

LAW OFFICE  
of the  
PUYALLUP INDIAN TRIBE



*Via Hand Delivery*

July 16, 2014

Steven V. King, Executive Director and Secretary  
Washington Utilities and Transportation Commission  
1300 S. Evergreen Park Dr. S.W.  
Olympia, Washington 98504-7250

RE: *In the Matter of the Petition of Puget Sound Energy, Inc., for an Accounting Order Authorizing Accounting Treatment Related to Payments for Major Maintenance Activities,*  
Docket UE-130583;

*Washington Utilities and Transportation Commission v. Puget Sound Energy, Inc.,*  
Docket UE-130617;

*In the Matter of the Application of Puget Sound Energy, Inc., for an Order Authorizing the Sale of the Water Rights and Associated Assets of the Electron Hydroelectric Project in Accordance with WAC 480-143 and RCW 80.12,*  
Docket UE-131099; and

*In the Matter of the Application of Puget Sound Energy, Inc., For an Order Authorizing the Sale of Interests in the Development Assets Required for the Construction and Operation of Phase II of the Lower Snake River Wind Facility,*  
Docket UE-131230 (consolidated)

Dear Mr. King:

Enclosed for filing in the above-referenced docket are the original and twelve copies of the Puyallup Tribe's Petition to Intervene and for Leave to File Response to PSE's Amended Application, and Certificate of Service.

Sincerely,

Lisa A. Brautigam  
Attorney  
Puyallup Tribe of Indians

Enclosures

cc: Parties (via U.S. Mail and Electronic Mail)

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of

PUGET SOUND ENERGY

For an Accounting Order Authorizing  
Accounting Treatment Related to Payments  
for Major Maintenance Activities

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WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY

Respondent.

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In the Matter of the Petition of

PUGET SOUND ENERGY

For an Accounting Order Authorizing  
Accounting the Sale of the Water Rights and  
Associated Assets of the Electron  
Hydroelectric Project in Accordance with  
WAC 480-143 and RCW 80.12..

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In the Matter of the Application of

PUGET SOUND ENERGY, INC.,

For an Order Authorizing the Sale of  
Interests in the Development Assets  
Required for the Construction and Operation  
of Phase II of the Lower Snake River Wind  
Facility.

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DOCKET UE-130583  
*(Consolidated)*

DOCKET UE-130617  
*(Consolidated)*

DOCKET UE-131099  
*(Consolidated)*

PUYALLUP TRIBE'S PETITION  
TO INTERVENE AND FOR  
LEAVE TO FILE RESPONSE TO  
PSE'S AMENDED APPLICATION

DOCKET UE-131230  
*(Consolidated)*

1 Pursuant to WAC § 480-07-355, the Puyallup Tribe (“Tribe”) petitions the Washington Utilities and Transportation Commission (“WUTC” or “Commission”) for leave to intervene in the above-captioned proceeding, as an intervenor with full party status as described in WAC § 480-07-340. The business address of the Tribe is:

Puyallup Tribe of Indians  
3009 East Portland Ave  
Tacoma, WA 98404

The Tribe will be represented in this matter by Lisa A. Brautigam, Law Office of the Puyallup Tribe. All documents relating to this proceeding should be served on Ms. Brautigam as attorney for the Tribe at the following address:

Lisa A. Brautigam  
Law Office  
3009 East Portland Ave  
Tacoma, WA 98404

### GROUND FOR INTERVENTION

2 The Puyallup Tribe is a federally recognized Indian tribe with its reservation located in Pierce and King Counties and its governmental headquarters are located at Tacoma, Washington. The Tribe, as a governmental entity, owns and operates land and facilities on those lands that utilize Puget Sound Energy (“PSE”) for electric power services and pays PSE for those services. Declaration of Julie Hamilton, attached as Exhibit A. In fact, the Tribe’s largest hatchery facility utilizes PSE for electric power service and pays substantial utility rates for the power services needed to supply its hatchery operations. *Id.*

In addition to being a ratepayer with a definitive interest in the rates charged by PSE and representations in PSE's Amended Application that are inaccurate or lacking sufficient detail that could lead to detrimental impacts to the Tribe as a ratepayer, the Puyallup Tribe has an agreement with Puget Sound Energy called the Resource Enhancement Agreement ("REA"). The REA contains terms which control how the Electron Dam Facility, currently owned by PSE and proposed to be transferred to Electron Hydro LLC ("Electron Hydro"), operates. The REA governs operations by its terms, including, but not limited to, annual payments for work the Tribe performs at the facility to protect fish, including fish listed under the Endangered Species Act; requirements for either significant work to upgrade and license the facility or retire the facility by 2026; obligations to perform duties and invest funds in staff and materials to ensure upstream and downstream passage of fish, including fish listed under the Endangered Species Act; terms limiting the amount of water PSE can divert from the River under its water right, also proposed to be transferred to Electron Hydro; and terms that dictate PSE's, as the owner and operator of the facility, communication directly with the Tribe. See Paragraph 4 and Exhibit 1 to the Declaration of Russell C. Ladley, which is attached as Exhibit B. Paragraph 18.1 of the REA also states:

18.1 **Assignment, Successor.** A Party shall not assign all or any part of this REA or any of its rights hereunder without the prior written consent of the other Party.

*Id.* The Tribe has not provided any express, written or other consent to any assignment of the REA or the obligations thereunder. Declaration of Lisa A. Brautigam, ¶ 8, attached as Exhibit C. The REA provides that all disputes under the REA be submitted first to a Joint Technical Committee and then through formal dispute resolution proceedings. See Exhibit 1, REA ¶¶ 14-15, to the Declaration of Russell C. Ladley, attached hereto as Exhibit B.

The Tribe is initiating the dispute resolution procedures either at the same time as or shortly thereafter filing this Petition. Declaration of Lisa A. Brautigam, ¶ 9, attached as Exhibit C.

4

The Tribe is seeking intervention pursuant to WAC § 480-07-355(b) because the initial hearing dates in these consolidated matters have already occurred. Specifically, the Tribe is seeking to intervene regarding the recently filed Amended Application, filed by PSE in this matter on June 25, 2014. The Tribe became aware of the filing of the Amended Application on the afternoon of July 8, 2014 after hearing rumor of a definitive closing date and searching and checking the dockets for this proceeding. Declaration of Lisa A. Brautigam, ¶ 4, attached as Exhibit C. In the Amended Petition, PSE seeks to transfer the Electron Facility and the water rights associated with the facility to Electron Hydro LLC. PSE originally sought the Commission's approval for the transfer in 2013, and received an order allowing transfer so long as there were no material changes to the Asset Purchase Agreement that was the subject of that Application. *See In the Matter of the Petition of Puget Sound Energy for an Accounting Order Authorizing Accounting the Sale of the Water Rights and Associated Assets of the Electron Hydroelectric Project in Accordance with WAC 480-143 and RCW 80.12*, Docket No. UE-131099 (2013). The Asset Purchase Agreement stated as a condition of the sale that prior to closing

4.2.2 (i) Buyer has executed a Renewable Resource Agreement (“RRA”) with the Puyallup Tribe (the “Tribe”), in form and substance satisfactory to Buyer in its sole discretion; and (ii) Seller has received the consent of the Tribe to the Termination of the Current Resource Enhancement Agreement between Seller and the Tribe;

Exhibit D, Excerpted Copy of the Asset Purchase Agreement filed with the Application for in WUTC Docket No. UE-131099, (Id. 4817CE), at ¶ 4.2.2. Therefore, in PSE's original Application it was clear the REA between the Tribe and PSE would be resolved between the

Tribe and PSE before any sale of the facility closed. Therefore, the Tribe's interest in both the compliance with the agreement and its impacts on rates and the public interest were protected under the initial application.

5           However, the current Application filed in this matter for an order authorizing the transfer and sale contains material changes to the Asset Purchase Agreement. The Application discloses for the first time that the Asset Purchase Agreement has been amended to remove the condition of the sale that a new agreement be executed between the Tribe and the prospective purchaser. *Amendment No. 4 to Asset Purchase Agreement and Waiver of Certain Closing Conditions*, Exhibit F-5 to PSE's Amended Application, filed June 25, 2014. Instead, the contingency in the original Asset Purchase Agreement requiring a new agreement between the Tribe and Electron Hydro LLC has been waived. *Id.* at ¶ 4.2(a). Instead the Amended Asset Purchase Agreement requires PSE and Electron Hydro LLC to enter into the Electron Facility Operation Agreement whereby the Electron LLC is obligated to abide by the REA and PSE is obligated to only act under the REA, with few exceptions, through approval of Electron Hydro LLC. *Id.* at ¶ 4.3(b)(ii) and Exhibit 2. The Tribe has never been notified of this new agreement by PSE although it directly violates the REA. In fact, PSE has only provided two writings to the Tribe regarding the future sale. The first described how PSE was considering closing the sale prior to any approval by the Commission but would operate the facility until the Tribe entered an agreement with Electron Hydro LLC or until the end of the 2013 calendar year, whichever was earlier. Declaration of Lisa A. Brautigam, ¶¶ 5-7, attached as Exhibit C. The second letter requested the Tribe consent to assignment of the REA to Electron Hydro LLC, but the Tribe never gave its consent. *Id.* at ¶ 7-8.

## PUYALLUP TRIBE'S POSITION

6           The changes in the Amended Asset and Purchase Agreement will have a negative impact on rates and are not in the public interest. The changes create, at best, uncertainty or even invalidity of the assertions made by PSE in its application by creating liabilities for both PSE and the Electron Hydro LLC.

7           The REA contains a provision that prohibits assignment of “all or any part of this REA or any of its rights hereunder without the prior written consent of the other Party.” Exhibit 1, ¶ 18.1 to the Declaration of Russell C. Ladley, attached as Exhibit A. While PSE sought such an assignment, the Tribe never expressed its consent to such assignment. Declaration of Lisa A. Brautigam, ¶ 8, attached as Exhibit C. According to the Electron Facility Operation Agreement filed as an exhibit to the Amended Application, now PSE does in fact seek to assign many of the its obligations under the REA to Electron Hydro including, but not limited to, annual payments where PSE will only act as an agent for Electron Hydro, maintenance of the downstream trap and haul operations, decisions as to whether to upgrade or retire the Electron Project in 2018, all actions to either upgrade or retire the Electron Project, payment of a cost share of destruction of fish facilities in the event of their destruction or failure, and a choice and approval of all communications with the Tribe. *See Exhibit 2 to Amendment No. 4 to Asset Purchase Agreement and Waiver of Certain Closing Conditions*, Exhibit F-5 to PSE’s Amended Application, filed June 25, 2014.

8           Furthermore, PSE seeks to assign many of the general rights the Tribe bargained for in the REA to the prospective purchaser. The Tribe entered into the REA in part because in

2018 PSE would make the decision to either upgrade or retire the project. Declaration of Russell C. Ladley, ¶ 4, attached as Exhibit A. The Tribe expected PSE to be making that decision based upon factors as to PSE's ability to operate the facility in a cost effective manner for PSE. *Id.* The Tribe anticipated that if PSE chose to retire the project, PSE would be responsible for the retirement and all actions necessary to remove the dam and other related structures. *Id.* The Tribe anticipated that PSE, with its wealth of resources, experience and ties to the region, would be managing and completing these substantial obligations. *Id.* In the Amended Application, PSE has stated it is clearly avoiding those obligations, and purports this is a clear benefit of the transfer. Prefiled direct Testimony (Confidential) of Paul K. Wetherbee, pp. 39-40. However, PSE is assigning those obligations to Electron Hydro, with no proven track record or proven financial ability or backing. Electron Hydro is an LLC created just for this project, with resources that will be limited to the individual will of its partners to fund Electron Hydro when they deem it in their personal interest. The financial wherewithal of Electron Hydro is a complete mystery. Nowhere in the record documents available to the public is there a demonstration that the new entity has the expertise or financial wherewithal to maintain, operate, and support activities for an upgrade or retirement of the Project.

9

PSE also assigns the task of maintaining the downstream trap and haul facilities to Electron Hydro LLC in the Electron Facility Operation Agreement. *Amendment No. 4 to Asset Purchase Agreement and Waiver of Certain Closing Conditions*, Exhibit F-5 to PSE's Amended Application, filed June 25, 2014. However, there is no evidence that Electron Hydro has the experience in maintaining those systems. Declaration of Russel C. Ladley, ¶¶ 5-11, attached as Exhibit B. Current PSE staff and biologists have either already been



reassigned or will be reassigned to other PSE facilities. *Id.* There is no indication that any employee of Electron Hydro is experienced in the equipment operations or fish biology to handle such tasks. *Id.* Nor is there any indication that the newly formed LLC can fund a significant number of employees.

10           The Tribe also bargained for the right to work directly with the owner and operator of the Electron Facility and its associated water rights in the REA. PSE now will act as intermediary between the Tribe and Electron Hydro, which has no proven track record of operating this facility with its challenges and impacts on fish, three of which are listed under the Endangered Species Act. *Amendment No. 4 to Asset Purchase Agreement and Waiver of Certain Closing Conditions*, ¶ 6, Exhibit F-5 to PSE's Amended Application, filed June 25, 2014. In fact, through the proposed Electron Facilities Operation Agreement, PSE is restricted from communicating with the Tribe on any substantive issue without the express approval of Electron Hydro. *Id.* PSE has assigned all control over any matters with regard to the REA to Electron Hydro. *Id.*

11           The Tribe will begin dispute resolution proceedings under the REA shortly after filing this document. Declaration of Lisa A. Brautigam, ¶ 9, attached as Exhibit C. The Tribe will be making claims for breach of the provisions of the REA relating to this application and be seeking relief for a breach of the clause that requires PSE to maintain the downstream Trap and Haul Facilities at Electron as PSE has been neglecting this duty for some time. Declaration of Russel C. Ladley, ¶¶ 7-11, attached as Exhibit B. These claims

are not accounted for in PSE's Amended Application and Cost Analysis and, therefore, the costs and benefits to rate-payers are invalid.<sup>1</sup>

12 In addition to the uncertainties regarding the REA, PSE and Electron Hydro are subject to claims under the Endangered Species Act for take of a listed species. PSE and the Tribe have a longstanding disagreement over the effectiveness of the Downstream Trap and Haul operations at Electron. While PSE disagrees, Tribal biologists estimate that as much as 50% of listed species migrating downstream are killed when they enter the facility and its penstocks because the fish are propelled through the penstocks and pulverized prior to being discharged downstream.

13 The Endangered Species Act allows for an incidental take of a listed species by a private entity through the development of a habitat conservation plan ("HCP") which leads to the issuance of an incidental take permit. See 16 U.S.C. §1539(2). The permit allows a take incidental to an otherwise lawful operation when the party, through the habitat conservation plan, has minimized the take to the maximum extent practicable. *Id.* Absent an incidental take permit, the organization or individuals that take listed species could be subject to both civil and criminal liability. 16 U.S.C. §§1538, 1540. The National Marine Fisheries Service has agreed that the Electron Facility causes significant harm to listed species, calling the Electron Facility one of the biggest threats to Puget Sound Chinook Recovery. Exhibit 2 to the Declaration of Russell C. Ladley, ¶ 11, attached hereto as

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<sup>1</sup> The Tribe's claims against PSE arise from PSE's failure, for years, to appropriately maintain the downstream Trap and Haul operations at Electron. Since PSE determined it would seek to sell the Electron Facility it has continued to reduce staff at the facility. The reduction in staff has led to significant lack of maintenance of the Downstream Trap and Haul operation, and even more fish being pulverized by entering the penstocks. Some of these fish are listed under the Endangered Species Act, and their death constitutes a take under the Act, for which PSE has never received any permit coverage. See Declaration of Russel Ladley, ¶¶ 7-11, attached as Exhibit B..

