100 KVA
2000	3 EA	PAD-1PH , >=51 THRU <=100 KVA
1991	2 EA	PAD-1PH , >=100 KVA
2000	1 EA	PAD-1PH , >=100 KVA
1999	1 EA	POLE-3PH , <=50 KVA
2000	1 EA	POLE-3PH , >=51 THRU <=100 KVA
1976	2 EA	PAD-3PH , >=100 KVA
1989	1 EA	PAD-3PH , >=100 KVA
1993	2 EA	PAD-3PH , >=100 KVA
1997	1 EA	PAD-3PH , >=100 KVA
2005	1 EA	PAD-3PH , >=100 KVA
1976	3 EA	CURRENT TRANSFORMERS (METERING)
1980	6 EA	CURRENT TRANSFORMERS (METERING)
1990	6 EA	CURRENT TRANSFORMERS (METERING)
1991	12 EA	CURRENT TRANSFORMERS (METERING)
1999	3 EA	CURRENT TRANSFORMERS (METERING)
2000	3 EA	CURRENT TRANSFORMERS (METERING)
1991	2 EA	RESIDENTIAL HOUSE METER
1993	52 EA	RESIDENTIAL HOUSE METER
2002	2 EA	PRIMARY METER
1976	1 EA	COMMERCIAL MULTI-FUNCTION METER
1980	2 EA	COMMERCIAL MULTI-FUNCTION METER
1989	1 EA	COMMERCIAL MULTI-FUNCTION METER
1990	2 EA	COMMERCIAL MULTI-FUNCTION METER
1991	7 EA	COMMERCIAL MULTI-FUNCTION METER
1993	26 EA	COMMERCIAL MULTI-FUNCTION METER
1999	4 EA	COMMERCIAL MULTI-FUNCTION METER
2000	6 EA	COMMERCIAL MULTI-FUNCTION METER
1980	4 EA	LIGHT GUARD MV 7000 LUMEN 175W

**Schedule 1.09**  
**Excluded Assets**

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PacifiCorp's 12.5kv distribution feeder along Fort Road and Robbins Road, originating at Toppenish Substation to which the Assets are connected.

**Schedule 1.18  
Permitted Liens**

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None.

**Schedule 1.33**  
**Trust Allotments**

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1042  
TR-13  
T-456A  
T-617A  
T-620  
T-1589  
T-1589A  
T-1589B  
T-1589C  
T-3163  
T-5159  
T-6587

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**Schedule 2.04  
Assumed Liabilities**

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None.

**Schedule 2.09**  
**Receivables**

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None.



**Schedule 3.04**  
**Consents and Approvals**

None.

**Schedule 3.07**  
**Legal Proceedings**

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Yakama Nation and Yakama Power v. Electrical Distribution Facilities in the Yakama Tribal Court for the Confederated Tribes and Bands of the Yakama Nation, No. C 05-031.

IN THE YAKAMA TRIBAL COURT FOR THE CONFEDERATED TRIBES  
AND BANDS OF THE YAKAMA NATION

**YAKAMA NATION AND YAKAMA POWER,**

**Petitioners,**

**v.**

**ELECTRICAL DISTRIBUTION FACILITIES,**

**Respondent.**

**No. C 05-031**

**FINAL JUDGMENT AND ORDER RE  
CONDEMNATION OF ELECTRICAL  
DISTRIBUTION SYSTEM**

Based on the stipulation of the parties and the Asset Transfer Agreement among Yakama Nation, Yakama Power and PacifiCorp, doing business as Pacific Power, filed in this action (the "Asset Transfer Agreement"), the Court expressly finds and concludes:

A. The Court has subject matter jurisdiction and personal jurisdiction over the parties and the Electrical Distribution Facilities. PacifiCorp does not concede the Court's personal and subject matter jurisdiction but does not contest the Court's jurisdiction for purposes of entry of this final judgment and order of condemnation of the Electrical Distribution Facilities consistent with the Asset Transfer Agreement and order of approval thereof by the Washington Utilities and Transportation Commission ("WUTC"), a copy of which WUTC approval the parties have filed with this Court and made a part of the record of this action.

B. All conditions precedent required for the proper exercise of condemnation by Yakama Nation and Yakama Power under Revised Yakama Tribal Code, Title MX have been satisfied.

C. The parties' agreement regarding just compensation due PacifiCorp, \$ \_\_\_\_\_, as set forth in the Asset Transfer Agreement, is approved and confirmed by the Court.

~~D. The agreed, approved, and confirmed amount of compensation set forth in Section C has been paid to PacifiCorp outside the registry of the Court.~~

E. Yakama Nation and Yakama Power are obligated to pay to PacifiCorp amounts demanded by PacifiCorp under Section 2.05 of the Asset Transfer Agreement.

F. Yakama Nation's and Yakama Power's condemnation of the Electrical Distribution Facilities described in Schedule 1 attached to this final judgment and order is in the public interest.

**NOW, THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED:**

1. Final Judgment in Condemnation is granted in favor of Yakama Nation and Yakama Power, Petitioners in case C05-031 against PacifiCorp for and on behalf of the Electrical Distribution Facilities, Respondent, conveying and transferring from PacifiCorp and vesting in Yakama Nation and Yakama Power all of PacifiCorp's right, title and interest in that certain property listed in Schedule 1 attached to and incorporated into this final judgment and order.

2. The property listed on Schedule 1 is vested in Yakama Nation and Yakama Power free and clear of all liens and encumbrances as of \_\_\_\_\_, 2005.

3. The agreed, approved, and confirmed amount of just compensation in the amount set forth in the Asset Transfer Agreement has already been paid to PacifiCorp and Yakama Nation and Yakama Power are obligated to pay and shall pay to PacifiCorp the further amounts provided in Section 2.05 of the Asset Transfer Agreement. If there is any dispute as to amount due PacifiCorp under Section 2.05, Yakama Nation and Yakama Power shall pay the undisputed amount to PacifiCorp and deposit with the Court the disputed amount and immediately by supplemental petition request the Court to resolve such dispute.

4. This Final Judgment and Order Re Condemnation of Electrical Distribution System reflects a settlement of all issues raised or that could be raised in this action.

5. No party shall have or recover any costs, disbursements, attorneys fees, costs, or expenses of this action.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

\_\_\_\_\_  
Yakama Tribal Court Judge

Presented by and stipulated to:

---

J.D. Williams

\_\_\_\_\_  
Portland, OR \_\_\_\_\_

Attorney for Yakama Nation and Yakama Power

DATED: \_\_\_\_\_

Michael P. O'Connell

Stoel Rives LLP

One Union Square

600 University Street

Seattle, WA 98177

Attorneys for PacifiCorp

\_\_\_\_\_  
DATED: \_\_\_\_\_



BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of  
PACIFICORP for an Order Approving the  
Sale of its Interest in Distribution Assets  
Serving Certain Yakama Nation Accounts  
Within the Yakama Indian Reservation,  
Washington