Exhibit B. While PSE started the HCP process at least a decade ago, PSE has not diligently pursued its development or obtained any of the necessary permits. The Tribe has attempted to be patient in awaiting such approval knowing that PSE had the technology and financial ability to reach a permit, but PSE has chosen to ignore the requirements and now would release all of its obligations to Electron Hydro. Prefiled direct Testimony (Confidential) of Paul K. Wetherbee, p. 40. It is not clear that Electron Hydro does, in fact, have any of the technical or financial qualifications to develop a successful HCP or obtain an incidental take permit to cover the Electron Facility. Absent such a permit, the National Marine Fisheries Service or U.S. Fish and Wildlife Service could enforce against the entity and shut down operations. This creates not only uncertainties in the cost of compliance for Electron Hydro, it also creates uncertainties as to the liabilities of PSE for past operations violating the Act.

14 If the Federal Agencies fail to enforce the ESA, private parties can elect to notice the Federal Agencies to do so under the ESA's citizen suit provisions. 16 U.S.C. 1540(g). The Tribe is an eligible party to bring such an action. The Tribe is currently evaluating its actions, and is seriously considering filing its notice to enforce the ESA under the ESA's citizen suit provisions if PSE transfers ownership to Electron Hydro. Declaration of Lisa A. Brautigam, ¶ 10, attached as Exhibit C. The ESA liabilities are not factored into any of the cost analysis provided by PSE, which fails to allow a full evaluation of potential harm and risk to ratepayers.

15 Not only do the Tribe's ESA claims impact the financial analysis portion of the application, the ESA claims render PSE's reliance on the Power Purchase Agreement to show they will have sufficient power supply in spite of the sale speculative at best.

Electron Hydro LLC, if faced with ESA claims that successfully prevent the operation of the facility until ESA compliance is met, may not be able to operate the facility at all for a significant period of time. *See generally* 16 U.S.C. §1540(g)(1). Furthermore, Electron Hydro's financial ability to complete compliance activities and other necessary operations is not proven, particularly when income from power generation is either minimal or wholly absent. Therefore, PSE may not be able to purchase power from the facility for a significant period of time if at all if Electron LLC is unable to complete necessary changes to the operations to reach ESA compliance. Therefore, the claims that power will be available for its customers as an adequate replacement through the Power Purchase Agreement are baseless, invalid, and contradicted by the record. *See Amended Application*, pp. 9-10, ¶ 20.

16           The foregoing reasons demonstrate not only a potential negative impact for ratepayers, but also demonstrate that this transfer as proposed by PSE is not in the public's interest. Under WAC § 480-143-170 the Commission has determined that applicants for the sale and transfer of assets must demonstrate that the transaction does not harm the public interest. *In the Matter of the Application of Soren Pedersen Water Company*, Docket UW-131046 Order Granting Application for Sale and Transfer of Assets; Adopting Tarrif (September 12, 2013). Furthermore, the Commission can look at the new company's ability to manage the operations and its financial fitness to manage the operation. *Id.*

17           The Amended Application, as discussed above, gives rise to substantial liabilities of PSE under the REA and for violations of the ESA, neither of which are mentioned in PSE's arguments supporting approval of the sale and transfer of the Electron Facility to Electron Hydro. The Public will suffer substantial harm by allowing the sale and transfer to be

approved because rates will be affected by the undisclosed liabilities and the amount of power, if any, is speculative under the Power Purchase Agreement.

18 Furthermore, there is no evidence in the record that the prospective purchaser, Electron Hydro, can manage the facilities in light of the significant responsibilities of maintenance of not only the aging hydropower plant, but the intricate, albeit ineffective, downstream trap and haul operations. The record also is absent any evidence that Electron Hydro can financially manage the day to day operations or the substantial liabilities that may result from enforcement due to the ongoing violations of the Endangered Species Act. The public will suffer substantial harm not only from the financial instabilities and potential suspension or closure of the power generators, but from the continued violations of the Endangered Species Act themselves due to harm to fish populations that are critical to recreational and economic interests.

### RELIEF REQUESTED

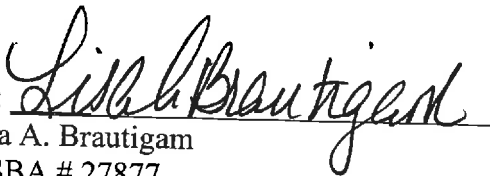
19 For the foregoing reasons, the Puyallup Tribe Petitions the Commission for leave to intervene in these proceedings regarding PSE's Amended Application. In addition to the Tribe's Application to Intervene, the Tribe is requesting leave to file a full response to PSE's Amended Application. A number of the documents filed by PSE were redacted so that non-parties could not review significant facts. The Tribe requests an opportunity to review such documents and file a full response to the Amended Application. While the Tribe understands PSE has set a deadline for closing on July 31, 2014, the Tribe anticipates it will require at least 45 business days to obtain the documents, review the files, seek input

from consulting experts, and draft a response approved by the Tribal Council on behalf of the Tribe after an affirmative decision by the Commission to permit intervention.

DATED this 16th day of July 2014.

Respectfully submitted,

LAW OFFICE  
PUYALLUP TRIBE OF INDIANS

By:   
Lisa A. Brautigam  
WSBA # 27877  
Tel 253-573-7852  
Fax 253-680-5998  
Email [lisa.brautigam@puyalluptribe.com](mailto:lisa.brautigam@puyalluptribe.com)

Samuel J. Stiltner  
WSBA # 7765  
Tel 253-573-7  
Fax 253-680-5998  
Email [sam.stiltner@puyalluptribe.com](mailto:sam.stiltner@puyalluptribe.com)

Docket UE-130583, UE-130617, UE-131099 and UE-131230 (*Consolidated*)  
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the attached Puyallup Tribe's Petition to Intervene and for Leave to File Response to PSE's Amended Application upon the persons and entities listed on the Service List below via electronic mail and by depositing a copy of said document in the United States mail, addressed as shown on said Service List, with first class postage prepaid.

DATED within the Reservation of the Puyallup Tribe, at Tacoma, Washington this 16<sup>th</sup> day of July 2014.

  
LISA A. BRAUTIGAM

*For the Commission:*

Sally Brown, Assistant Attorney General  
Don Trotter, Assistant Attorney General  
WUTC  
P.O. Box 40128  
Olympia, WA 98504-0128  
sbrown@utc.wa.gov  
dtrotter@utc.wa.gov

Kenneth Johnson  
Director, Rates & Regulatory Affairs  
Puget Sound Energy, Inc.  
P.O. Box 97034  
Bellevue, WA 98009-9734  
Phone: (425) 456-2110  
ken.s.johnson@pse.com

*For PSE:*

Sheree Carson  
Donna Barnett  
Jason Kuzma  
Perkins Coie  
10885 NE Fourth Street Suite 700  
Bellevue, WA 98004-5579  
Phone: (425) 635-1400  
jkuzma@perkinscoie.com  
scarson@perkinscoie.com  
dbarnett@perkinscoie.com  
pseds@perkinscoie.com

*For PGE:*

PORTLAND GENERAL ELECTRIC  
121 S.W. Salmon St.  
Portland, OR 97204

*For Public Counsel:*

Simon ffitc  
Lisa Gafken  
Public Counsel Section  
Office of Attorney General  
800 Fifth Avenue, Suite 2000  
Seattle, WA 98104-3188  
Phone 206-389-2055  
simonf@atg.wa.gov  
lisag@atg.wa.gov  
stefaniej@atg.wa.gov  
carol.baker@atg.wa.gov

Katherine Barnard  
Puget Sound Energy, Inc.  
P.O. Box 97034  
Bellevue, WA 98009-9734

*For ICNU:*

Melinda Davison

Irion A. Sanger

Jesse E. Cowell

Davison Van Cleve

333 SW Taylor, Suite 400

Portland, OR 97204

Phone 503-241-7242

ias@dvclaw.com

mjd@dvclaw.com

jec@dvclaw.com

Michael Deen: mdeen@r-c-s-inc.com

Donald Schoenbeck: dws@r-c-s-inc.com

*For Electron Hydro:*

Electron Hydro, LLC

3633 Alderwood Ave.

Bellingham, WA 87114



# **EXHIBIT A**

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of

PUGET SOUND ENERGY

For an Accounting Order Authorizing  
Accounting Treatment Related to Payments  
for Major Maintenance Activities

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WASHINGTON UTILITIES AND  
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DOCKET UE-130583  
*(Consolidated)*

DOCKET UE-130617  
*(Consolidated)*

DOCKET UE-131099  
*(Consolidated)*

Declaration of Julie Hamilton, CPA

DOCKET UE-131230  
*(Consolidated)*

1 Julie Hamilton, under penalty of perjury, declares as set forth below:

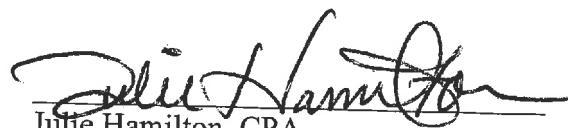
2 I am over the age of 18 years and competent to be a witness herein.

3 I am the Tribal Financial Officer (TFO) for the Puyallup Tribe. I have worked as the  
TFO for 8 years.

4 Attached as Exhibit 1 is a true and correct copy of the list of payments the Puyallup  
Tribe paid to PSE for power services at Tribal owned facilities for the current fiscal year  
through July 14, 2014. The Tribe's current fiscal year runs from October 1, 2013 through  
September 30, 2014.

5 In fact, the account listed for the address at 6824 Pioneer Way is for electric services  
for one of the Puyallup Tribe hatcheries, which produces Chinook and coho salmon for  
release above Electron Dam.

6 I certify under penalty of perjury under 28 U.S.C. § 1746 that the foregoing is true  
and corrected. Signed at Tacoma, Washington within the Puyallup Reservation this 15  
day of July, 2014.



Julie Hamilton, CPA  
Tribal Financial Officer  
Puyallup Tribe of Indians

# **EXHIBIT 1**

**Puyallup Tribe of Indians**  
**Check/Voucher Register**  
 From 10/1/2013 Through 7/14/2014

<u>ID</u>	<u>Check D...</u>	<u>Transaction Description</u>
PUGSOEN169200	10/16/2013	200015090117 130829-130927 1613 East 31st St
PUGSOEN169200	10/16/2013	200002103311 130829-130927 2244 E Harrison St
PUGSOEN169200	10/16/2013	200020979007 130829-130927 3010 Duct Cho St
PUGSOEN169200	10/16/2013	200015059542 130829-130927 1829 E 30th St
PUGSOEN169200	10/16/2013	200006850875 130820-130918
PUGSOEN169200	10/17/2013	200001555578 130820-130918 - Hunting and Wildlife
PUGSOEN169200	10/21/2013	200020978645 130911-131009
PUGSOEN169200	11/1/2013	200019483565 130921-131022
PUGSOEN169200	11/1/2013	200019483565 130921-131022
PUGSOEN169200	11/1/2013	200019483730 130921-131022
PUGSOEN169200	11/1/2013	200019483730 130921-131022
PUGSOEN169200	11/6/2013	200015090117 130928-131029
PUGSOEN169200	11/6/2013	200020978462 130928-131029
PUGSOEN169200	11/6/2013	200015059542 130928-131029
PUGSOEN169200	11/12/2013	200015195890 -130921-131024
PUGSOEN169200	11/12/2013	200013337619 -130824-131024
PUGSOEN169200	11/12/2013	200013337874 -130824-131024
PUGSOEN169200	11/13/2013	200020979007 -130928-131029
PUGSOEN169200	11/21/2013	200002103311 -130928-131029
PUGSOEN169200	11/25/2013	200020978645 - 131010-131108 - 31716 Camp 1 Rd E
PUGSOEN169200	12/2/2013	200020996175 131010-131108
PUGSOEN169200	12/3/2013	200019483565 131023-131120 - Child Support
PUGSOEN169200	12/3/2013	200019483565 131023-131120 - Child Support
PUGSOEN169200	12/3/2013	200019483730 131023-131120
PUGSOEN169200	12/3/2013	200019483730 131023-131120

**Puyallup Tribe of Indians**  
**Check/Voucher Register**  
From 10/1/2013 Through 7/14/2014

<u>ID</u>	<u>Check D...</u>	<u>Transaction Description</u>
PUGSOEN169200	12/10/2013	200020995367 131030-131130
PUGSOEN169200	12/16/2013	<del>200020995367</del> 131018-131118
PUGSOEN169200	12/20/2013	200020996175 131109-131210
PUGSOEN169200	1/10/2014	200015195890 - Garage Electricity
PUGSOEN169200	1/10/2014	200013337619 - Well Electricity
PUGSOEN169200	1/10/2014	200020979007 131201-131230
PUGSOEN169200	1/15/2014	200020995367 131201-131230 2919 E Portland Ave
PUGSOEN169200	1/15/2014	200006521625 131204-140102 - gaming
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# **EXHIBIT B**

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of

PUGET SOUND ENERGY

For an Accounting Order Authorizing  
Accounting Treatment Related to Payments  
for Major Maintenance Activities

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WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY

Respondent.

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In the Matter of the Petition of

PUGET SOUND ENERGY

For an Accounting Order Authorizing  
Accounting the Sale of the Water Rights and  
Associated Assets of the Electron  
Hydroelectric Project in Accordance with  
WAC 480-143 and RCW 80.12..

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In the Matter of the Application of

PUGET SOUND ENERGY, INC.,

For an Order Authorizing the Sale of  
Interests in the Development Assets  
Required for the Construction and Operation  
of Phase II of the Lower Snake River Wind  
Facility.

DOCKET UE-130583  
*(Consolidated)*

DOCKET UE-130617  
*(Consolidated)*

DOCKET UE-131099  
*(Consolidated)*

Declaration of Russell C. Ladley

DOCKET UE-131230  
*(Consolidated)*

1 Russell C. Ladley, under penalty of perjury, declares as set forth below:

2 I am over the age of 18 years and competent to be a witness herein.

3 I am the Resource Protection Manager in the Department of Fisheries for the Puyallup Tribe of Indians. I have worked in the Fisheries Department for the Tribe for twenty-six years. I have been conducting salmonid research, monitoring and associated field work at Electron and the associated habitat areas for twenty-six years. I make this declaration based upon my training and experience as the Resource Protection Manager for the Puyallup Tribe, my direct knowledge of the Resource Enhancement Agreement (“REA”) and the negotiations leading up to the execution of the REA, and my direct personal knowledge of the conditions and operations at Electron Dam and its associated facilities.

4 Attached as Exhibit 1 is a true and correct copy of the REA that was executed by PSE and the Tribe in 1997. I participated, as the Resource Protection Manager, in the negotiations to reach agreement in the form of the REA. In negotiating the REA representatives from the Tribe never anticipated nor did the Tribe agree to any other party or entity carrying out the duties in the REA including, but not limited to, the decision to retire or upgrade the project or any activities associated with retiring or upgrading the project.

5 While the Tribe and PSE have disagreed over the years of operations under the REA with regard to issues such as sufficiency of the downstream trap and haul operations and maintenance thereof and the drawn out nature of PSE’s efforts to complete permitting for

6 compliance under the Endangered Species Act, the Tribe entered into the REA anticipating that PSE and its resources and strength as a regulated public utility would be responsible for carrying out the agreed to tasks, including any retirement or upgrade of the project. The Tribe never agreed to allow any other party to carry out PSE's obligations, particularly one lacking experience in fish passage engineering, maintenance and operations..