Docket No. \_\_\_\_\_

**PACIFICORP**

**APPLICATION EXHIBIT NO. 2**

**Yakama Distribution Facilities**

November 2005

## Description of Assets

### Easement across Allotment 1042 (individual allotment)

Vintage	Qty	Unit Meas.	Description
1978	1	EA	POLE 45 FT
1980	3	EA	POLE 35 FT
1981	1	EA	POLE 40 FT
1991	1	EA	POLE 45 FT
2002	5	EA	POLE 45 FT
1999	1	EA	POLE 45 FT
1980	160	FT	WIRE ALUM/ACSR 6 THRU 2
1981	110	FT	WIRE ALUM/ACSR 1 THRU 4/0
1997	240	FT	WIRE ALUM/ACSR 6 THRU 2
2000	50	FT	WIRE ALUM/ACSR 1 THRU 4/0
1980	600	FT	CONDUIT PLASTIC 2 IN
1981	30	FT	CONDUIT PLASTIC 4 IN
1990	1250	FT	CONDUIT PLASTIC 4 IN
1991	2872	FT	CONDUIT PLASTIC 2 IN
1993	4115	FT	CONDUIT PLASTIC 2 IN
1999	1470	FT	CONDUIT PLASTIC 2 IN
2000	5070	FT	CONDUIT PLASTIC 2 IN
1995	2	EA	3 PH CONCRETE TRANSFORMER VAULT
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1997	1	EA	3 PH CONCRETE TRANSFORMER VAULT
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2000	12	EA	1 PH CONCRETE TRANSFORMER VAULT
1980	2	EA	1 PH SECTIONALIZING CABINET
1990	1	EA	3 PH SECTIONALIZING CABINET
1991	3	EA	3 PH SECTIONALIZING CABINET
1993	3	EA	3 PH SECTIONALIZING CABINET
1995	1	EA	3 PH SECTIONALIZING CABINET
1999	3	EA	1 PH SECTIONALIZING CABINET
2000	4	EA	3 PH SECTIONALIZING CABINET
1993	4	EA	CONCRETE 1 PH TRANSFORMER PAD
1998	5	EA	CONCRETE 1 PH TRANSFORMER PAD
1976	240	FT	CABLE INS 1/C 600V 250 THRU 499 MCM
1980	6025	FT	CABLE INS PRIMARY 15 KV #2
1981	90	FT	CABLE INS PRIMARY 15 KV 4/0
1990	1750	FT	CABLE INS PRIMARY 15 KV 4/0
1991	5527	FT	CABLE INS PRIMARY 15 KV #2
1993	10110	FT	CABLE INS PRIMARY 15 KV #2
1999	1870	FT	CABLE INS PRIMARY 15 KV #2
2000	13860	FT	CABLE INS PRIMARY 15 KV #2



Vintage	Unit Qty Meas.	Description
1976	80 FT	CABLE INS 1/C 600V 500 MCM & LARGER
1993	720 FT	CABLE INS 1/C 600V 500 MCM & LARGER
1999	1440 FT	CABLE INS 1/C 600V 500 MCM & LARGER
1999	3 EA	POLE-1PH , <=25 KVA
1980	2 EA	PAD-1PH , <=50 KVA
1993	3 EA	PAD-1PH , <=50 KVA
1999	2 EA	PAD-1PH , <=50 KVA
2000	1 EA	PAD-1PH , <=50 KVA
1980	1 EA	PAD-1PH , >=51 THRU <=100 KVA
1993	4 EA	PAD-1PH , >=51 THRU <=100 KVA
2000	3 EA	PAD-1PH , >=51 THRU <=100 KVA
1991	2 EA	PAD-1PH , >=100 KVA
2000	1 EA	PAD-1PH , >=100 KVA
1999	1 EA	POLE-3PH , <=50 KVA
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1990	2 EA	COMMERCIAL MULTI-FUNCTION METER
1991	7 EA	COMMERCIAL MULTI-FUNCTION METER
1993	26 EA	COMMERCIAL MULTI-FUNCTION METER
1999	4 EA	COMMERCIAL MULTI-FUNCTION METER
2000	6 EA	COMMERCIAL MULTI-FUNCTION METER
1980	4 EA	LIGHT GUARD MV 7000 LUMEN 175W



BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of  
PACIFICORP for an Order Approving the  
Sale of its Interest in Distribution Assets  
Serving Certain Yakama Nation Accounts  
Within the Yakama Indian Reservation,  
Washington

Docket No. \_\_\_\_\_

**PACIFICORP**  
**APPLICATION EXHIBIT NO. 3**  
**Yakama Power Charter**

November 2005

## CHARTER OF YAKAMA POWER

### ARTICLE I

#### Name

The Confederated Tribes and Bands of the Yakama Nation (Yakama Nation), acting through the Tribal Council of the Yakama Nation by the authority delegated to the Nation's Tribal Council by Resolution T-38-56 hereby authorizes this Charter pursuant to the above Resolution of the Nation's General Council and is established as an instrumentality of the Nation with those powers expressly of this tribally chartered entity is Yakama Power. The Yakama Nation confers on Yakama Power all of the Nation's rights, privileges and immunities as if it engaged in the activities undertaken by Yakama Power, including but not limited to, the Nation's rights of police powers, eminent domain, taxation and sovereign immunity.

### ARTICLE II

#### Duration

The period of existence of Yakama Power shall be perpetual, except that Yakama Power may have this charter amended or restated or Yakama Power may be dissolved in accordance with the inherent authority of the Yakama Nation.

### ARTICLE III

#### Purposes and Powers

A. General. The purposes for which Yakama Power is organized are to provide low-cost electric power to all users of such power within the Yakama Reservation and undertake any other electric utility projects that would benefit Yakama Power and that are approved by the Yakama Nation Tribal Council. Yakama Power is a non-profit organization. All revenues shall be used to meet the

Utility purposes described in III.B. The Yakama Nation Tribal Council hereby finds and declares that the creation of Yakama Power is necessary and desirable in order to promote the development of the Nation's resources, to promote the prudent economic vitality of the Reservation, to protect the health and welfare of tribal members and to provide employment and training opportunities for tribal members and to safeguard, protect and secure all rights, privileges and benefits guaranteed to the Yakama Nation and its members by their original Treaty of June 9, 1855.

B. Enumerated Purposes. The purposes for which Yakama Power is organized are as follows:

1. To develop, operate and manage the provision of electric power to all retail users of electricity within the Yakama Reservation, including physical facilities for the generation or delivery of power.
2. To develop, manage and control all other utilities operated within the Yakama Reservation when so requested by resolution or ordinance of the Yakama Nation Tribal Council.
3. To provide training and employment opportunities for members of the Nation in the construction, management and operation of providing electric power to the users of electricity within the Yakama Reservation.
4. To facilitate economic development on the Reservation.
5. To enhance and protect the health and welfare of tribal members and the electric utility customers of Yakama Power and to promote other public benefits such as energy efficiency, low-income weatherization, and fish and wildlife protection.
6. To manage all electric utility enterprises owned or operated by Yakama Power in a prudent, efficient and economic manner in accordance with Tribal law.
7. To buy and sell electric power in the wholesale market, and to provide power to retail consumers and to adopt any provision of the Federal Energy Regulatory Commission which will allow Yakama Power to perform activities under FERC jurisdiction.

C. Ancillary. To do everything necessary, proper, advisable or convenient for the accomplishment of the purposes herein above set forth, and do all things incidental thereto or connected therewith, which are not forbidden by law.