7 Part of the downstream trap and haul operations requires PSE to constantly maintain the operations in the facility's forebay. A large part of the maintenance is cleaning off the net that isolates the forebay and prevents fish from entering the penstocks where they will be pulverized. The net has a large surface area and requires cleaning every few days or even more often depending on the sediment and debris delivery rates. In addition to cleaning, holes in the net must be repaired often and immediately to prevent fish from entering the penstocks or becoming trapped in the forebay. If regular maintenance is not done, the net becomes ineffective as it is riddled with holes and becomes silted in to the bottom.

8 The net is the primary apparatus designed to prevent fish from migrating into an area of the forebay where they are drawn into the penstocks and experience certain death. Furthermore, fish migrating beyond the net that do not enter the penstocks can have the migrations delayed for significant periods of time as they become trapped in the forebay, which can experience extreme conditions that lead to additional mortality and loss.



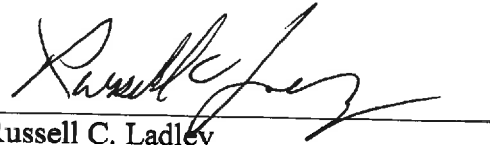
9           Since PSE has been considering the sale to Electron, LLC, PSE has been cutting staff, which include experienced fisheries biologists, at the forebay. The decrease in staff has led to ineffective maintenance activities and loss of fish into the penstocks. The lost fish include species listed under the Endangered Species Act, Chinook, bull trout, and steelhead.

10           It has been reported to me that the remaining few staff members at the facility are already assigned to other PSE projects and will leave the Electron Facility once Electron LLC takes ownership. It is our understanding that while a few of the principals and staff of Electron LLC have been trained in operations at the facility, there will be insufficient numbers of staff and no experienced staff to maintain the downstream trap and haul operations and no staff to our knowledge has any fisheries experience to monitor fish.

11           The continued lack of maintenance at the forebay is of grave concern. Even in optimal conditions, the fish that enter the forebay have a greatly reduced chance of surviving to make it downstream. Even when the system was operating as planned in the REA, the National Marine Fisheries Service recognized that the Electron Facility was identified as the most serious single threat to Chinook salmon in the Puyallup watershed. *See Exhibit 2, Letter from Keith Kirkendall, NMFS, to Edward Schild, Puget Sound Energy dated July 25, 2005.* Reduced maintenance leading to reduced effectiveness is not an option particularly since, as discussed in the Mr. Kirkendall's letter from National Marine Fisheries Service in 2005, PSE lacks any permits providing protection from take under the Endangered Species Act. *Id.* Lack of maintenance and experienced staff will only increase the take experienced at the facility.

12

I certify under penalty of perjury under 28 U.S.C. § 1746 that the foregoing is true and corrected. Signed at Tacoma, Washington within the Puyallup Reservation this 15<sup>th</sup> day of July, 2014.



Russell C. Ladley  
Resource Protection Manager  
Puyallup Tribe of Indians

# **EXHIBIT 1**

**RESOURCE ENHANCEMENT AGREEMENT**

**by**

**and between**

**PUYALLUP TRIBE OF INDIANS**

**and**

**PUGET SOUND ENERGY, INC.**

**March 27, 1997**

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## RESOURCE ENHANCEMENT AGREEMENT

This Resource Enhancement Agreement ("REA") is made by and between the PUYALLUP TRIBE OF INDIANS (the "Tribe") and PUGET SOUND ENERGY, INC., a Washington corporation ("Puget"). The Tribe and Puget are sometimes collectively referred to hereinafter as the "Parties." This REA is made with reference to the following facts:

### RECITALS

A. Over a period of several years, the Tribe has asserted various claims against Puget relating to Puget's Electron Hydroelectric Project (the "Project"). These claims have been broadly stated by the Tribe, with reference to various federal, state and local laws (including, but not limited to, claims allegedly arising under the Treaty of Medicine Creek). The Parties desire to settle these claims.

B. The Parties have, since March of 1996, been actively engaged in negotiations regarding the Project and certain fishery enhancements in and about the upper reaches of the Puyallup River. On November 25, 1996, the Parties directed their legal counsel to execute an Agreement in Principle (as amended, the "AIP") encompassing a framework of principles that appropriately balanced the benefits of fishery enhancements and the benefits of hydroelectric generation.

C. This REA now effects settlement of the aforementioned claims and incorporates the principles set forth in the AIP. To this end, this REA represents a historic achievement of which both the Tribe and Puget are proud.

### AGREEMENT

In consideration for mutual promises and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to use best efforts to cooperatively implement this REA to accomplish the goals and objectives referenced above.

#### 1. Definitions

In addition to the definitions set forth in the Recitals, the following capitalized terms shall have the following meanings for purposes of the REA:

1.1 "Annual O & M Contribution" is a collective reference to each Annual O & M Contribution identified below in subparagraphs 3.4, 4.4, 5.1.2.1 and (if required) 5.2.2.

- 1.2 "Banked Instream Flow" means the net accumulated instream flow determined in accordance with subparagraph 2.2 below, and available for use by the Tribe in accordance with subparagraph 2.3 below.
- 1.3 "Construction Access" means reasonable and sufficient access for purposes of transporting personnel and materials to the proposed site of the Fish Ladder.
- 1.4 "Construction Contract Documents" means the construction contract documents attached to and by this reference incorporated in this REA as Exhibit A.
- 1.5 "Downstream T & H" means downstream fish passage trap and haul and associated facilities more particularly described in the preliminary design therefor, attached to and incorporated in this REA as Exhibit B.
- 1.6 "Effective Date" means the date following the Parties' execution of this REA, upon which the Tribe notifies Puget in writing of the occurrence of any one of the following: (i) approval of the Resolution by the Bureau of Indian Affairs pursuant to Article VI, Section 2, of the Constitution and Bylaws of the Puyallup Tribe of the State of Washington; (ii) approval of the REA by the Secretary of the Interior and the Bureau of Indian Affairs pursuant to 25 U.S.C. § 81; or (iii) receipt by the Tribe of written notification from the Secretary of the Interior and the Bureau of Indian Affairs that approval is not required under subsections (i) and (ii) of this subparagraph 1.6.
- 1.7 "Fish Ladder" means the fish ladder and associated facilities more particularly described in the preliminary design therefor, attached to and incorporated by this reference in this REA as Exhibit C.
- 1.8 "Fishery Enhancements" is a collective reference to any one or more of the measures contemplated by this REA to enhance the fishery resources in and about the upper reaches of the Puyallup River. The term includes, without limitation, the Downstream T & H, the Fish Ladder, the Upstream T & H, the Minimum Instream Flow, the Flow Monitoring Plan, the Banked Instream Flow, the Rearing Ponds and the Annual O & M Contribution.
- 1.9 "Flow Monitoring Plan" means the flow monitoring plan more particularly described in the plan attached to and incorporated by this reference in this REA as Exhibit D.
- 1.10 "Force Majeure" means events or causes that are not reasonably within the control or contemplation of the Party whose ability to perform under this REA is delayed by the events or causes, including, without limitation and by way of example only: landslides, lightning, forest fires, storms, floods, freezing, drought, earthquakes, civil disturbances, strikes, or other disturbances associated with labor relations, acts of the

public enemy, wars, public riots, breakage, explosion, accident to machinery or equipment (reasonably related to the delayed performance), government restraint (other than matters within the purview of subparagraph 9.5 below) or other causes outside of the reasonable control or contemplation of a Party. For purposes of this definition, action or inaction by the Tribe shall not be deemed or construed to be a "governmental restraint."

1.11 "Funding Date" means June 1 of each year during the Term.

1.12 "Joint Technical Committee" or "JTC" shall mean a committee of not less than four individuals nor more than six, comprised of two individuals with technical qualifications or practical experience related to either fisheries biology or hydrology (one appointed by the Tribe and one appointed by Puget), and either two or four additional individuals with an equal number appointed by the Tribe and by Puget). The JTC may invite such other persons to meetings of the JTC as the JTC deems appropriate to provide information and assistance to the JTC. The JTC shall meet not less than monthly during the first six (6) months of the Term and not less than quarterly thereafter based upon a schedule and in accordance with such proceeding as the JTC may establish. The first meeting of the JTC shall take place within ten (10) days of the Effective Date.

1.13 "Minimum Instream Flow" shall mean, during the Term, an in-channel surface flow below the Electron dam of 80 cfs for the four-month period from July 15 through November 15, and of 60 cfs from November 16 through July 14.

1.14 "O & M Fund" means one or more accounts or subaccounts to be established by the Tribe in accordance with subparagraphs 3.5 and 5.1.2.3 below, from which the Tribe may draw funds to develop and implement fishery enhancement and related programs on the Puyallup River that implement the goals and objectives of this REA.

1.15 "Permits and Approvals" shall mean any and all determinations, certificates, reviews, authorizations, licenses, permits or other form of approvals made or issued by any one or more federal, state, local or other governmental entity. For purposes of this definition, the Tribe shall not be deemed or construed to be a "governmental entity."

1.16 "Ramp Rate" and "Ramp Rate Plan" means the ramp rate provided for by subparagraph 6 below and the provisions of the Flow Monitoring Plan that pertain to the ramp rate.

1.17 "Rearing Ponds" means rearing ponds and associated facilities for salmonids (e.g., Chinook (*Oncorhynchus tshawytscha*), Coho (*Oncorhynchus kisutch*) or Steelhead (*Oncorhynchus Mykiss*)) as more particularly described in the preliminary design therefor, attached to and by this reference incorporated in this REA as Exhibit E.



1.18 "Resolution" means a resolution of the Tribal Council, in the form attached hereto as Exhibit F.

1.19 "Retire the Project" means such actions as Puget shall deem necessary for purposes of permanently discontinuing the generation of electricity at the Project and, for such purposes, the removal of the Electron Dam from the channel of the Puyallup River.

1.20 "Schedule" means the schedule for implementation of Fishery Enhancements, as determined in accordance with paragraph 10 below. Subject to modification in accordance with subparagraph 10.2 below, the Schedule is attached to and by this reference incorporated in this REA as Exhibit G.

1.21 "Term" shall commence as of the Effective Date and shall end December 31, 2026, unless the Term is ended (except for the survival of certain matters as provided for by subparagraph 17.3) prior to that time in accordance with subparagraph 18.7 below.

1.22 "Upgrade the Project" means construction or major modification that increases the Project's head, generating capacity, or otherwise significantly modifies the Project's pre-1935 design and operation.

1.23 "Upstream T & H" means the upstream fish passage trap and haul facilities more particularly described in the preliminary design therefor, attached to and by this reference incorporated in this REA as Exhibit H.

## **2. Minimum Instream Flow Below Electron Dam**

2.1 **Flow.** The Parties shall, during the Term, cooperate in the implementation of the Minimum Instream Flow in accordance with the Flow Monitoring Plan.

### **2.2 Banked Instream Flow.**

2.2.1 During the Term, the Tribe may, for purposes of acquiring Banked Instream Flow for use in accordance with subparagraph 2.3 below, release portions of the Minimum Instream Flow to Puget as flow available for generation. In order for such a release of Minimum Instream Flow by the Tribe to qualify as Banked Instream Flow, the following criteria must be satisfied to the Parties' mutual satisfaction: (i) flows may only be banked, and such banked flows must be used, during each annual four-month period beginning on July 15 and ending on November 15; and (ii) the volume of water banked shall only be that amount of the Minimum Instream Flow released by the Tribe that actually increases the flow available to Puget for generation (i.e., "available for generation" means water in the flume, such that an actual increase in the flow "available

for generation" must correspond to an actual quantity of additional water diverted to the flume that is then available for generation).

2.2.2 The Tribe shall make a good faith effort to provide Puget with an annual schedule, on or before June 15, indicating its desired dates for flow banking for the subsequent four-month period. It is understood, however, that unplanned matters may require that the proposed schedule be modified. Accordingly, the Parties shall also exercise their best reasonable efforts to accommodate requested flow variations to address exigent circumstances within the general parameters of the REA. However, the Parties recognize that to achieve a desired instream flow for fishery enhancement purposes and to avoid inefficiencies in production, the Parties shall cooperate to develop 60-day forecasts of anticipated flows and flow banking requests. In no event shall Puget have any obligation to accommodate a flow banking request made on advance notice of less than 72 hours.

2.3. **Use of Banked Instream Flow.** During the Term, the Tribe may use Banked Instream Flow for fishery enhancement purposes as follows:

2.3.1 The Tribe shall provide Puget with advance notice of not less than 72 hours of its request to increase the Minimum Instream Flow with Banked Instream Flow.

2.3.2 Banked Instream Flow shall thereafter be provided by Puget, as available, subject to the following limitations: (i) Banked Instream Flow must be used in the same calendar year that the Tribe receives credit for its release of such a portion of the Minimum Instream Flow, pursuant to subparagraph 2.2.1 above, and must be used in that year during the four-month period beginning July 15 and ending November 15; and (ii) use of Banked Instream Flow, at any given time during such four-month period, shall not reduce the availability of water for generation below 50 cfs.

### 3. **Rearing Ponds**

3.1 **Design.** The Parties shall jointly plan the siting and design of the Rearing Ponds, and to this end, Puget shall provide the Tribe with its written comments on the preliminary design for the Rearing Ponds within ten (10) days of the Effective Date. The Rearing Ponds shall initially be designed for Chinook (*Oncorhynchus tshawytscha*) and Coho (*Oncorhynchus kisutch*) (and may subsequently be used for other salmonids (e.g., Steelhead (*Oncorhynchus Mykiss*))). The Tribe shall thereafter use its best reasonable efforts to complete the design in accordance with the Schedule.

3.2 **Construction and Operation of Rearing Ponds.** The Tribe shall use its best reasonable efforts to construct the Rearing Ponds and commence operation of the Rearing Ponds in accordance with the Schedule.

3.3 **Capital Contributions.** Puget shall pay the Tribe \$50,000 towards the cost of design and construction of the Rearing Ponds within thirty (30) days of the Effective Date. Puget shall thereafter make the following subsequent payments towards the cost of design and construction of the Rearing Ponds to the Tribe:

3.3.1 \$50,000 on or before May 1, 1997.

3.3.2 \$50,000 on or before July 1, 1997.

3.3.3 \$50,000 on or before September 1, 1997.

Puget may, at its option, prepay all or any portion of the capital contributions referred to in subparagraphs 3.3.1 through 3.3.3.

3.4 **Operation and Maintenance Contributions.** Within thirty (30) days of the date that the first Rearing Pond goes into operation, Puget shall pay the Tribe an Annual O & M Contribution of \$100,000 for operation and maintenance of the Rearing Ponds, thereby facilitating fishery enhancements and related activities implementing the goals and objectives of the REA. Puget shall thereafter make an Annual O & M Contribution to the Tribe of \$100,000 in support of such activities through the year 2005, and unless Puget shall Retire the Project, Puget shall continue to make such \$100,000 payments each year thereafter as an Annual O & M Contribution during the Term. Each such Annual O & M Contribution, except for the first contribution, shall be made on the Funding Date; provided, however, Puget may at its option, prepay all or any portion of this Annual O & M Contribution.

3.5 **O/M Fund.** If during any one year the Tribe shall not utilize the full Annual O & M Contribution, then the Tribe shall place the unused funds in the O/M Fund, where such funds shall be held and available to be drawn upon by the Tribe during subsequent years. The Tribe shall use the O/M Fund to develop and implement fishery enhancements and related programs on the Puyallup River that further the goals and objectives of the REA.