D. Enumerated Powers. Yakama Power shall have the following enumerated powers:

1. To sue and be sued in courts of competent jurisdiction.

2. To enter into contracts and agreements affecting the business affairs of Yakama Power and to accept all funds and obligations resulting therefrom.

3. To contract with private persons, associations, or corporations for the provision of any service within or without its boundaries and to accept all funds and obligations resulting therefrom.

4. To borrow money and incur indebtedness and other obligations and evidence the same, with the prior approval of the Nation's Tribal Council, by certificates, notes or debentures and issue general obligation or revenue bonds, or any combinations thereof.

5. To refund, with the prior approval of the Nation's Tribal Council, any bonded or other indebtedness or special obligations of Yakama Power without an election.

6. To acquire, dispose of and encumber real or personal property, including, without limitation, rights and interests in property, including leases and easements necessary to accomplish the purposes of Yakama Power except that at no time will Yakama Power encumber the trust lands or the trust estate of Yakama Nation lands held by Yakama Power by leasehold.

7. To acquire, construct, equip, operate and maintain any and all physical facilities, including electrical distribution as necessary, to accomplish the purposes of Yakama Power.

8. To manage, control and supervise all the business affairs, contracts and properties of Yakama Power.

9. To adopt, by resolution, rules and regulations consistent with federal, state and tribal law which are necessary, appropriate or incidental to any authorized services provided by Yakama Power.

10. To delegate the management of the day-to-day operation of Yakama Power to others, and in exercising its authority hereunder, may rely on its officers and other experts. Yakama Power shall establish policies and retain responsibility for the ultimate direction and affairs of Yakama Power but may give usual and essential latitude to Yakama Power's Manager as Yakama Power deems appropriate from time to time.

11. To fix and collect taxes, rates, fees, tolls and other service charges pertaining to the services of Yakama Power, including, without limitation, minimum charges and charges for availability of the facilities or services relating thereto subject to the approval of the Yakama Nation Utilities Commission.

12. To propose and collect rates from the retail consumers of Yakama Power that are based on cost, reasonable, and nondiscriminatory, that are subject to the approval of the Yakama Nation Utilities Commission.

13. To purchase and/or construct, establish, and maintain works and facilities; (a) in, across, or along any easement dedicated to a public use, or any public street, road, or highway; (b) in, upon, or over any vacant public lands; and (c) in, across, or along any stream or water course.

14. To plan for the development with the service area served by Yakama Power, including but not limited to, review of all comprehensive plans of tribal government located within Yakama Power's service area, and review of all capital construction of other federally funded projects proposed by any governmental entity within the boundaries of Yakama Power's service area for which review is required by federal, state or tribal law.

15. To provide service to all customers within Yakama Power service territory on the Yakama Reservation.

Principal Place of Business

Yakama Power shall be a resident of and maintain its headquarters and principal place of business on the Yakama Reservation with offices located at Toppenish, Washington 98948. Yakama Power may conduct its business activities any place in or outside of the United States so as to achieve the purposes under Articles III of this Chapter.

ARTICLE VI

Assets

Subject to such contractual rights of others, including the Yakama Nation, Yakama Power shall have as its assets, and the authority to acquire, manage, own, use, pledge, encumber, or otherwise dispose of the following:

A. Tribal Property. Tribal properties of a real or personal nature subject to any conditions set out in the Tribal Council's resolution authorizing the transfer of such properties to Yakama Power.

B. Funds. All funds which Yakama Power may generate from direct sales and/or acquire by grant, gift, loan or other means.

C. Other Real and Personal Property. All interests in real and personal property whether of a tangible or intangible nature, Yakama Power may acquire by grant, gift, loan, purchase, lease or other means.

D. Other Assets. All earnings, interest, dividends, accumulations, contract rights, claims and other proceeds arising from the above listed assets.

Article VII

Control of Assets



All cash assets shall be deposited, invested, re-invested or paid out pursuant to the contractual obligations of Yakama Power and in accordance with the standards of prudent business practices so as to ensure the continued existence, integrity and viability of Yakama Power. Such decisions are reserved exclusively to the Board of Directors of Yakama Power.

## ARTICLE VIII

### Asset Distribution/Dissolution

Yakama Power shall determine in its sole discretion as to when a payment is to be issued and the amount of any such payment to retail power customers from Yakama Power's retail electricity operations. Yakama Power shall determine in its sole discretion as to when a payment is to be issued and the amount of any such payment to the Yakama Nation as a distribution of any income from wholesale power sales and/or operations. Upon dissolution of Yakama Power, the remaining assets, after payment of all debts and liabilities, shall be returned to the Nation. In no event shall the Yakama Nation be liable for any debts or liabilities of Yakama Power.

## ARTICLE IX

### Board of Directors

The Board of Directors of Yakama Power shall consist of seven (7) members and is hereby vested with all powers necessary to carry out the purposes of Yakama Power. The Board members shall be selected by the Yakama Nation Tribal Council. There are no prohibitions against the Yakama Nation Tribal Council serving as the Board of Directors. Members of the Board need not be enrolled members of the Yakama Nation. However, no more than three (3) Board members of Yakama Power may be non-members of the Yakama Nation. The Board members' term of office and their qualifications shall be specified in the Bylaws of Yakama Power.

## ARTICLE X

Registered Office and Registered Agent

The address of Yakama Power's registered office is the Office of the Chairperson of Yakama Power, Yakama Reservation, Toppenish, Washington 98948, and the registered agent at this address is the Chairperson of Yakama Power.

ARTICLE XI

Advisory Board

The Tribal Council of the Yakama Nation shall act as the Advisory Board to the Board of Directors of Yakama Power for the purpose of providing information and advice to the Board regarding political, cultural and social issues that concern the Nation and its members.

ARTICLE XII

Trustee

Yakama Power is the trustee of all assets owned or controlled by Yakama Power on behalf of the Yakama Nation.

ARTICLE XIII

Litigation

The Yakama Nation reserves the right to challenge in whatever forum all matters involving Yakama Power, which, in the opinion of the Yakama Nation Tribal Council, affect the Nation's sovereign authority and the Nation's rights, privileges and immunities as a sovereign government. Before initiating or entering an appearance in any such litigation or administrative proceeding, Yakama Power shall give at least thirty (30) days, or

such time as the court rules allow, prior written notice to the Chairperson of the Yakama Nation Tribal Council.

#### ARTICLE XIV

##### Waiver of Immunity

The Board of Directors of Yakama Power is hereby authorized to waive the sovereign immunity of Yakama Power in any contract, agreement or other document in which the Board of Directors of Yakama Power shall determine in their sole discretion that any such waiver of sovereign immunity is in the best interest of Yakama Power. The acts or omissions of Yakama Power, whether pursuant to the powers enumerated in Article III or otherwise, shall not create any liability, obligation or indebtedness either of the Yakama Nation or payable out of assets, revenues or income of the Nation, and only the assets, revenues and income held by or in the name of Yakama Power shall be subject, to the extent otherwise permitted herein and by law, to the debts, obligations or other liabilities created or incurred by Yakama Power. Any waiver of immunity of or by Yakama Power shall not be construed to waive any immunity of the Yakama Nation or any other covered persons and entities or extend any liability to any assets, revenues or income of the Yakama Nation Tribal Council.