3.6 **Stock Selection.** The Tribe has to date, and during the Term shall continue to consult with Puget and keep Puget informed as to the Tribe's plans for determining and selecting salmonid stocks (e.g., Chinook, Coho and Steelhead) for the Rearing Ponds. The selection of stocks shall be in accordance with sound fishery biology principles and shall be consistent with the fish passage facilities to be provided in accordance with the REA.

#### 4. Downstream Passage

4.1 **Design.** The Parties shall jointly plan and design the Downstream T & H Facilities, and to this end, within 10 days of the Effective Date the Tribe shall provide Puget with its written comments on the preliminary design for Downstream T & H Facilities. Puget shall thereafter exercise its best reasonable efforts to complete the design in accordance with the Schedule.

4.2 **Construction and Operation of Downstream T & H.** Puget shall use its best reasonable efforts to construct and commence operation of the Downstream T & H Facilities in accordance with the Schedule.

4.3 **Obligation to Maintain and Operate.** Puget shall operate and maintain the Downstream T & H Facilities during the Term, unless Puget Retires the Project pursuant to subparagraph 17.3 below.

4.4 **Operation and Maintenance Contributions.** Within thirty (30) days of the date that the Downstream T & H Facilities are completed and first put into operation, Puget shall pay the Tribe an Annual O & M Contribution of Twenty-five Thousand (\$25,000) Dollars to be used by the Tribe for fishery-related activities incident to downstream passage. Unless Puget Retires the Project pursuant to subparagraph 17.3, Puget shall continue to make an Annual O & M Contribution to the Tribe in the amount of Twenty-five Thousand (\$25,000) Dollars in each subsequent year during the Term to support such activities. Each such subsequent contributions shall be paid on the Funding Date; provided, however, Puget may, at its option, prepay all or any portion of this Annual O & M Contribution.

#### 5. Upstream Passage

5.1 **Upstream Passage Alternatives.** The Parties agree that the Fish Ladder, to be established in the vicinity of the Electron Dam, is the preferred method of providing for upstream passage. If the Tribe decides to provide for upstream passage by means of the Upstream T & H, then the Upstream T & H will be provided in accordance with subparagraph 5.2 below.

5.1.1 **Fish Ladder Alternative.** The following procedures shall apply to the determination by the Tribe of which alternative (i.e., the Fish Ladder or Upstream T & H) will be implemented to provide upstream passage:

5.1.1.1 **Study of Fish Ladder Site Access Costs.** The Tribe may undertake the following studies that, if pursued, shall be completed within 30 days of the Effective Date: (a) costs of constructing and maintaining existing access roads or other roads across Champion International, Inc. ("Champion") lands to levels sufficient for

equipment necessary to construct the Fish Ladder in the year 2001; (b) annual costs of constructing and maintaining existing roads or other roads across Champion lands to levels sufficient for equipment necessary to perform operation and maintenance activities and; (c) review of what, if any, permit or other regulatory requirements may be associated with the provision of such access.

**5.1.1.2 Upstream Passage Alternative Selection.** Within sixty (60) days of the Effective Date, the Tribe shall notify Puget in writing whether or not the Tribe has selected the Fish Ladder upstream passage alternative. If the Tribe does not so notify Puget, then the Upstream T & H alternative shall be implemented in accordance with subparagraph 5.2 below.

**5.1.1.3 Fish Ladder Budget, Design, Access and Bidding.** Should the Tribe notify Puget that it has selected the Fish Ladder as its preferred alternative in accordance with subparagraph 5.1.1.2, Puget will use its best reasonable efforts to install the Fish Ladder in accordance with the Schedule, and subject to subparagraphs A through F below. As used herein, the terms "Fish Ladder Budget" or "FLB" are a reference to a principal amount of \$750,000, subject to increase in accordance with subparagraph A below.

**A. Site Design & Analysis.** Puget shall commence, in cooperation with the Tribe and in accordance with the Schedule, such additional design work and site analysis as is necessary to prepare a specific proposal suitable for solicitation of bids. The proposal shall ask each bidder to include a plan for providing Construction Access to the proposed site of the Fish Ladder. Puget's budget for design work and site analysis is \$50,000. Puget shall bear any additional cost for such design work and analysis up to \$60,000. If the cost of completion of such design work and analysis shall exceed \$60,000, then the Tribe and Puget shall bear such excess in equal proportions. The portion of such excess to be borne by the Tribe shall, at the Tribe's option, either be paid directly by the Tribe to Puget promptly, upon receipt of an invoice from Puget therefor, or the Tribe may direct Puget to offset its share of any such excess against future Annual O & M Contributions (and if so offset, with adjustments commensurate to those required for future Annual O & M Contributions pursuant to subparagraph 3.4). Any balance that remains in the \$50,000 budget following the completion of design work and site analysis shall be added to the FLB set out in subparagraph 5.1.1.3.

**B. Construction Access.** The Tribe shall be responsible for providing and maintaining Construction Access to the proposed site of the Fish Ladder in accordance with the Schedule. The Parties anticipate efficiencies associated with the utilization of a single contractor to construct the Fish ladder and to develop Construction Access, and therefore the Tribe shall provide Puget with sufficient detailed information as

to Construction Access at a time and in a form suitable for solicitation of bids. The Tribe shall bear the cost of Construction Access directly, but may offset some or all of the cost of Construction Access by arrangements acceptable to Puget involving one or more of the following measures: (i) the Tribe may offset the costs of Construction Access against future payments due the Tribe from Puget, in accordance with a payment schedule acceptable to the Parties; or (ii) the Tribe may utilize another means of funding the costs of Construction Access that is acceptable to the Parties.

**C. Solicitation of Bids.** At such time as the Parties shall determine that it is appropriate to solicit bids, in view of the anticipated date of operation (June 1, 2001), Puget shall solicit bids in cooperation with the Tribe. The scope of work shall include, without limitation, a requirement to be reflected in General Condition "GC-5" of the Construction Contract Documents that the Contractor shall be responsible for obtaining all Permits and Approvals necessary to construct the Fish Ladder in accordance with the Schedule.

**D. Contract Award.** If a bidder, determined by Puget and the Tribe to be a qualified bidder, submits a bid to construct the Fish Ladder for a cost not to exceed the FLB, Puget shall award a contract to such qualified bidder. Puget shall act (or shall designate its representative to act) as an "Owner" under the Construction Contract Documents; provided however, (i) the Tribe shall fully cooperate with and assist Puget as to matters for which the Tribe has responsibility under this REA (e.g., Construction Access), as to matters affecting the Schedule, and as to matters for which Puget makes a reasonable request for direction or communication from the Tribe; and (ii) neither Party shall have any responsibility, liability or accountability to the other Party for the acts or omissions of the "Contractor" or its "Support" as those terms are defined in the Construction Contract Documents. The Tribe shall, for purposes of the Construction Contract Documents, be identified as an "Additional Insured" for purposes of the indemnities to be provided by the Contractor in General Condition "GC-19" of the Construction Contract Documents.

**E. Bid Exceeding FLB.** If a bidder, determined by Puget and the Tribe to be a qualified bidder, submits a bid to construct the Fish Ladder for a cost in excess of the FLB, Puget shall so inform the Tribe. Upon receipt of such notice, the Tribe shall have the option to bear the excess cost (i.e., the amount of the bid in excess of the FLB) by arrangements, acceptable to Puget, which acceptance shall not be unreasonably withheld, involving any one or more of the following measures: (i) the Tribe may bear costs in excess of the FLB directly; (ii) the Tribe may offset costs in excess of the FLB against future payments due the Tribe from Puget, in accordance with a payment schedule acceptable to the Parties; or (iii) the Tribe may utilize another means of funding the excess cost above the FLB that is acceptable to Puget. If, through any one or more of these measures, the excess cost of constructing the Fish Ladder (i.e., the cost

in excess of the FLB) is agreed by the Parties to be borne by the Tribe or by another entity on the Tribe's behalf, then Puget shall award a contract to the qualified bidder.

**F. Rejection of Bids.** If the qualified bidder submits a bid to construct the Fish Ladder for a cost in excess of the FLB and the Tribe is unwilling to either bear or otherwise provide a means of funding the excess of constructing the Fish Ladder (i.e., the cost in excess of the FLB) that is acceptable to Puget in accordance with subparagraph 5.1.1.3(E), then Puget shall reject all bids, and Puget shall install the Upstream T & H in accordance with subparagraph 5.2.

**5.1.2 Fish Ladder O & M Costs.** If the upstream passage is provided by a Fish Ladder in accordance with the procedures set forth in subparagraph 5.1.1, then the following terms and conditions shall apply as to an Annual O & M Contribution by Puget to the Tribe associated with the Fish Ladder:

**5.1.2.1. Fish Ladder Annual O & M Contribution.** Puget shall pay the Tribe \$50,000 per year as an Annual O & M Contribution towards the cost of operation and maintenance of the Fish Ladder. The first such \$50,000 Annual O & M Contribution shall be made to the Tribe on the date the Fish Ladder commences operation. Each year thereafter during the Term, Puget shall make such \$50,000 Annual O & M Contribution on the Funding Date, unless Puget shall Retire the Project pursuant to subparagraph 17.3. Puget may, at its option, prepay all or a portion of this Annual O & M Contribution.

**5.1.2.2. Sharing Excess Fish Ladder Operation and Maintenance Costs.** The Tribe shall apply the \$50,000 Annual O & M Contribution toward the annual costs to operate and maintain the Fish Ladder, including costs of maintaining roads providing access to the Fish Ladder site. To the extent the Tribe includes road operation and maintenance costs in this account, such costs shall be limited to costs associated with normal wear and tear (i.e., not costs associated with matters such as severe erosion or washout occurring in a given year). If costs to operate and maintain the Fish Ladder exceed \$50,000 in any year, the Tribe and Puget shall share on an equal basis such excess costs up to \$60,000 (i.e., in any year, Puget's total operation and maintenance obligation is capped at \$55,000). The Tribe shall bear any operation and maintenance costs in excess of \$60,000 in any year. In any year in which the Tribe and Puget share excess operation and maintenance costs, representatives of the Parties shall confer to assess future actions that either of the Parties could take to reduce risks that the Parties would be obligated to pay excess operation and maintenance costs in future years.

**5.1.2.3 Fish Ladder O & M Fund.** If in any year, the annual costs to operate and maintain the Fish Ladder are less than the \$50,000 Annual O & M Contribution, the Tribe shall deposit the balance of any unexpended funds in the O & M

Fund account or subaccount for Fish Ladder operations and maintenance. In any year where operation and maintenance costs exceed \$50,000, the available funds in the O & M Fund account or subaccount for Fish Ladder operations and maintenance shall first be applied to such costs until the balance in the O & M Fund account or subaccount for Fish Ladder operations and maintenance is exhausted. In any year in which the \$50,000 Annual O & M Contribution and any available balance in the O & M Fund account or subaccount for Fish Ladder operations and maintenance are not sufficient to pay the operation and maintenance costs of the Fish Ladder, the Parties shall equally share such excess as provided in subparagraph 5.1.2.2.

**5.1.2.4 Performance of O & M Activities.** The Parties further anticipate that the Tribe may elect to retain Puget on an annual or multi-year basis and on such terms as the Parties shall agree, to perform O & M on all or part of the Fish Ladder on the Tribe's behalf. If, however, the Tribe elects to directly undertake such activities, or chooses to retain a third party to undertake such activities, then such activities shall be undertaken in accordance with such further reasonable terms and conditions as are agreeable to the Parties, consistent with this REA. Such terms shall include, but are not limited to, such matters as the time, manner and method of access and operations; the prevention of damage or injury to persons, property or the environment; and matters (such as indemnities and insurance), ensuring that the person or entity performing such activities shall be legally and financially responsible for its conduct.

## **5.2 Installation and Operation of Upstream T & H Facilities.**

**5.2.1** If the Fish Ladder is not selected to provide upstream passage in accordance with subparagraph 5.1.1 (or if the Tribe elects not to restore the Fish Ladder in accordance with subparagraph 16.1.3.2), then upon written notice from the Tribe to Puget requesting that Puget proceed with the Upstream T & H alternative, Puget shall install the Upstream T & H facilities at its expense, and shall cause the Upstream T & H facilities to be operational as soon thereafter as is reasonably possible. It is anticipated that, apart from possible delays associated with Permits and Approvals, it will take approximately twelve (12) months from and after the date Upstream T & H facilities are selected to place such Upstream T & H facilities into operation.

**5.2.2 Upstream T & H Operation and Maintenance.** Puget shall, at its expense, operate and maintain the Upstream T & H facilities during the Term, unless Puget shall Retire the Project pursuant to subparagraph 17.3. Within thirty (30) days of the date that the Upstream T & H facilities are put into operation, Puget shall pay the Tribe a \$25,000 Annual O & M Contribution for fishery enhancement activities to be carried out by the Tribe related to upstream passage. Each year thereafter during the Term, Puget shall make such \$25,000 Annual O & M Contribution to the Tribe on the



Funding Date, unless Puget shall Retire the Project pursuant to subparagraph 17.3. Puget may, at its option, prepay all or any portion of such \$25,000 Annual O & M Contribution.

**6. Ramp Rate.**

Within sixty (60) days of the Effective Date and thereafter during the Term, the Project shall, for purposes of providing the Minimum Instream Flow, operate within a ramp rate of two to four inches per hour, and in accordance with procedures for ramping to be developed in accordance with the Flow Monitoring Plan.

**7. Sediment Management Measures.**

Within sixty (60) days of the Effective Date and thereafter during the Term, Puget shall limit the discharge of sediment from the sediment basin to those times when there is at least a 500 cfs instream flow in the Project reach.

**8. Land Transfer.**

8.1 Consistent with Puget's need to maintain adequate operating right for the Project, Puget shall convey title to approximately 25 acres of land to the Tribe. The land to be conveyed shall be located by the Parties within the Puget lands lying within the Puyallup River Watershed. Title shall be conveyed by quitclaim deed. The property shall be conveyed in all respects "as is," without warranty or representation of any kind.

8.2 Within 60 days of the Effective Date, Puget shall provide the Tribe with a list of one or more parcels of land, meeting the criteria of subparagraph 8.1, from which the Tribe may select the parcel (or parcels) to be conveyed. After receiving the list from Puget, the Tribe shall have the opportunity to make its own investigation as to matters of title, or any other matter of interest or concern to the Tribe with respect to such land. At such time as the Tribe shall indicate in writing that it has completed any and all such investigations, and is prepared to accept title to such land, Puget shall promptly convey the designated parcel or parcels to the Tribe, subject to compliance of applicable subdivision requirements (if any).

8.3 Should the Tribe request conveyance in a form other than by quitclaim deed, Puget shall cooperate with the Tribe to effect such conveyance in the desired form; provided, however, in so doing Puget shall be under no obligation to assume, by warranty, representation or any other form of promise, covenant or commitment, any obligation above or beyond that associated with a conveyance by quitclaim deed, or above or beyond that associated with a conveyance that in all respects is "as is," without warranty or representation of any kind.

9. **Permits and Approvals.**

9.1 **Good Faith Efforts to Obtain Permits.** The Parties shall cooperate in their respective efforts to obtain Permits and Approvals to implement the Fishery Enhancements and shall at their own expense make available such technical and legal resources as may be necessary to accomplish these tasks in a cost effective and timely manner. In this regard, and with the cooperation of the other Party:

9.2 Puget shall use its best reasonable efforts to obtain Permits and Approvals for the Downstream T & H and if the Fish Ladder is not selected, for Alternative Upstream T & H.