##### Resolution

BE IT RESOLVED, that the foregoing Charter of the Yakama Power, be and the same is hereby adopted. Upon adoption of the Bylaws of Yakama Power by the Board of Directors, two signed duplicates originals shall be delivered to the office of the Tribal Council Secretary of the Yakama Nation.

BE IT FURTHER RESOLVED, that the chairman and the secretary of the Yakama Nation are authorized and instructed to sign this resolution for and on behalf of the Yakama Nation Tribal Council.



BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of  
PACIFICORP for an Order Approving the  
Sale of its Interest in Distribution Assets  
Serving Certain Yakama Nation Accounts  
Within the Yakama Indian Reservation,  
Washington

Docket No. \_\_\_\_\_

**PACIFICORP**

**APPLICATION EXHIBIT NO. 4**

**Petition to Condemn Electric Distribution Facilities**

November 2005

IN THE YAKAMA TRIBAL COURT FOR THE CONFEDERATED TRIBES  
AND BANDS OF THE YAKAMA NATION

IN RE:	)	
	)	
<u>YAKAMA NATION AND YAKAMA POWER</u>	)	COURT NO. C 05-031
	)	
PETITIONER	)	
	)	
VS.	)	CIVIL SUMMONS WITH COMPLAINT
	)	
<u>ELECTRICAL DISTRIBUTION FACILITIES</u>	)	
	)	
RESPONDENT	)	

TO RESPONDENT:

YOU ARE HEREBY NOTIFIED that the attached Complaint has been filed against you and you are notified to appear and answer the complaint by personally appearing and stating your defense to the complaint before the Yakama Tribal Court; or by submitting your written Answer to the Clerk of the above-entitled Court within (15) days of service of this Summons/Complaint upon you. (only in cases where the complaint may be a REGISTRATION OF FOREIGN JUDGMENT then you will have (60) days to respond when indicated otherwise.) Service may be by personal service or by registered / certified mail.

If you appear in person or by written Answer within (15) days, (60) days if Foreign Judgment a hearing will be set for a later date and time. If you do not appear or file a written answer, a Default will be taken against you awarding the Plaintiff whatever was requested in the Complaint.

Dated this 19 day of APRIL, 2005.

Maryrose M. Gonzalez

Clerk, Yakama Tribal Court  
P.O. Box 151  
Toppenish, WA 98948  
Phone: 509-865-5121  
Out of State: 1-800-859-5121

sent to respondent by certified mail

sent to Yakama Tribal Police for personal service

58802/96

FILED

APR 19 2005

YAKAMA TRIBAL COURT

IN THE TRIBAL COURT OF  
THE YAKAMA NATION

2005 APR 19 AM 10:39

Yakama Nation and Yakama Power, )  
)  
Petitioners, )  
v. )  
)  
Electrical Distribution Facilities, )  
)  
)  
Respondent. )

PETITION TO CONDEMN CERTAIN  
REAL AND PERSONAL PROPERTY

C 05-031

1.

The Yakama Nation and its utility, Yakama Power, petition this court for an order condemning certain real and personal property and awarding just compensation pursuant to the Nation's powers of eminent domain, Revised Yakama Code, Title MX, Exhibit 1.

2.

All real and personal property involving the local electrical distribution system serving the Nation's lands located within the boundaries of the following allotments: T-3163, T456A, T-6587, TR-13, T-5159, T-1589C, T-1589, T-1589B, and T-1589A. This includes property currently located on these allotments at the time of the filing of this petition and any property later located on such allotments during these condemnation proceedings

3.

The owners of the property are PacifiCorp, a corporation doing business in Washington, and/or its parent companies, subsidiaries, divisions, or other persons and entities as owners of record, holding title or interests in the described property.

4.

The Nation is condemning the property for the public purpose of creating a public electric utility owned and regulated by the Nation to protect the best interests of the Nation, Tribal members and other users of the local electric distribution system. Those best interests include, but are not limited to, the provision of stable competitive power costs, the provision of quality customer service, the promotion of the development of the Nation's resources, the promotion of the economic vitality of the Reservation, the protection of the health and welfare of tribal members and Reservation residents, the creation of employment opportunities, and the protection of the Nation's rights, privileges and benefits reserved to the Nation by its Treaty of 1855. Exhibit 2, Charter of Yakama Power.

5.

The Tribal Council has authorized this action by resolution, Exhibit 3. The Tribal Council has also delegated its power of eminent domain to its utility, Yakama Power, which Board of Directors has also authorized this action.

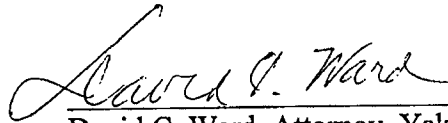
6.

The Petitioners respectfully request that the Court schedule the hearing within the sixty days required by the Nation's code. Title MX, Section 110.12.02.

7.

This proceeding is in good faith for the purposes specified in this petition.

Dated this 9th day of April, 2005.



---

David C. Ward, Attorney, Yakama Nation

---

J.D. Williams, Attorney, Yakama Power  
WSB No. 29882



# **Revised Yakama Code of the Yakama Nation**

## **Title MX**

### **CONDEMNATION OF REAL OR PERSONAL PROPERTY UNDER POWER OF EMINENT DOMAIN**

#### **Sec. 110.01.01 SCOPE OR POWER OF EMINENT DOMAIN**

The Yakama Nation shall have authority pursuant to this Chapter to condemn interests in real or personal property located within the exterior boundaries of the Yakama Reservation, as described in the Treaty of June 9 1855 (12 Stat. 951), for public uses.

#### **Sec. 110.02.01 PETITION FOR ASCERTAINMENT OF COMPENSATION BY JURY**

In all cases where the Yakama Nation shall determine to condemn an interest in real or personal property located within the exterior boundaries of the Yakama Reservation, it shall pay just compensation for such property, and it shall file a petition in the Tribal court requesting that the just compensation to be made for such property may be ascertained by a jury.

#### **Sec. 110.03.01 CONTENTS OF PETITION FOR ASCERTAINMENT OF COMPENSATION**

A petition filed pursuant to Section 110.02.01 shall name the Yakama Nation as plaintiff, and all persons having interest in or liens upon the property affected by the proceedings as defendants, so far as they shall be known at the time of filing the same. It shall contain a description of the property to be taken or damaged shall be clearly set forth in the petition. It shall not be necessary to specify the interests or claims of the several defendants in the land or property affected by the proceedings. The petition shall set forth the public use for which the property is condemned.

#### **Sec. 110.04.01 AMENDMENT OF PETITION AND NOTICE**

If any person is a proper party defendant to a proceeding under this Chapter, or any property affected thereby, shall have been omitted from said petition or notice, the plaintiff may file amendments to the same, which amendments from the filing thereof shall have the same effect as though contained in said petition and notice.

#### **Sec. 110.05.01 VERIFICATION OF PETITION - STATEMENT OF GOOD FAITH**

The petition commencing the condemnation action shall be signed or verified in the manner provided by law for the signing or verification of complaints in actions in the Tribal Court, and the affidavit of verification shall contain the further statement that the proceeding is in good faith for the purpose specified in the petition.

**Sec. 110.06.01 ATTACHMENT OF DOCUMENT AUTHORIZING CONDEMNATION**

In all cases, the petition shall have attached to it a copy of a resolution of the Tribal Council authorizing the taking of the interests in property described in the petition.