9.3 The Tribe shall use its best reasonable efforts to obtain Permits and Approvals for the Construction Access and the Rearing Ponds.

9.4 **Timeliness of Obtaining Permits.** If any one or more of the Permits and Approvals to be obtained to implement the Fishery Enhancements is not obtained within the time frame anticipated by the Schedule, the Parties shall amend the Schedule to take account of such delay. If the Parties cannot agree upon an amendment to the Schedule, the matter shall be submitted to the JTC for consideration in accordance with subparagraph 14.2.

9.5 **Materially Altered Terms and Conditions, Minimum Flow and Financial Obligations Ceiling.** If the terms and conditions of any one or more of the Permits and Approvals obtained by a Party to implement the Fishery Enhancements shall contain terms and conditions that materially affect a Party's obligation under this REA, then:

9.5.1 The Party asserting that such terms and conditions materially affect its obligation under this REA shall so notify the other Party, and shall propose to the other Party a course of action to rectify the Party's concern.

9.5.2 The Party receiving the notice sent in accordance with subparagraph 9.5.1 shall either: (i) notify the other Party that the proposed course of action to rectify the other Party's concern is acceptable, and if requested by the other Party, execute an amendment to the REA to reflect the Parties' agreement as to such course of action; or (ii) notify the other Party that the proposed course of action to rectify the other Party's concern is not acceptable, in which event, the Parties shall within ten (10) days convene a meeting of the JTC and commence negotiation in good faith in an effort to arrive at a mutually agreeable course of action. Should the Parties be unable to agree upon a course of action within fifteen (15) days of the date such negotiations are initiated, either Party may submit the matter to further resolution in accordance with paragraph 15.

9.5.3 For purposes of this subparagraph 9.5, any one or more of the following matters shall be deemed to be a matter that "materially affects" a Party's obligation under this REA: (i) any matter that alters the jurisdictional determination of the FERC, which such determination is attached and by this reference is incorporated as Exhibit I; (ii) any matter that alters the Minimum Instream Flow, the Flow Monitoring Plan, or the Ramp Rate; (iii) any matter resulting in an increase of 10% or more in the cost to construct the Rearing Ponds (the Rearing Pond Budget is \$200,000), an increase of 5% or more in the cost to construct the Downstream T & H (the Downstream T & H Budget is \$500,000), an increase of 10% or more in the cost to construct the Fish Ladder (as determined by reference to the FLB), or an increase of 5% or more in cost to construct the Upstream T & H (the Upstream T & H Budget is \$500,000); (iv) any matter resulting in an increase in O & M costs associated with operation of any one or more of the Fishery Enhancements by 5% or more, or (v) any matter resulting in the delay of a Milestone Event of 90 days or more. If any matter referred to the JTC pursuant to subparagraph 9.5.2 should subsequently be referred to dispute resolution in accordance with paragraph 15, in no event shall a Party be bound to the other Party in any manner that is in conflict with the thresholds of materiality set forth in this subparagraph 9.5.3.

## 10. Schedule.

10.1 The Parties shall perform their respective obligations with respect to implementation of the Fishery Enhancements in accordance with the Schedule. The Schedule incorporates completion dates for the following Milestone Events:

Rearing Ponds (operational) June 30, 1998

Downstream T & H (operational) June 30, 1998

Fish Ladder (operational) June 1, 2001

10.2 The Schedule shall be subject to reasonable amendment by either Party, upon written notice to the other, provided that such amendment shall not affect the completion date of any one or more Milestone Events. If a Party seeks to amend the Schedule, and such amendment does affect the completion date of any one or more Milestone Events, then such amendment shall be subject to the agreement of the other Party. If the Parties are unable to agree upon any such amendment, then the matter shall be submitted to the JTC for consideration in accordance with subparagraph 1.42.

10.3 Without limiting the generality of the foregoing, the Parties recognize the necessity and desirability of coordinating the planning and construction of the Rearing Ponds with the design and construction of the Downstream Passage Facilities. Within thirty (30) days of the Effective Date, the JTC shall convene a meeting for the primary purpose of determining optimum processes, procedures and timing for construction of the

Rearing Ponds, and concomitant coordination of the design and construction of the Downstream T & H.

## 11. Project Decision.

11.1 Puget shall provide written notice to the Tribe, no later than the year 2018, of Puget's decision to either: (i) promptly initiate actions necessary to Upgrade the Project by 2026; or (ii) Retire the Project by 2026. Subsequent to such notice and subject to its acquisition of any necessary regulatory approvals, Puget shall either complete an upgrade of the Project or Retire the Project. However, if Puget elects to Upgrade the Project and, notwithstanding its timely and best reasonable efforts to secure all necessary regulatory approvals so as to complete such upgrade on or before 2026, Puget shall cooperate with the Tribe to pursue immediate implementation of any additional fishery enhancements as are then proposed for the upgraded Project as may then be practical to implement.

11.2 If Puget notifies the Tribe that it intends to Upgrade the Project, Puget will not pursue a proposed upgrade that diminishes the minimum instream flows below the Electron dam to levels below that set forth in subparagraph 1.3, without the Tribe's prior consent.

11.3 If Puget notifies the Tribe that it intends to Upgrade the Project, and agrees to pursue a proposal with a minimum daily instream flow of at least 100 cfs below the Electron dam (100 cfs each day of each month of every year), the Tribe will not oppose such a flow (but fully reserves the right to oppose any minimum daily instream flow below the Electron dam of less than 100 cfs).

## 12. Release of Claims.

12.1 **Tribe's Release of Past Claims.** As to and for the benefit of Puget (and each and all of Puget's directors, officers, employees and representatives), the Tribe does hereby, for itself and any person, entity, agent, successor or assign claiming through or under the Tribe, fully and completely release and discharge any and all rights, matters and interests giving rise, directly or indirectly, to any kind or nature of claim, loss, harm, cost, damage, expense or liability caused by, associated with or otherwise in anyway attributable to Puget's ownership, use, operation and maintenance of the Project (collectively, the "Tribe Claims," which include, but are not limited to, any and all Tribe Claims heretofore alleged or asserted by the Tribe against Puget or the Project). The Tribe's release is a full and complete release as to all such Tribe Claims arising prior to the Effective Date. The Tribe is hereby deemed to have consented to and ratified Puget's ownership, use, operation and maintenance of the Project prior to the Effective Date.

12.2 **Puget's Release of Past Claims.** As to and for the benefit of the Tribe (and each and all of the Tribe's directors, officers, employees and representatives), Puget does hereby, for itself and any person, entity, affiliate, subsidiary, successor or assign claiming through or under Puget, fully and completely release and discharge the Tribe from any kind or nature of claim, loss, harm, cost, damage, expense or liability caused by, associated with or otherwise in anyway attributable to the acts or omissions of the Tribe affecting Puget's ownership, use, operation and maintenance of the Project arising prior to the Effective Date (collectively "Puget Claims"). Puget's release of Puget Claims is full and complete as to all such Puget Claims arising prior to the Effective Date.

12.3 **Future Claims.** So long as a Party is in compliance with its obligations under this REA, this REA shall be deemed to fully satisfy a Party's obligations or responsibilities to the other Party, up to and through 2026, as to any rights, matters, or interests that heretofore gave rise to any one or more of the Tribe Claims or the Puget Claims released pursuant to this paragraph 12. As to other rights, matters and interests, the Parties reserve the same. This release of future claims includes, without limitation, any assertion by the Tribe of regulatory authority over the Project.

### 13. **White River Proceeding.**

13.1 **White River Proceeding.** Puget has applied to the Federal Energy Regulatory Commission ("FERC") for a license for its White River Hydroelectric Project, FERC Project No. 2494 (the "FERC Licensing Proceeding"). The Tribe is a party to that proceeding and has asserted, among other things, a position in support of a minimum instream flow for the White River that exceeds the minimum instream flow desired by Puget. As to the FERC Licensing Proceeding, and as to the Tribe's water quality concerns with respect to the White River:

13.1.1 **Withdrawal.** The Tribe shall, within thirty (30) days of the Effective Date, withdraw from the FERC Licensing Proceeding. Such withdrawal shall be complete and unconditional. Thereafter, Puget shall not, directly or indirectly, assert or imply in the FERC Licensing Proceeding that the Tribe's withdrawal is an assertion by the Tribe of any position as to the minimum instream flow for the White River. Thereafter, the Tribe shall not, directly or indirectly, assert or imply in the FERC Licensing Proceeding any position as to minimum instream flows for the White River. Puget shall not, in the FERC Licensing Proceeding, move to strike from the record any evidence submitted to the record by the Tribe; however, Puget shall be free to controvert such evidence with any evidence it may offer in such proceeding, and Puget shall be free to contest any position asserted by others that may, in whole or in part, be based upon evidence submitted by the Tribe.

13.2 **Water Quality.** As to point source and non-point source discharges in and below the bypass reach of the White River below the point of withdrawal for the White River Hydroelectric Project, it is the intent of the Tribe to address its concerns relating to applicable water quality standards ("WQS") through the pursuit of individual discharge control strategies or other effluent control measures for each such discharge. If, however, available individual discharge control strategies or effluent control measures do not satisfy applicable WQS, the Tribe may pursue an increase in instream flow to meet applicable WQS. Where such increase in instream flow would reduce the availability of water for generating electricity at the White River Hydroelectric Project, the Tribe will support reasonable efforts by Puget to obtain compensation from others for providing additional instream flow. Nothing in this subparagraph affects the ability of the Tribe to assert federal reserve water rights to instream flows in any future adjudication of water rights, or other water rights proceeding.

*Tribe*

*Tribe SPP  
PSE to  
get  
grant for  
legal to  
buy out at  
to purchase*

**14. The JTC.**

14.1 The Parties agree to cooperate in good faith to implement the letter and spirit of this REA. The JTC is intended to facilitate such cooperative efforts.

14.2 The JTC shall meet whenever requested by a Party. If a Party desires to convene such a meeting, it may do so by advance written notice to the other of at least five (5) days, which such notice shall also identify the matter or matters to be submitted to the JTC for consideration. The JTC will be used as the primary means of consultation and coordination between the Parties in connection with the implementation of the REA. Further, no matter shall be subject to dispute resolution, pursuant to paragraph 15 below, unless such matter shall have first been submitted to the JTC for consideration in accordance with this paragraph 14.

14.3 If a meeting of the JTC is called in accordance with subparagraph 14.2, then the JTC shall promptly meet and confer in good faith, and endeavor to render a decision as to the matter or matters under consideration. If, within thirty (30) days from and after the date a matter is submitted to the JTC for consideration, the JTC has failed to render a decision as to such matter, or if the JTC has rendered a decision that, for any reason, is not to a Party's satisfaction, then either Party may submit the matter (or the JTC's decision, as the case may be) to dispute resolution in accordance with paragraph 15.

14.4 The JTC shall decide matters submitted to it for consideration by consensus. Unless the matter is submitted to dispute resolution as provided in subparagraph 14.3, a matter shall remain pending before the JTC, and the JTC shall meet and confer in good faith as to any such matters until a decision is reached as to such matter.

## **15. Formal Dispute Resolution.**

Any dispute or claim arising between the Parties from, or relating to, this REA or its performance or nonperformance, including either Party's alleged failure to comply with any provision of this REA ("Dispute"), shall be settled by the procedures of this paragraph 15, and not by court action except as provided in this paragraph. Neither Party may invoke dispute resolution pursuant to this paragraph 15 until the requirements of subparagraphs 14.3 and 14.4 have been satisfied.

**15.1 Statement of Positions.** In the event of a Dispute, a Party shall first promptly provide the other Party with a general written statement of its claim(s) and position(s). This statement need not be complete and will not limit the claims of a Party in any further procedure. The statement shall indicate that it is the first statement of a formal dispute resolution process under this REA. If the Parties cannot resolve the dispute within 14 days of receipt of these written statements, a claimant may proceed as set forth in subparagraphs 15.2 and 15.3 below.

**15.2 Mediation Procedure.** If the Parties cannot resolve a Dispute pursuant to subparagraph 15.1, the Parties shall, within 21 days of such failure, commence mediation by notice of selection of a third party, neutral mediator and proposed time(s) and date(s) for the mediation. If the other Party does not propose an alternative mediator within 15 days of such notice, then the mediation shall occur before the first person proposed. If the other Party does propose an alternative mediator, then the two proposed mediators shall promptly and jointly select a third, neutral party to act as the sole mediator. If the two proposed mediators cannot agree between themselves on a proposed mediator, then the mediator shall be selected, and the mediation conducted, under the then-existing Commercial Mediation Rules of the American Arbitration Association ("AAA"). The mediation shall take place in Tacoma, Washington, and mediator's fees shall be equally shared by the Parties. If the mediation resolves the Dispute, the resolution shall be memorialized in writing. If the Parties cannot resolve the Dispute through mediation, either Party may terminate mediation. Upon termination of mediation, either Party may submit the Dispute to binding arbitration under subparagraph 15.3.

**15.3 Binding Arbitration.** If the parties do not resolve a Dispute pursuant to subparagraphs 15.1 and 15.2 above, the Dispute shall be resolved by binding arbitration in Tacoma, Washington, as follows:

**15.3.1 AAA Rules Apply.** The arbitration shall be under the then existing Commercial Arbitration Rules of the AAA or a like successor organization.

**15.3.2 Arbitrators.** The Parties shall attempt to agree on a single arbitrator. If they cannot so agree, each Party shall name one arbitrator, and the two arbitrators shall jointly name a third neutral arbitrator, and a decision of any two of the three arbitrators

shall bind the Parties in all matters hereunder. If two arbitrators cannot agree on a third neutral arbitrator, then the AAA shall appoint the third neutral arbitrator. Before the appointment of a third arbitrator, the parties may communicate ex parte with the party-named arbitrators. After the appointment of the third arbitrator, and before any hearings or conferences with the arbitrators, each arbitrator shall take an oath of impartiality, and the Parties may communicate directly with any of the arbitrators only by using the same procedures as would be proper for the parties or their representatives to communicate with a federal district court judge relating to litigation pending in a federal district court. The arbitrator(s) fees shall be jointly shared by the Parties.

**15.3.3 Discovery.** The Parties shall be permitted to obtain discovery from each other of documents and other tangible evidence at a time reasonably prior to the arbitration hearing. No depositions shall be allowed.

**15.3.4 Governing Rules and Awards.** The Parties agree that this REA is a transaction involving commerce as that term is used in the Federal Arbitration Act (FAA), Title 9 United States Code. To the extent applicable, the FAA shall govern any judicial proceedings, resolve any issue of arbitration, and procedurally govern arbitration under or related to this REA. The arbitrator(s) shall resolve any Dispute in accordance with this REA, including the applicable law designated by the Parties in subparagraph 15.3.6. The Parties agree that the arbitrator(s) shall have authority, without resort to any court, to award any remedy, order or relief, including without limitation awards, orders granting preliminary and permanent affirmative, mandatory, prohibitory, or specific performance relief relating to any obligation under this REA, compensatory damages (but expressly excluding punitive or exemplary damages), and sanctions for abuse or frustration of the arbitration process to the same that a federal court with personal and subject matter jurisdiction could award, order or issue or any other specific performance of any obligation. The Parties agree that the obligation to arbitrate under this REA and any award, order or judgment of the arbitrator(s) under this REA shall be final and may be specifically enforced in the United States District Court for the Western District of Washington, at Tacoma, if it shall have jurisdiction, and if not, then in the Superior Court of the State of Washington for Pierce County. Each Party shall bear its own attorney, expert and other fees and costs associated with the arbitration, except that the prevailing party in any action brought to enforce this arbitration clause shall be entitled to recovery of its reasonable attorney's fees from the other Party.