**Sec. 110.07.01 ADDITIONAL PLEADING NOT REQUIRED**

No pleading other than the petition shall be required in a proceeding under this Chapter, unless ordered by the court.

**Sec. 110.08.01 INTERPLEADER OF ADVERSE CLAIMANTS TO COMPENSATION**

If there be adverse claimants for the compensation, the court may require such adverse claimants to interplead so as to determine fully their rights and interest in such compensation.

**Sec. 110.09.01 UNITED STATES NOT AN INDISPENSABLE PARTY - UNITED STATES RIGHT OF INTERVENTION**

The United States shall not be an indispensable party in any proceeding under this Chapter. The United States, upon timely application, shall have a right to intervene in any proceeding under this Chapter.

**Sec. 110.10.01 NOTICE OF PENDENCY OF ACTION FILED WITH CLERK OF COURT AND COUNTY REGISTER OF DEEDS- EFFECT OF RECORDING**

At any time after the filing of the petition, the plaintiff may file for record, in the office of the auditor for the county in which the land described in the petition is situated, a notice of the pendency of the proceeding, containing the names of the parties plaintiff and defendant, a statement of the purpose of the proceeding, and a description of the property to be condemned, which notice shall be recorded and indexed in the same manner as for the recording and indexing of notices of pendency of actions in the Tribal or State Superior Court, as the case may be, and from the date of the filing thereof shall be notice to all subsequent purchasers or encumbrances of the property therein described.

**Sec. 110.1 1.01 SUMMONS TO DEFENDANTS - CONTENTS**

At any time after the filing of the petition, the plaintiff may issue a summons to the defendants, which shall be entitled in the action or proceeding and state the time and place of filing the petition, the nature of the proceeding, and contain a notice to the effect that if the defendants do not appear in said proceeding by filing a notice of appearance or answer with the Court within thirty (30) days from the service thereof, exclusive of the day of service, the plaintiff will apply to the court for an order to impanel a jury and ascertain the just compensation for the property proposed to be taken or damaged in such proceeding. The summons may be served as in civil actions unless otherwise provided in this Chapter.

**Sec. 110.12.01 HEARING ON RIGHT TO TAKE - TIME FOR DEMAND - WAIVER OF RIGHT TO QUESTION NECESSITY - FINDING OF NECESSITY AS BINDING**

Within thirty (30) days from the date the summons described in section 110.11.01 is served, the defendant may demand a hearing in Tribal Court on the Nation's right to take. Failure to make such a demand or to consent in writing to the taking, within the thirty (30) day period, shall constitute a waiver of the right to question the necessity of the taking. The finding of necessity by the plaintiff unless based upon fraud; bad faith or/and abuse of discretion shall be binding on all persons.

**Sec. 110.12.02 HEARING ON RIGHT TO TAKE - TIME FOR HEARING - RIGHT TO CONTINUANCE**

If defendant demands a hearing in Tribal Court on the Nation's right to take, Tribal Court shall schedule that hearing within sixty (60) days of the demand. Tribal Court may grant defendant, if defendant requests it, only one continuance for an additional thirty (30) days.

**Sec. 110.13.01 OFFER TO DEPOSIT COMPENSATION WITH CLERK - EVIDENCE OF OFFER NOT ADMISSIBLE**

When the remedy is exercised under the provisions of this chapter, the plaintiff may at the time of service of the summons on any defendant, serve upon him an offer in writing to the effect that the plaintiff will deposit with the Tribal Court a sum of money specified to be paid to defendant or other parties entitled thereto as compensation for all of the property taken or damaged. If the defendant fails to accept the offer by filing notice of acceptance with the Clerk of Court, within ten days after service of the offer upon him, it is deemed to be withdrawn, and cannot be given in evidence.

**Sec. 110.14.01 ORDER TO SUMMON JURY ON DEFAULT**

If no appearance be made by any defendant within the time specified in the summons, the plaintiff, upon affidavit of the default, may apply to the court for an order directing the Clerk of Court to draw and summon six (6) jurors to attend at the courthouse or place of holding the Tribal Court, at a time to be specified in such order. Said jurors shall be drawn and summoned as for other proceedings before the Tribal Court.

**Sec. 110.15.01 JURY TRIAL - CHALLENGE OF JURORS - CONDUCT OF TRIAL DEFAULT BY PLAINTIFF**

At the time and place specified in the order made pursuant to section 110.14.01 a session of the Tribal Court shall be held, at which the proceedings in impaneling the jury, trial and rendering of the verdict or verdicts shall be conducted in the same manner as in civil actions except that every defendant shall have the same rights and privileges, upon such trial, to challenge jurors and examine and cross-examine witnesses and participate there in, by himself or attorney, as a defendant in a civil action who has appeared and answered. As to all the defendants who appear within the time specified in the summons, the proceeding shall be conducted in like manner except that three (3) days' notice of the

time and place of trial may be given by either party and the case brought on for trial at any session of the court called for such purpose, and on the failure of the plaintiff; after such notice, to proceed with the trial, said petition shall be dismissed as to such defendant, and any pending lawsuit involving the title of property of such defendant shall be discharged and no other proceeding for the same purpose shall be brought by the plaintiff against such defendant until after the expiration of one (1) year, and then only upon the condition that the plaintiff will, in good faith prosecute such proceeding against such defendant with reasonable diligence.

**Sec. 110.16.01 JURY COMPOSITION - VERDICT - DISAGREEMENT**

Proceedings under this Chapter shall be held before a jury composed of six (6) jurors and one (1) alternate. A verdict may be rendered by not less than five-sixths of the jurors constituting the jury. Where less than five-sixths of the jurors constituting the jury cannot agree after being kept together for as long as is deemed reasonable by the Court, the Court shall discharge the jury and direct a new trial before another jury.

**Sec. 110.17.01 CONTINUANCE OF PROCEEDINGS AS TO DEFENDANTS NOT SERVED**

As to all defendants not served before the trial said proceedings shall be continued as the court may direct, for the purpose of serving the summons on such defendants.

**Sec. 110.18.01 ISSUE TRIED BY JURY**

The only issue that shall be tried by the jury upon the petition shall be the amount of compensation to be paid for the property taken or damaged. When determining the amount of compensation to be paid for real property taken or damaged, the jury shall consider the value of real property with attributes reasonably similar to the real property being taken or damaged. When determining the value of personal property taken or damaged, the jury shall consider the condemnee's net investment in the property being sold.

**Sec. 110.19.01 VIEW OF PREMISES/PROPERTY BY JURY**

Upon the demand of any party to the proceeding, if the court deems it necessary, the jury may view the premises or property to be condemned under such rules as the court may prescribe for such viewing.

**Sec. 110.20.01 RECORDING OR VERDICT - JUDGEMENT ON VERDICT**

Upon the return of the verdict, the court shall order the same to be recorded, and shall enter such judgment thereon as the nature of the case may require, and that the plaintiff pay to the persons entitled thereto the amount of compensation ascertained by the verdict.

**Sec. 110.20.02 RECORDING OF VERDICT - TIME OF VERDICT**

Upon return of the verdict, the court shall order the recording of the verdict and enter judgment within fourteen (14) days.

**Sec. 110.21.01 EFFECT OF JUDGEMENT**

A final judgment in favor of the Tribe is conclusive as to the title of the Tribe, in and to the interest in the trust or restricted land described in said judgment, against any and all, parties in said action, including unknown defendants, and against any and all persons claiming from, through or under such a party by title accruing after the filing of the judgment by the clerk of the Tribal Court or after the filing of a notice of pendency of the action pursuant to Section 110.10.01 of this Chapter.

**Sec. 110.21.02 EFFECT OF JUDGMENT – NO APPEAL**

The jury verdict and/or Tribal Court judgment shall be final with no right of appeal, notwithstanding the language of any other Tribal codes.

**Sec. 110.24.01 SEVERABILITY**

If any term or provision of this Chapter is held invalid, the remaining provisions shall not be affected and shall remain in full force and effect.

**Sec. 110.24.01 DEFINITIONS**

The following terms when used herein shall have the following meanings:

- (a) Real Property: Land, or anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land. Real property shall also mean incorporeal interests in land such as easements.
- (b) Personal Property: Any movable or intangible thing that is subject to ownership and not classified as real property, including, but not limited to, utility facilities located both above and below ground.

*[End of Title MX]*



Confederated Tribes and Bands  
of the Yakama Nation

Established by the  
Treaty of June 9, 1855

## RESOLUTION

T-080-05

WHEREAS, the Yakama Nation is a federally recognized Nation pursuant to the Treaty of 1855 (12 Stat. 951), and

WHEREAS, the Yakama Tribal Council is the governing body of the Confederated Tribes and Bands of the Yakama Nation by the authority delegated by Resolution T-38-56, and

WHEREAS, the Nation is a sovereign tribal government possessed of all sovereign powers, including the power of eminent domain to condemn property for public uses, and adopted a condemnation code, Revised Yakama Code, Title MX, Resolution T-188-03, as amended, and

WHEREAS, the Council determined that it was in the best interests of the Nation to establish a tribal utility, Resolutions T-166-00 and T-169-04, and

WHEREAS, to obtain the lowest cost wholesale power available in order to protect tribal members' electricity rates, the Nation must meet BPA's (Bonneville Power Administration) standards of service by acquiring the local distribution system through condemnation, and

WHEREAS, the existing Condemnation Code provides an indefinite time period to complete the process, and could potentially keep Yakama Power from owning the local distribution system in time to meet BPA's standards for service.

NOW, THEREFORE, BE IT RESOLVED, by the Executive Board of the Yakama Tribal Council, acting under authority delegated by Section III A of the Rules of Procedures, approved by Yakama Tribal Council Resolution T-10-61, dated July 13, 1960, and meeting at the Governmental Headquarters of the Yakama Nation, that it hereby approves the (attached) amendments to the Condemnation of Real or Personal Property Under Power of Eminent Domain, a Title of the Revised Yakama Code, Title MX (110).

BE IT FURTHER RESOLVED, that any member of the Yakama Tribal Council Executive Board is authorized to negotiate and execute any agreements and amendments thereof, on behalf of the Yakama Tribal Council, as delegated by Section III A of the Rules of Procedures pursuant to T-10-61, as approved, provided further that any Executive Board Member may negotiate the contract.

BE IT FINALLY RESOLVED, that the Yakama Nation does not waive, alter, or otherwise diminish its Sovereign Immunity, whether expressed or implied, by virtue of this contract for any and all administrative or legal action which may arise directly or indirectly from the same, nor does the Yakama Nation waive, alter, or otherwise diminish its rights, privileges, remedies or services guaranteed by the Treaty of 1855.

Post Office Box 151, Fort Road, Toppenish, WA 98948 (509) 865-5121

EXHIBIT 1 p. 6


**Yakama Tribal Council Resolution**

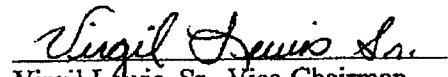
**T-080-05**

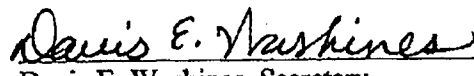
**03/31/05**

**Page Two**

DONE AND DATED on this 31<sup>st</sup> day of March, 2005, by the undersigned members of the Executive Board of the Yakama Tribal Council.

  
Jerry Meninick, Chairman  
Yakama Tribal Council

  
Virgil Lewis, Sr., Vice-Chairman  
Yakama Tribal Council

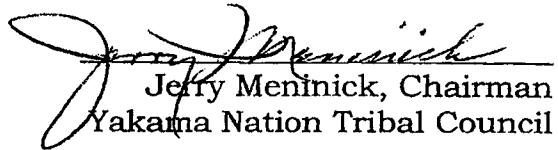
  
Davis E. Washines, Secretary  
Yakama Tribal Council

Certification

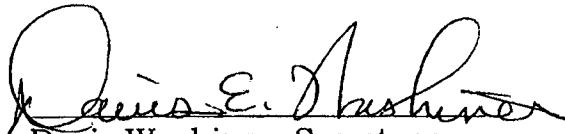
We, the undersigned, chairman and Secretary of the Yakama Nation Tribal Council, hereby certify that the Yakama Nation Tribal Council met on this day and by a vote of

In favor 7, Opposed 3, and 1 Not voting, in a duly called and convened meeting of the council, adopted the foregoing resolution.

Dated this 12<sup>th</sup> day of October 2004.

  
Jerry Meninick, Chairman  
Yakama Nation Tribal Council

Attest:

  
Davis Washines, Secretary  
Yakama Nation Tribal Council





Confederated Tribes and Bands  
of the Yakama Nation

Established by the  
Treaty of June 9, 1855

## RESOLUTION

T-079-05

WHEREAS, the Yakama Nation is a federally recognized Nation pursuant to the Treaty of 1855 (12 Stat. 951), and

WHEREAS, the Yakama Tribal Council is the governing body of the Confederated Tribes and Bands of the Yakama Nation by the authority delegated by Resolution T-38-56, and

WHEREAS, the Nation is a sovereign tribal government possessed of all sovereign powers, including the power of eminent domain to condemn property for public uses, and adopted a condemnation code, Revised Yakama Code, title MX, Resolution T-188-03, as amended, and

WHEREAS, the Council determined that it was in the best interests of the Nation to establish a tribal utility, Resolutions T-166-00 and T-169-04, and

WHEREAS, to obtain the lowest cost wholesale power available in order to protect tribal members' electricity rates, the Nation must meet BPA's (Bonneville Power Administration) standards of service by acquiring the local distribution system through condemnation.

NOW, THEREFORE, BE IT RESOLVED, by the Executive Board of the Yakama Tribal Council, acting under authority delegated by Section III A of the Rules of Procedures, approved by Yakama Tribal Council Resolution T-10-61, dated July 13, 1960, and meeting at the Governmental Headquarters of the Yakama Nation, that it hereby approves the filing of the attached petition for condemnation in tribal court pursuant to Revised Yakama Code, Title MX.

BE IT FURTHER RESOLVED, that any member of the Yakama Tribal Council Executive Board is authorized to negotiate and execute any agreements and amendments thereof, on behalf of the Yakama Tribal Council, as delegated by Section III A of the Rules of Procedures pursuant to T-10-61, as approved, provided further that any Executive Board Member may negotiate the contract.