**15.3.5 Limited Waiver of Sovereign Immunity.** The Tribe voluntarily enters a limited waiver of its sovereign immunity, and that of its officers and employees acting for the Tribe in their official capacities, and consents to binding and mandatory arbitration, the enforcement of the obligation to arbitrate, and the enforcement of any award, order or judgment of the arbitrator(s) in any arbitration authorized by this paragraph 15. The Tribe voluntarily enters a limited waiver of its sovereign immunity



and consents to suit solely by Puget, or successors and assigns approved pursuant to subparagraph 18.1 below, to judicially enforce this REA in accordance with this paragraph 15 in a suit brought in the United States District Court for the Western District of Washington, at Tacoma or, if jurisdiction is not available in the United States District Court, in the Superior Court of the State of Washington for Pierce County. The Tribe agrees that it will not raise sovereign immunity as a defense in any judicial action brought by Puget to enforce this REA in accordance with this paragraph 15.

**15.3.6 Governing Law.** The Fishery Enhancement measures contemplated by this REA will be implemented in the upper reaches of the Puyallup River, outside the boundaries of the present Puyallup Reservation. The Parties agree that it is appropriate to designate Washington law to govern this REA. Accordingly, the Parties agree that this REA, and all questions concerning the performance of this REA shall be interpreted, construed and enforced in all respects in accordance with applicable laws of the State of Washington, without reference to rules relating to choice of law.

**15.3.7 No Jurisdiction in Tribal Court.** This REA and actions taken pursuant to this REA shall not be interpreted under any circumstances as consent by Puget to jurisdiction in a court of the Tribe over any claims or disputes arising under this REA. The Tribe expressly waives any right it may have to require Puget to exhaust its remedies in a court of the Tribe before bringing an enforcement action pursuant to subparagraph 15.3.4 of this REA. The Tribe agrees that it will not prosecute, maintain, or institute any action, suit, administrative action or proceeding of any kind or nature against Puget in a Court of the Tribe for any matter within the scope of claims released in subparagraph 12.1 and subparagraph 12.3 of this REA.

## **16. Allocation of Risk.**

**16.1 Risk of Loss of Fishery Enhancements.** This subparagraph is not intended to convey, confer or determine title to any property (real or personal), or allocate as between the Parties any risk or loss as to such property, except as expressly provided below with respect to the following Fishery Enhancements:

**16.1.1 Rearing Ponds.** As between the Parties, the Tribe shall have title to the Rearing Ponds and shall bear the risk of loss thereof.

**16.1.2 Downstream T & H; Upstream T & H.** As between the Parties, Puget shall have title to the Downstream T & H and the Upstream T & H, and shall bear the risk of loss thereof.

**16.1.3 Fish Ladder.** As between the Parties, Puget shall have title to the Fish Ladder, and during the Term, the risk of loss shall be borne as follows:

16.1.3.1 The Parties shall, at such time as the Fish Ladder shall be complete and available for normal and reliable operation and thereafter during the Term, use their best reasonable efforts to maintain, in full force and effect, policies of property damage insurance providing insurance against loss of, damage to or destruction of the Fish Ladder. Such insurance shall be so maintained, if and as available, in an amount equivalent to the full replacement value of the Fish Ladder, with such carrier and on such terms and conditions as the Parties shall determine to be appropriate. As to any such insurance the Parties shall determine to maintain, the premiums therefor shall be shared equally by the Parties.

16.1.3.2 In the event the Fish Ladder is lost, damaged or destroyed (in whole or in part) during the Term, the Parties shall look first to the proceeds of insurance (if any) to restore the same. If, however, the proceeds of such insurance are either not available or insufficient to restore the same, Puget shall bear the risk of loss up to an amount (as to any single occurrence and as a cumulative total for multiple occurrences) of up to, but not in excess of, Fifty Thousand Dollars (\$50,000). If and at such time, during the Term, the Fish Ladder is lost, damaged or destroyed and Puget shall have, at such time, incurred restoration costs (in connection with such event, and/or as a cumulative total for past occurrences) of Fifty Thousand Dollars (\$50,000), then the Tribe may elect, in consultation with Puget:

(A) to restore the Fish Ladder at its expense, and thereafter during the Term, the Tribe shall bear the risk of loss of the Fish Ladder and shall keep the Fish Ladder in a normal and reliable operating condition for the remainder of the Term. Should the Tribe elect this option, upon such election, Puget shall pay the Tribe Four Hundred Thousand Dollars (\$400,000) as a one-time contribution toward Fish Ladder restoration costs, which such one-time contribution shall be held in an interest-bearing account by the Tribe for the purpose of application toward Fish Ladder restoration costs, and such funds shall be expended for no other purposes whatsoever. If, at the end of the Term, any portion of such one-time contribution, together with interest thereon, shall not have been so applied by the Tribe, such portion, together with interest earned thereon, shall be refunded to Puget.

(B) not to restore the Fish Ladder, in which event, Puget shall thereafter construct the Upstream T & H and, during the Term, shall thereafter bear the risk of loss thereof and keep the Upstream T & H in normal and reliable operating condition.

**16.2 Third Party Liability.** Each Party shall indemnify and hold harmless the other Party from any and all claims, damages, costs, expenses or liabilities (including, but not limited to, attorneys' fees) incurred by the other Party as a direct result of the indemnifying Party's negligent acts or negligent omissions in the performance of its

obligations arising under this REA. Without limiting the generality of the foregoing, each Party shall, during the Term, maintain a policy or policies of commercial general liability insurance (and, if not otherwise covered by such insurance, automobile liability insurance) providing insurance initially in an amount not less than \$5,000,000, and unless a Party shall maintain an approved self-insurance program as to risks of at least \$1,000,000, a Party shall, at the request of the other Party, name such other Party as an Additional Insured on such policy or policies of liability insurance. Within five (5) years of the Effective Date, and thereafter within five (5) year intervals throughout the Term, the Parties shall evaluate the appropriateness of the \$5,000,000 minimum limit, the appropriate amount of any deductible, and such other matters of concern to the Parties. A Party shall, upon request of the other Party, provide to the other Party written evidence (e.g., certificates of insurance) demonstrating that all required policies of insurance (in such amounts and with such coverages and endorsements as herein required) are in full force and effect and have been issued by carriers with an AM Best rating of A X, or better.

## 17. Default and Termination.

17.1 If a Party shall fail to make any payment to the other Party within the time period required therefor by this REA, the Party entitled to receive such payment shall give the other Party notice of such monetary default. The Party to whom such notice is directed shall have thirty (30) days from the receipt thereof to make such payment and thereby cure such default; provided, however, nothing herein is intended, nor shall it be construed, to require a Party to make any payment to the other Party that is not otherwise due and payable pursuant to the terms and conditions of this REA.

17.2 As to matters other than monetary defaults for which a specific cure period is provided pursuant to subparagraph 17.1 above, if a Party believes the other Party to be in default of its obligations under this REA, the Party alleging such default shall so notify the other and shall offer the other a reasonable opportunity to cure any default. However, the Parties acknowledge that each Party has obligations arising under this REA that, if not performed in accordance with the terms and conditions hereof, may result in immediate and material damage to the other Party.

17.3 If, during the Term, Puget shall determine that it desires to Retire the Project, Puget shall so notify the Tribe. Upon completion of such activities as Puget shall undertake to Retire the Project (including, but not necessarily limited to, the removal of the Electron dam from the channel of the Puyallup River), Puget shall so notify the Tribe, and the effect of such notice shall be to terminate the Term of this REA, and except as otherwise provided in subparagraph 18.7 below, neither Party shall thereafter have any further obligations to the other Party arising under this REA.

**18. Miscellaneous.**

**18.1 Assignment, Successor.** A Party shall not assign all or any part of this REA or any of its rights hereunder without the prior written consent of the other Party.

**18.2 Force Majeure.** Neither Party shall be deemed to have defaulted in the performance of its obligations under the REA if and to the extent such performance is wholly or partially prevented or delayed by Force Majeure. Unless the Force Majeure prevents the performance of obligations under this REA, the Force Majeure event may not operate to excuse, but only to delay, the performance of obligations under this REA. In the event of such delay, the affected obligations hereunder shall be suspended for the duration of the Force Majeure event, the time for performance of such obligations shall be extended for as long as is reasonable in light of the Force Majeure, and the Schedule shall be amended to account for such delay (including, if necessary, amendment of completion dates for Milestone Events). The Party affected by the Force Majeure shall use good faith efforts to attempt, in a commercially reasonable manner, to rectify the conditions brought about by the Force Majeure and to avoid or minimize delay. Upon learning of the existence of or potential for an event that qualifies as Force Majeure, the affected Party shall promptly notify the other party of such situation, describing in reasonable detail the nature of the event or event in question.

**18.3 Accounting and Record Keeping by Tribe and Puget.** The Tribe shall establish and maintain an accounting system for Annual O & M Contributions and the O & M Fund in accordance with generally accepted, customary, standard, and sound accounting principles and practices. Puget shall have the right to request an audit and examination of the accounting, bookkeeping, and related records kept by the Tribe in accordance with the requirements of this subparagraph 18.3. The Tribe shall provide Puget or its agents with reasonable and customary access for inspection of such records within thirty (30) days of such request.

**18.4 Governing Law.** As of the Effective Date, the Tribe certifies that: (i) it is authorized under its Constitution and Bylaws and under the laws of the United States to enter into this REA; (ii) any and all consultation with or approval by the Secretary of Interior or appropriate officials in the Bureau of Indian Affairs that is required by policy or law has been concluded or obtained; and (iii) it has duly enacted the Resolution, attached to this REA as Exhibit F.

**18.5 Adjustment.** Annual O & M Contributions are subject to adjustment, on each Funding Date, by increasing the amount of the Annual O & M Contribution for the preceding year by three percent (3%).

18.6 **Notices.** Any notice, request, approval, consent, instruction, direction or other communication under this REA given by either Party to the other Party shall be in writing and shall be delivered in person or mailed, properly addressed and sent first-class mail or commercial delivery services, postage prepaid. Either Party may from time to time change the person authorized to receive such notice or such person's address by giving the other Party notice of such change in accordance with the provisions of this subparagraph 18.6.

18.6.1 If to the Tribe:

Russel Ladley  
Fishery Biologist  
Fishery Department  
Puyallup Tribe of Indians  
6824 Pioneer Way  
Puyallup, WA 98371

With concurrent copies to:

John Bell  
Martha Fox  
Tribal Attorney  
Puyallup Tribe of Indians  
2002 East 28th Street  
Tacoma, WA 98404

Richard A. Du Bey  
Michael P. O'Connell  
Stoel Rives LLP  
600 University Street, Suite 3600  
Seattle, WA 98101-3197

18.6.2 If to Puget:

Puget Sound Energy, Inc.  
One Bellevue Center Bldg.  
411 - 108th Avenue N.E., 14th Floor  
Bellevue, WA 98004-5515  
Attn: Ed Schild, Director Energy Production & Storage  
Attn: Cary L. Feldman, Manager Hydrolicensing &  
Biology  
Attn: Janet Gaines, Manager Power Production

and to:

Puget Sound Energy, Inc.  
P.O. Box 97034  
Bellevue, WA 98009-9734  
Attn: Ed Schild, Director Energy Production & Storage  
Attn: Cary L. Feldman, Manager Hydrolicensing &  
Biology  
Attn: Janet Gaines, Manager Power Production

With concurrent copies to:

Markham A. Quehrn  
Perkins Coie  
One Bellevue Center  
Suite 1800  
411 - 108th Avenue  
Bellevue, WA 98004-5584

**18.7 Survival.** Paragraphs and subparagraphs 11.3, 12.1, 12.2 (and as to matters arising prior to completion or termination of the REA, 12.3), 13.1.1, 13.2, and 16.2, and all other provisions of this REA which may reasonably be interpreted or construed as surviving the completion or termination of this REA shall survive the completion or termination of this REA. As to those provisions of the REA that shall survive the completion or termination of the REA, the provisions of paragraph 15 "Formal Dispute Resolution" as to such provisions. The survival of subparagraph 16.2 is not intended nor shall it be deemed to extend, preserve or in any way affect the rights of any third party (including, but not limited to the applicability of any statute of limitation) as against any Party.

**18.8 Integration.** This REA constitutes the complete, entire, final, unambiguous, and integrated agreement of the Parties concerning the subject matter hereof and supersedes the AIP and all other communications, representations, proposals, understandings, or agreements, either oral or written, among the Parties with respect to such subject matter. This REA may not be modified or amended, in whole or in part, except by a writing signed by each of the Parties.

**18.9 Nonwaiver.** The failure or delay of a Party to insist upon strict performance of any of the provisions of this REA, to exercise any rights or remedies provided in this REA or by law, or to notify the other Party in the event of breach of this REA shall not release or relieve the other Party from any of its obligations under this

REA. Waiver by any Party of any default by the other shall not be deemed a waiver by such Party of any other default.

**18.10 Severability; Interpretation.** The invalidity or unenforceability of any provision of this REA shall not affect the other provisions hereof, and this REA shall be construed in all respects as if such invalid or unenforceable provisions were omitted. The headings of paragraphs and subparagraphs of this REA are for convenience of reference only and are not intended to restrict, affect or be of any weight in the interpretation or construction of the provisions of such paragraphs or subparagraphs. The REA shall be construed as a whole, and all provisions and parts of the REA are intended to be correlative and complementary.

**18.11 No Partnership.** This REA shall not be interpreted or construed to create an association, joint venture or partnership between Puget and the Tribe or to impose any partnership obligations or liability upon either Party. Each Party shall take such action (including, but not limited to, the execution, acknowledgment and delivery of documents) as may reasonably be requested by the other Party for the implementation or continuing performance of this REA.

**18.12 No Third-Party Beneficiaries.** This REA shall not be interpreted or construed to create any rights, benefits or interests in any person or entity other than the Parties.

**18.13 Terms and Conditions Negotiated.** The provisions of this REA have been negotiated by the Parties in good faith, and with the representation of legal counsel, and consequently in construing this REA, neither Party is entitled to any presumption against the other based upon the drafting of this REA.

**18.14 Negotiation Costs.** Within ten (10) days of the Effective Date of this REA, Puget shall make a single lump sum payment to Stoel Rives for the benefit of the Tribe in the amount of \$75,000.

**18.15 Additional Recitals**

**18.15.1** This REA is in writing, and duplicates of it have been delivered to the Tribe and Puget.

**18.15.2** The Parties, their residences and occupations are as follows:

Tribe: Puyallup Tribe of Indians  
2002 E. 28th Street  
Tacoma, Washington 98404  
A federally recognized tribal government

Puget: Puget Sound Energy, Inc.  
P.O. Box 97034  
Bellevue, Washington 98009  
A Washington corporation

18.15.3 The Tribe's authority to enter and approve this REA is set forth in Article VI, Section 1(f) of the Constitution and Bylaws of the Puyallup Tribe and Tribal Council Resolution No. 190397. The Tribe's reason to approve this REA is to settle claims relating to Puget's Electron Hydroelectric Project and to provide measures contemplated by this REA to enhance fishery resources in and about the upper reaches of the Puyallup River.

18.15.4 The Term of this REA is defined in subparagraph 1.20.

18.15.5 This REA is made and executed in separate counterparts by the Parties at the time and places set forth in the execution blocks of the REA.

IN WITNESS WHEREOF, the parties hereto have caused this REA to be duly executed as of this 27th day of March, 1997.

**Tribe:**  
Puyallup Tribe of Indians

**Puget:** Richard R. Sonsteli  
Puget Sound Energy, Inc.

By: Billy Stenud  
Title: Chairman  
Dated: 3/27/97  
Time: 2:20  
Place: Tacoma WA

By: Richard R. Sonsteli  
Title: Chairman & Chief Executive Officer  
Dated: Mar 27, 1997  
Time: 2:20 PM  
Place: Tacoma Washington



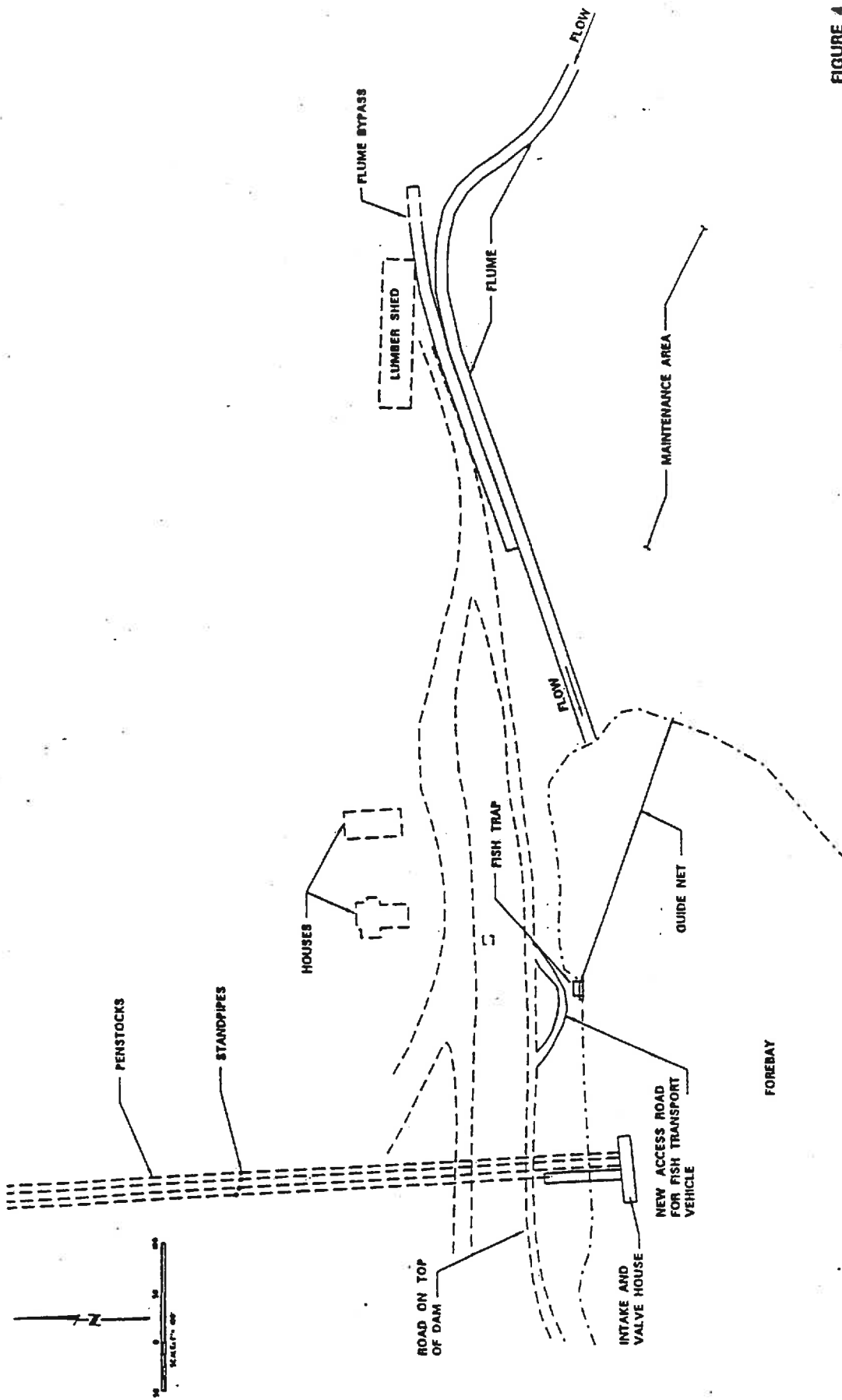


FIGURE 4  
ELECTRON PROJECT UPSTREAM FISH PASSAGE  
ALTERNATIVE 1  
FOREBAY FISH TRAP

PROTECTED BY FEDERAL AND STATE LAWS OF EVIDENCE 406 RELATING TO SETTLEMENT DISCUSSIONS  
 PRIVILEGED AND CONFIDENTIAL



EXHIBIT B

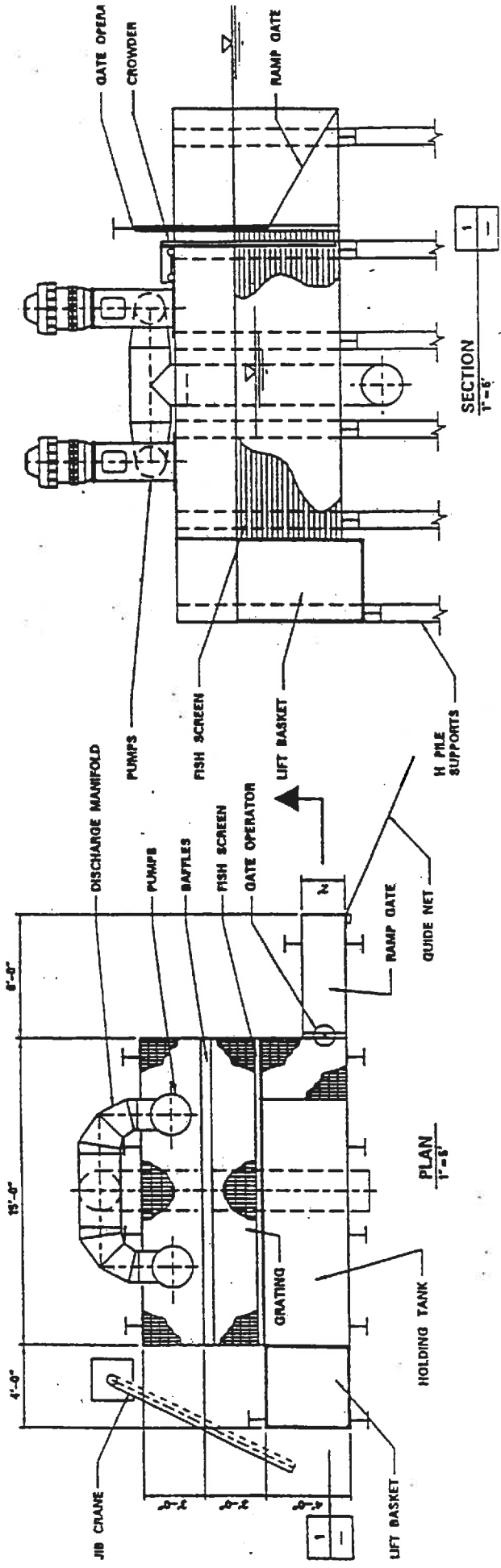


FIGURE 5  
 ELECTRON PROJECT UPSTREAM FISH PASSAGE  
 ALTERNATIVE 1  
 FOREBAY FISH TRAP  
 PLAN AND SECTION

PROTECTED BY FEDERAL AND STATE LAWS RELATING TO COPYRIGHT AND PATENT RIGHTS. ALL RIGHTS RESERVED.



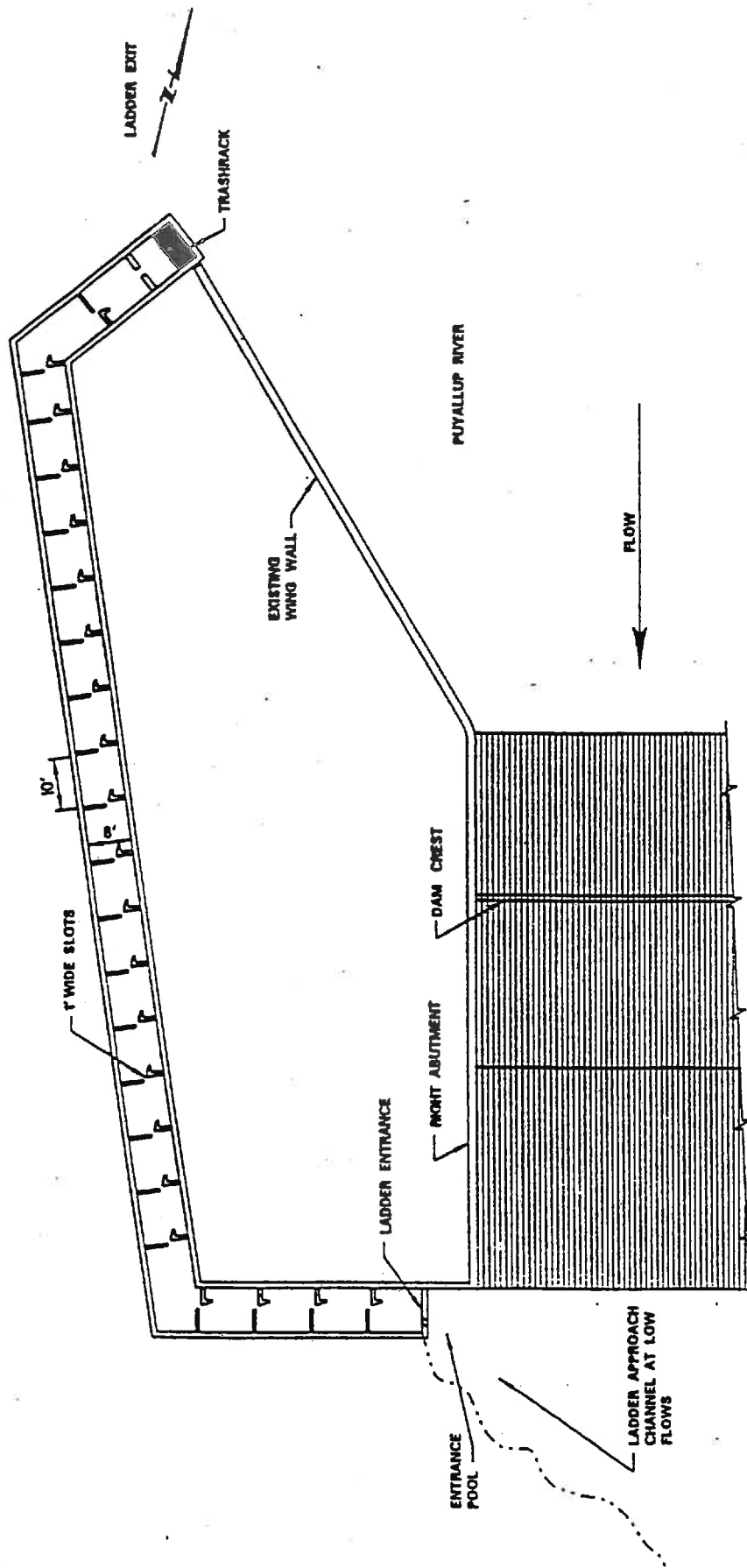


FIGURE 1  
 ELECTRON PROJECT UPSTREAM FISH PASSAGE  
 ALTERNATIVE 1  
 RIGHT BANK VERTICAL SLOT LADDER  
 PLAN

PROTECTED BY FEDERAL AND STATE LAWS RELATING TO COPYRIGHT INFRINGEMENTS



# EXHIBIT C

## Flow Monitoring Plan

### Exhibit D

1. Purpose of the Plan. This plan outlines objectives and potential methods Puget will utilize to implement and monitor instream flows and ramp rates. Implementation of this plan will be facilitated through consultation among the members of the JTC.

2. Minimum Instream Flow. The Minimum Instream Flow (as defined at subparagraph 1.13 of the REA) is a target flow, not an absolute, instantaneous flow. The Minimum Instream Flow includes that cumulative volume of river flow that augments the instream flow below the dam and does not include the flow diverted for generation. The Minimum Instream Flow includes, but is not limited to, leakage through the dam, as determined in paragraph 4 below. It is the goal of this plan to reduce the anticipated flow fluctuation, relative to the target flow, from an initial fluctuation of  $10\% \pm$  to a fluctuation of  $5\% \pm$  in accordance with paragraph 3 below.

2.1. Interim Flow Period Fluctuation. Beginning on a date that is sixty (60) days from and after the Effective Date, and thereafter during the Term until one of the upstream passage facility alternatives described in the REA becomes operational (hereinafter, the "Interim Flow Period"), the Minimum Instream Flow shall be a target flow, with an anticipated fluctuation of  $10\% \pm$ , and a goal of achieving the target flow as an average as provided in subparagraph 2.3 below.

2.2. Final Flow Period. Subsequent to the Interim Flow Period, and thereafter until the end of the Term (hereinafter, the "Final Flow Period"), the Minimum Instream Flow shall be a target flow, with an anticipated fluctuation of  $5\% \pm$ , and a goal of achieving the target flow as an average in accordance with subparagraph 2.3 below.

2.3. Fluctuations from Target Flow. Puget shall make good faith efforts to reduce fluctuations from the target flow (to the extent the cause is within Puget's reasonable control). Puget shall develop and implement procedures, in consultation with the Tribe, to quantify (in accordance with subparagraphs 3.1.3 and 3.2.3 below) and to reduce such fluctuations.

2.4. Material Fluctuations from Target Flow (Interim Flow Period). During the Interim Flow Period described in subparagraph 2.1, fluctuations in flow which are in excess of  $10\% \pm$  of the target flow are deemed material fluctuations from the target flow (hereinafter "Material Fluctuations"). If such Material Fluctuations

from the target flow occur, Puget shall adjust flow releases with the goal of achieving the average target flow as soon as practical. In no event shall Puget reduce the volume of instream flow to adjust the flow downward for a prior excess Material Fluctuation (more than 10% of the target flow) in a manner that would adversely affect the fishery resources of the Puyallup River

2.5. Material Fluctuations from Target Flow (Final Flow Period).

During the Final Flow Period described in subparagraph 2.2, fluctuations in flow that are in excess of 5%± of the target flow are deemed to be Material Fluctuations from the target flow (hereinafter "Material Fluctuations"). If such Material Fluctuations occur, the Parties shall promptly consult, for purposes of determining what steps need to be taken to adjust flow releases (from either or both of the Project or the upstream passage facility), with the goal of achieving the average target flow as soon as practical. Puget shall be responsible for implementing such steps as are necessary with respect to operation of the Project and/or the Upstream T & H. The Tribe shall be responsible for implementing such operation and maintenance steps as are necessary with respect to operation of the Fish Ladder. The Parties shall jointly develop and implement procedures for conducting in-river maintenance activities, such as sediment removal, that include provisions for avoiding activities that reduce or impair flow into the Fish Ladder intake or to the flume intake.

3. Release of Minimum Instream Flow. The measures the Parties anticipate will be employed to release and monitor the Minimum Instream Flow are set forth below:

3.1 Interim Flow Period Releases and Measurements. Puget will implement measures to release the Minimum Instream Flow during the Interim Flow Period. The flow release method(s) to be used by Puget will be field-tested and verified in consultation with the Tribe. Flow release methods under consideration by Puget for the Interim Flow Period include, but shall not be limited to: (1) lowering the existing Taintor gate at the upstream end of the flume; and/or (2) opening the rock chute slide gate near the upstream end of the flume. Puget will provide the Tribe with flow comparisons (observed vs. estimated) to verify that the selected flow release method is reasonably accurate. Questions (if any) concerning the accuracy of gauge records shall be referred to the JTC.