BE IT FINALLY RESOLVED, that the Yakama Nation does not waive, alter, or otherwise diminish its Sovereign Immunity, whether expressed or implied, by virtue of this contract for any and all administrative or legal action which may arise directly or indirectly from the same, nor does the Yakama Nation waive, alter, or otherwise diminish its rights, privileges, remedies or services guaranteed by the Treaty of 1855.

Post Office Box 151, Fort Road, Toppenish, WA 98948 (509) 865-5121

EXHIBIT 3 p1


**Yakama Tribal Council Resolution**

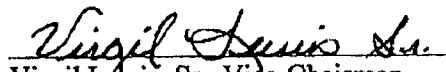
**T-079-05**

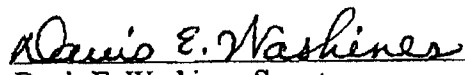
**03/31/05**

**Page Two**

DONE AND DATED on this 31<sup>st</sup> day of March, 2005, by the undersigned members of the Executive Board of the Yakama Tribal Council.

  
Jerry Meninick, Chairman  
Yakama Tribal Council

  
Virgil Lewis, Sr., Vice-Chairman  
Yakama Tribal Council


  
Davis E. Washines, Secretary  
Yakama Tribal Council

29/2005, 16:42 FAX 3032988380

KINKUSUNIN

p. 3

# RUSH ORIGINAL



Yakama Tribal Council Committee

**8. BUDGET & FINANCE / EXECUTIVE**

Official Committee Action

Fiscal Year 2005

RECEIVED

MAR 1 2005

Executive Secretary  
Yakama Tribal Council

7-079-05

DATE: March 29, 2005

TOPIC: Authority to proceed with Condemnation of PacifiCorp's distribution system on the Tribal Campus, including Legends Casino.

**ACTION REQUEST FOR Executive Committee to grant permission to start the Condemnation. Proceeding against PacifiCorp for their infrastructure on the Tribal Campus. This filing will help expedite the sale of the distribution system to the tribe, which is a requirement of Bonneville Power Administrations' "Standards for Service".**

**ACTION TAKEN: Authorize Yakama Power to proceed with Condemning PacifiCorp's infrastructure on the Tribal Campus, including Legends Casino. Resolution required.**

DECISION:                     Approved                     Disapproved                     Tabled

TOTAL VOTE: 3                    2 For                    0 Against                    0 Abstained

COMMITTEE MEMBERS		COMMITTEE ACTIVITY			
		Roll Call	Motion	Second	Vote
Jerry Meninick	Chairman	P			
Davis E. Washines	Secretary	TP		ALOW	FOR
Virgil Lewis, Sr.	Member	P	YES		For
Ex-Officio					

CERTIFICATION Jerry Meninick 3-29-05  
 Chairman and/or Secretary Date

COMMITTEE ACTION NO. 139-2005-8



**Yakama Power  
Board of Directors  
03/21/05**

**ITEM 2 - Condemnation**

**YP Board of Directors - MOTION**

**Motion Made by Davis Washines**

**MOTION**

- 1) Grant Authority to start condemnation before April 3rd**
- 2) Move forward to amend the condemnation code per James D. Williams**
- 3.) Authorize any available Board Members to sit in on negotiations with PacifiCorp**


**Second by Stella Washines**

**Call for questions**

**Vote For 4, Against 0, Abstain 0**

**Present: Jerry Meninick, Davis Washines, Stella Wasines, Max Corpuz, Virgil Lewis**

I certify that the above mentioned vote took place with a legal quorum present.

  
Jerry Meninick, Chairman of  
Yakama Power Board of Directors

IN THE TRIBAL COURT OF  
THE YAKAMA NATION

Yakama Nation and Yakama Power, )  
 )  
 Petitioners, )  
 v. )  
 )  
 Electrical Distribution Facilities, )  
 )  
 Respondent. )

C05-031

ORDER GRANTING LEAVE  
TO AMEND PETITION  
PETITION TO CONDEMN CERTAIN  
REAL AND PERSONAL PROPERTY

ORDER

On November 4<sup>th</sup>, 2005, Petitioners moved this court for permission to amend their Petition to Condemn Certain Real and Personal Property, filed on April 19, 2005 to add three Tribal trust allotments to paragraph 2 of the Petition - 1042, T-617A, and T-620.

Their motion was supported by an affidavit of their attorney stating that Respondent had no objections to the amendment.

The court, having reviewed the motion, points and authorities, and affidavit, grants the motion and orders the Petition amended to include the above mentioned allotments.

IT IS SO ORDERED this 4<sup>th</sup> day of November, 2005.

*Elizabeth M. Jensen*  
\_\_\_\_\_  
Judge





BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Application of  
PACIFICORP for an Order Approving the  
Sale of its Interest in Distribution Assets  
Serving Certain Yakama Nation Accounts  
Within the Yakama Indian Reservation,  
Washington

Docket No. \_\_\_\_\_

**PACIFICORP**

**APPLICATION EXHIBIT NO. 5**

**Answer to Petition to Condemn Electric Distribution Facilities**

November 2005

Stoel Rives LLP

MAY 18 2005

DOCKETED

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**COPY**

6 IN THE YAKAMA TRIBAL COURT FOR THE CONFEDERATED TRIBES  
7 AND BANDS OF THE YAKAMA NATION

8 YAKAMA NATION AND YAKAMA  
9 POWER,

10 Petitioners,

11 v.

12 ELECTRICAL DISTRIBUTION  
13 FACILITIES,

14 Respondent.

No. C 05-031

**RESPONDENT PACIFICORP'S  
ANSWER AND AFFIRMATIVE  
DEFENSES FOR AND ON BEHALF OF  
RESPONDENT ELECTRICAL  
DISTRIBUTION SYSTEM**

15 **TO:** Clerk of the Tribal Court;

16 **AND TO:** Yakama Nation and Yakama Power, Petitioners

17 PacifiCorp, an Oregon Corporation, doing business in Washington and within the  
18 Yakama Indian Reservation as Pacific Power, for itself and for and as owner of the Respondent  
19 Electrical Distribution Facilities answers, and alleges affirmative defenses to, the Petition to  
20 Condemn Certain Real and Personal Property ("Petition") filed by the Petitioners as follows:

21 1. PacifiCorp admits that the Yakama Nation and Yakama Power petitioned this  
22 Court for an order condemning certain real and personal property and awarding just  
23 compensation. PacifiCorp admits that two documents are attached to the Petition as Exhibit 1,  
24 but PacifiCorp is without knowledge to form a belief as to the accuracy, completeness, or legal  
25 effect of the documents attached as or referenced in Exhibit 1 or any factual allegations in  
26

**RESPONDENT PACIFICORP'S ANSWER AND AFFIRMATIVE  
DEFENSES FOR AND ON BEHALF OF RESPONDENT  
ELECTRICAL DISTRIBUTION SYSTEM - 1**



1 Exhibit 1 or documents referenced therein; PacifiCorp therefore denies the same. PacifiCorp is  
2 without knowledge or information sufficient to form a belief as to the truth of the remaining  
3 allegations of paragraph 1 of the Petition and, therefore, denies the same.