3.1.1 Within sixty (60) days of the Effective Date, Puget shall install a staff gauge just below the Electron dam, with a clearly visible mark showing the bypass reach water level at 60 cfs or 80 cfs. The minimum flow mark on the gauge shall be verified by Puget with on-site flow measurements. Puget shall observe the staff gauge on a regularly scheduled basis and shall keep records of such

observations. During the Term, Puget shall re-establish and calibrate the gauge as necessary.

3.1.2 After development and testing of a reasonable flow release system, Puget shall design, in consultation with the Tribe, a flow recording system capable of making daily records of instream flow release. Methods of flow recording under consideration by Puget for the Interim Flow Period are either a pressure transducer and data logger on a rock chute discharge or use of the USGS gauge minus flume flow (if reasonably accurate). Either: (i) a properly trained employee or agent of Puget shall visit the Electron dam site on at least three (3) separate occasions or more during each seven (7) day period for the purpose of inspecting the site and recording data, or (ii) in lieu of such on-site monitoring, Puget shall install, operate and maintain a "low flow" or "flow failure" monitoring device and alarm system to alert Puget operation staff that actions are necessary to avoid flow loss in the bypass reach below the Electron dam.

3.1.3 Puget shall maintain daily records of instream flow. Beginning sixty (60) days from and after the Effective Date, Puget shall make such daily records available to the Tribe on thirty (30) day intervals throughout the Term. Within five (5) business days after such information is available, the Parties shall consult for purposes of determining the average instream flow for the preceding thirty (30) day period. Such average instream flow shall be used to determine whether, for purposes of subparagraph 2.4, there has been a Material Fluctuation in the average flow for such thirty (30) day period. If the Parties determine that a Material Fluctuation has occurred, appropriate action shall be taken by Puget in accordance with subparagraph 2.4.

3.2 Final Flow Period Releases and Measurements. Puget shall implement measures to release the Minimum Instream Flow during the Final Flow Period. The 5%± fluctuation applicable to flows during the Final Flow Period, and the following measures under consideration to release and monitor such flows, reflect the Parties' assumptions that: (i) the upstream fish passage facility will release approximately 40 cfs; and (ii) flow leakage through the dam will release less than 20 cfs.

3.2.1 It is also assumed that flow through the proposed upstream fish passage facility will vary slightly under varying headwater, tailwater, and/or operation (e.g., fish ladder stoplog) conditions. Flow measurements attributable to the upstream fish passage facility over a range of differing conditions shall be made by Puget, in consultation with the Tribe, so that Puget may develop accurate real time rating curves for the upstream fish passage facility. These rating curves will be

considered, in combination with any other flow releases and leakage through the dam, to maintain the target flow within the 5% fluctuation range.

If the Fish Ladder is selected as the upstream fish passage facility, the Fish Ladder design will include a staff gauge visible from Puget's intake area for observing flow. Puget will regularly record such observations for purposes of comparison with the Fish Ladder rating curve. All such data shall be made available to the Tribe on a regular basis.

3.2.2 The mechanisms for releasing instream flow (in addition to flow through the upstream fish passage facility plus dam leakage) for the Final Flow Period will be determined by Puget in consultation with the Tribe. Possible methods include, but shall not be limited to: (1) installing an overflow weir or free-fall pipe along the Electron flume and discharging approximately 20 feet of the downstream edge of the dam apron; and (2) modifying the dam crest. As the location of permanent flow release measures will assist with upstream fish passage, such measures shall be located as close to the dam as is reasonably practical and consistent with reasonable limitations associated with operating the project.

3.2.3 Puget shall, in consultation with the Tribe, develop measures for daily monitoring of Minimum Instream Flow during the Final Flow Period. Procedures similar to those provided for the Interim Flow Period shall be developed. Such procedures shall provide, among other things, for:

3.2.3.1 the availability of daily records (i.e., as may be kept with respect to the Project and the Fish Ladder) on thirty (30) day intervals; and

3.2.3.2 the prompt consultation for purposes of determining the average instream flow for the preceding thirty (30) day period. Such average instream flow shall be used to determine whether, for purposes of subparagraph 2.5, there has been a Material Fluctuation in the average flow for such thirty (30) day period.

3.2.4 If the Parties determine in accordance with the procedures to be developed in accordance with subparagraph 3.2.3 that a Material Fluctuation has occurred during the Final Flow Period, appropriate action shall be taken by the Parties in accordance with subparagraph 2.5. Flow measurements will be periodically taken in the bypass reach to verify the Minimum Instream Flow.

3.3 Contingent Flow Plan. Within sixty (60) days of the Effective Date, Puget shall, in consultation with the Tribe, also develop procedures (which such procedures shall include provisions for reasonable notice to the Tribe) for providing

Minimum Instream Flow (or some portion thereof) on a temporary basis to account for circumstances where the primary methods of providing such flow is not functioning (e.g., plugged intakes or other circumstances). Providing flow with such temporary measures shall be deemed to be sufficient, for purposes of the REA, until the primary methods of providing such flows can be restored. These procedures shall be developed by Puget in consultation with the Tribe.

4. Dam Leakage. The rate of water leaking through the dam shall be measured within sixty (60) days of the Effective Date, if practical, given Puyallup River flow conditions. If river flow conditions are too high to make such measurements within sixty (60) days of the Effective Date, such measurements shall be made as soon thereafter as practical. Puget shall provide the Tribe with not less than 48 hours advance notice of its intent to undertake such measurements, and shall afford the Tribe the opportunity to observe such measurements. The point of measurement shall be the first location downstream of the dam, where all leakage combines into one channel, with a reasonable cross-section for measurement.

4.1. Leakage through the dam shall be considered constant for purposes of implementing this plan. Thereafter, unless there is a material change in the physical area where the dam is located and more frequent measurements are required, dam leakage shall be measured by Puget not less than once each year during the Term, and minimum flow releases shall be adjusted (if and as necessary) based upon such measurements. In general, dam leakage may be indirectly measured by calculating total by-pass flow in comparison with flow released from other sources (e.g., Fish Ladder, flume release system). If either Party determines that a more accurate measurement is necessary, and the Parties agree that such measurement can be obtained in a manner consistent with sound fishery management practices, then there may be a temporary diversion of water in excess of limitations otherwise required to maintain the Minimum Instream Flow for the duration of the measurement procedures.

5. Banked Flows. It is anticipated that Banked Instream Flow will be subject to the same fluctuations, measures and procedures applicable to the Minimum Instream Flow. The JTC shall develop procedures necessary for the orderly implementation of the provisions of the REA concerning Banked Instream Flow.

6. Ramp Rate. The two (2) to four (4) inch per hour ramp rate required by the REA applies only to water level reductions (down-ramps) controlled by Puget just downstream of the dam and just downstream of the powerhouse. (For example, and not by way of limitation, water level decreases due to natural flow changes or "emergency" (uncontrolled) powerhouse unit shut-downs are not subject to the specified ramp rate, nor are water level increases (up-ramps) in these river reaches).



6.1 Ramp Rate Procedures. Puget, in consultation with the Tribe, shall conduct a ramp rate study to identify reasonable operations for bringing the flume "on-line" or increasing flume flow. While maintaining a ramp rate of less than four inches per hour in the Puyallup River reach downstream of the Electron dam, Puget shall also conduct a study to determine reasonable operations for powerhouse flow reduction or shut-down. The Tribe will cooperate with field data collection and review of study results.

6.2 Ramp Rate Studies. Puget shall develop guidelines, in consultation with the Tribe, for the ramp rate studies that include the following:

6.2.1 The ramp rate study for the dam should include two or more gate operations at varying opening speeds, and water level measurement at five or more river cross-sections within 1/4-mile downstream of the dam.

6.2.2 The ramp rate study for the powerhouse should extend approximately one mile downstream to the existing USGS gauge location. The USGS gauge near Orting is considered a possible location for long-term monitoring of the ramp rate below the powerhouse.

6.2.3 If either the dam or the powerhouse ramp rate studies do not show a ramp rate between two (2) and four (4) inches per hour (or less), then as to such study(ies), additional tests will be conducted to determine equipment capability.

6.2.4 Ramp rate studies will be conducted when Puyallup River flows are 400 to 500 cfs at the dam, with bypass reach flow reasonably close to target flow levels.

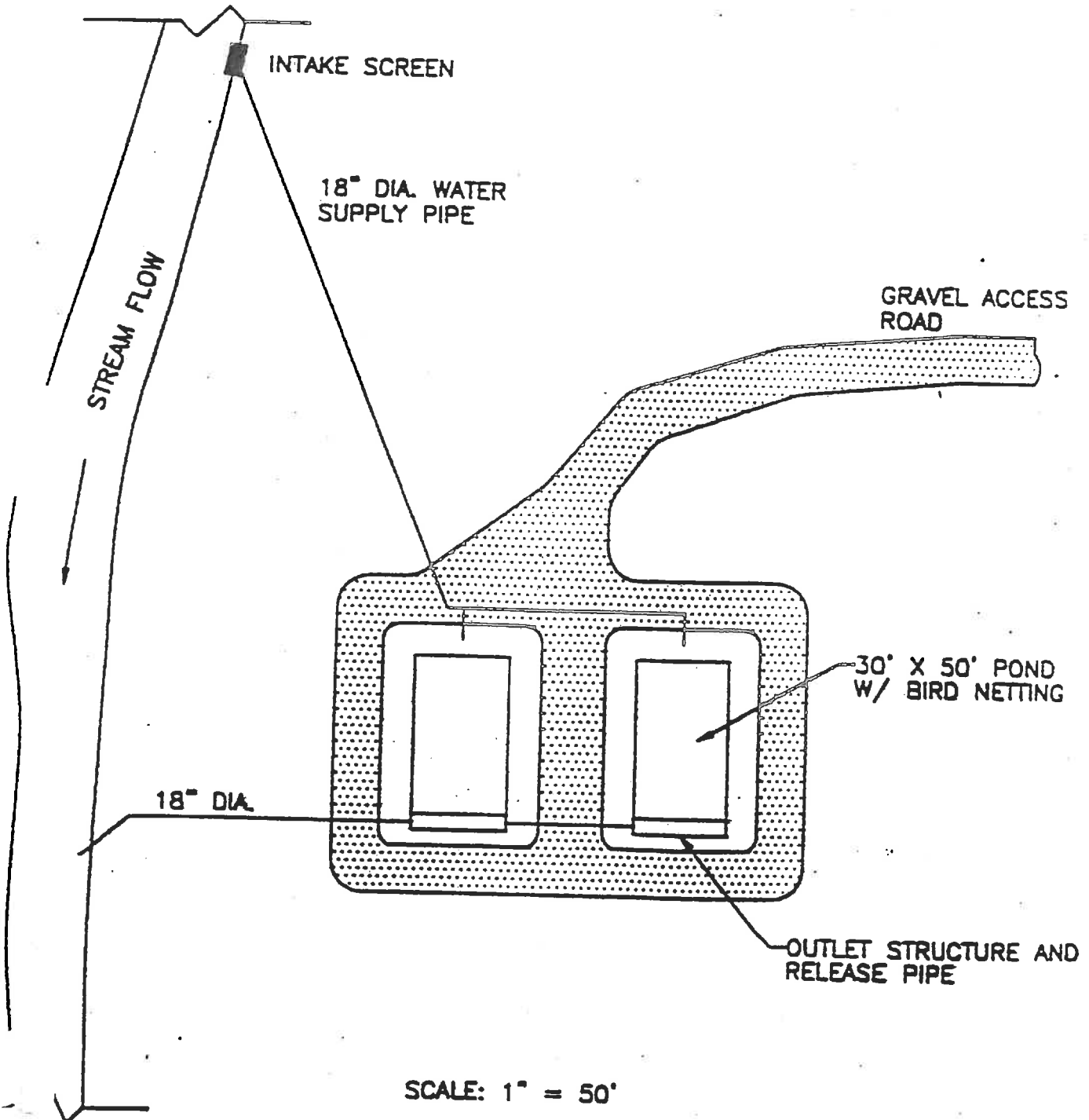
6.3 Use of USGS Gauge. The USGS gauge downstream of the powerhouse (near Orting) may be used to monitor water level changes resulting from powerhouse operations, provided the ramp rate study shows the USGS gauge to be representative of the river reach affected. If Puget decides to install a water level recorder in the Puyallup River or other alternative to monitor down-ramp events, Puget shall consult with the Tribe on the alternative monitoring measure.

6.4 Operating Procedures. Operations and procedures that result in the desired ramp rate will be reduced to writing and incorporated into the Project's standard operating procedures. If the Tribe wants to monitor a down-ramp event in the field, the Tribe shall notify Puget and be informed of the next scheduled project shutdown (or "on-line" schedule for the flume). During the monitoring test, Puget shall use the standard operating procedures developed from the ramp rate studies.

6.5 Ramp Rate Assumptions. This plan assumes that the existing Taintor gate controlling flume flow, and the existing powerhouse flow equipment and controls, are capable of controlling water level fluctuations within the two-to-four inch per hour rate. If the ramp rate studies show that existing Puget facilities are incapable of this level of control, Puget shall consult with the Tribe to determine options to meet the intent of the REA.

# EXHIBIT E

## Salmon Rearing Ponds



**Privileged and Confidential**  
Protected by Federal and State  
Rule of Evidence 408 Relating to



# Puyallup Tribe of Indians



## PUYALLUP TRIBAL COUNCIL RESOLUTION NO. 190397

WHEREAS, the Puyallup Tribe has existed since creation as the aboriginal people who are the owners and guardians of their lands and waters; and

WHEREAS, the Puyallup Tribe is an independent sovereign nation, having historically negotiated with several foreign nations, including the United States in the Medicine Creek Treaty; and

WHEREAS, the Puyallup Tribal Council is the governing body of the Puyallup Tribe in accordance with the authority of its sovereign rights as the aboriginal owners and guardians of their lands and waters, reaffirmed in the Medicine Creek Treaty, and their Constitution and By-Laws, as amended; and

WHEREAS, the Puyallup Tribal Council has the authority pursuant to Article VI, Section 1(f) of the Constitution of the Puyallup Tribe to manage all economic affairs and enterprises of the Puyallup Tribe; and

WHEREAS, the Puyallup Tribe has asserted various claims under federal and state law and the Treaty of Medicine Creek against Puget Sound Energy, Inc. relating to impacts of the Electron Dam hydroelectric project upon fishery resources and fishery habitat in the Puyallup River Basin; and

WHEREAS, the Puyallup Tribal Council established the Electron Dam Negotiating Team to negotiate with representatives of Puget Sound Energy, Inc. to address impacts of the Electron Dam hydroelectric project upon fishery resources and fishery habitat in the Puyallup River Basin; and

WHEREAS, the Electron Dam Negotiating Team and Puget Sound Energy, Inc. have arrived at a Resource Enhancement Agreement which addresses the Electron Dam project's impacts on fishery resources and fishery habitat by providing for dam removal or upgrade by 2026, and by providing in the interim for minimum instream flow, upstream and downstream fish passage and reintroduction of salmon and steelhead to newly opened habitat in the upper Puyallup River Basin for the first time in over 90 years; and

WHEREAS, the Resource Enhancement Agreement will bring economic and other benefits to member of the Puyallup Tribe and others who use and enjoy the Puyallup River's fishery resources; and

WHEREAS, the Resource