4           2.       PacifiCorp admits that some of the real and personal property involved in the  
5 electrical distribution facilities it owns and operates are within the Yakama Indian Reservation  
6 (“Reservation”) serve the Yakama Nation’s lands. PacifiCorp is without knowledge or  
7 information sufficient to form a belief as to the truth of the remaining allegations of paragraph 2  
8 of the Petition and, therefore, denies the same.

9           3.       PacifiCorp admits that is a corporation doing business in Washington, that it is the  
10 owner of, holds title to, and has interests in certain electrical distribution facilities within the  
11 Reservation. PacifiCorp is without knowledge or information sufficient to form a belief as to the  
12 truth of the remaining allegations of paragraph 3 of the Petition and, therefore, denies the same.  
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14           4.       The first and second sentences of paragraph 4 describe the Yakama Nation’s  
15 alleged purpose in filing the Petition rather than factual allegations, and, therefore, no answer is  
16 required. If an answer is required to the first and second sentences of paragraph 4, PacifiCorp  
17 denies the same. PacifiCorp admits that a document is attached to the Petition as Exhibit 2 but  
18 PacifiCorp is without knowledge or information sufficient to form a belief as to the accuracy,  
19 completeness, or legal effect of the document attached as or documents referenced in Exhibit 2  
20 or any factual allegations therein; PacifiCorp therefore denies the same. PacifiCorp is without  
21 knowledge or information sufficient to form a belief as to the truth of the remaining allegations  
22 of paragraph 4 of the Petition and, therefore, denies the same.  
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1           5.     PacifiCorp admits that a document is attached to the Petition as Exhibit 3 but  
2 PacifiCorp is without knowledge or information sufficient to form a belief as to the accuracy,  
3 completeness, or legal effect of the document attached as or documents referenced in Exhibit 3  
4 or any factual allegations therein and, therefore, denies the same. PacifiCorp is without  
5 knowledge or information sufficient to form a belief as to the truth of the factual allegations of  
6 paragraph 5 of the Petition and, therefore, denies the same.  
7

8           6.     Paragraph 6 sets forth a scheduling request rather than factual allegations, and no  
9 answer from PacifiCorp is required. To the extent an answer is required, PacifiCorp denies the  
10 same.  
11

12           7.     PacifiCorp is without knowledge or information sufficient to form a belief as to  
13 the truth of the factual allegations of paragraph 7 of the Petition and, therefore, denies the same.  
14

15           8.     Any allegation not expressly admitted is denied.

#### **AFFIRMATIVE DEFENSES**

16           1.     The electrical distribution facilities named in the Petition are useful in the  
17 performance of PacifiCorp's duties to the public and are dedicated to a public use under RCW  
18 80.28.  
19

20           2.     The electrical distribution facilities named in the Petition are regulated by the  
21 Washington Utilities & Transportation Commission ("WUTC") under RCW 80.28.

22           3.     Under RCW 80.12.020, PacifiCorp may not sell, lease, assign or otherwise  
23 dispose of the whole or any part of its properties or facilities useful in performance of its duties  
24 to the public without an order from WUTC, except a sale, lease, assignment or other disposal to a  
25 special district as defined in RCW 36.96.010, city, county. or town. Neither Petitioner is a  
26

1 special district as defined in RCW 36.96.010, city, county, or town and the WUTC has not issued  
2 an order under RCW 80.12.020.

3 4. Based on principles of comity or otherwise, the Tribal Court should abstain from  
4 entering or stay entry of a final judgment confirming a taking and an award of just compensation  
5 until the WUTC enters an order under RCW 80.12.020 authorizing disposition of PacifiCorp's  
6 property and facilities that are subject to WUTC jurisdiction in this proceeding.  
7

8 5. Yakama Power has not been delegated authority under Yakama Tribal law to  
9 condemn PacifiCorp's electrical distribution facilities.

10 6. No resolution adopted by the Yakama Tribal Council authorizing the taking of  
11 PacifiCorp's interests in the electrical distribution system was attached to the Petition, as  
12 required by Title MX 110.06.01.  
13

14 7. Resolutions T-080-05 and T-079-05 were not adopted by the Yakama Tribal  
15 Council.

16 8. PacifiCorp demands a hearing, as authorized by Title MX 110.12.01, on the  
17 Nation's right to take PacifiCorp's electrical distribution facilities.

18 9. No offer of just compensation was made at the time of service of the Petition, as  
19 authorized by Title MX 10.13.01. PacifiCorp demands a trial on the amount of just  
20 compensation owed.  
21

22 10. PacifiCorp demands just compensation in accordance with Title MX 110, the  
23 Indian Civil Rights Act, and federal common law.

24 11. PacifiCorp is a nonmember of the Yakama Nation.  
25  
26

1           12.     As a utility, PacifiCorp provides electric service to the Yakama Nation and its  
2 members in accordance with its duties under Washington law.

3           13.     PacifiCorp's relationship with Petitioners and Yakama Nation members is not a  
4 consensual relationship for purposes of federal common law relating to tribal jurisdiction.

5           14.     Condemnation of PacifiCorp's electrical distribution facilities by the Petitioners is  
6 not necessary to the health, safety, economic security, or self-government of Petitioners for  
7 purposes of federal common law relating to tribal jurisdiction.

8           15.     Congress has not delegated jurisdiction over PacifiCorp or PacifiCorp's Electrical  
9 Distribution System to the Yakama Nation, including but not limited to the Yakama Tribal  
10 Court.

11           16.     Under federal common law, Petitioners lack jurisdiction to condemn PacifiCorp's  
12 electrical distribution facilities in the Yakama Tribal Court.

13           17.     Any action to condemn PacifiCorp's electrical distribution facilities in or award  
14 of compensation for such condemnation by the Yakama Tribal Court is subject to review and  
15 control in federal court, in accordance with federal common law.

16           18.     The Petition fails to state a claim on which relief can be granted.

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20                                     **PRAYER**

21           WHEREFORE, PacifiCorp requests the Court:

22           1.     Dismiss the Petition for lack of jurisdiction;

23           2.     Abstain from entering or stay entry of a final judgment confirming a taking and  
24 making an award of just compensation until the WUTC enters an order under RCW 80.12.020  
25 authorizing disposition of PacifiCorp's property and facilities in this proceeding;

26  
**RESPONDENT PACIFICORP'S ANSWER AND AFFIRMATIVE  
DEFENSES FOR AND ON BEHALF OF RESPONDENT  
ELECTRICAL DISTRIBUTION SYSTEM - 5**



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**CERTIFICATE OF SERVICE**

The undersigned certifies under the penalty of perjury of the State of Washington that on the date indicated below that the following documents: **Respondent PacifiCorp's Answer and Affirmative Defenses For and On Behalf of Respondent Electrical Distribution System; and attached Certificate of Service**, were caused to be served via Federal Express Overnight Mail on the individuals and/or offices at the address listed below:

David C. Ward, WSBA#14162  
Attorney for Yakama Nation  
6209 S. Ferrall Court  
Spokane, WA 99223-7244  
Phone: 509-443-1032

J.D. Williams, WSBA#29882  
Attorney for Yakama Nation  
1300 SW 5<sup>th</sup> Avenue, Suite 3500  
Portland, OR 97201-5641  
Phone: 503-224-4133

Dated this 17<sup>th</sup> day of May, 2005.

  
\_\_\_\_\_  
Danny J. Autrey, Assistant to Attorney  
Michael P. O'Connell

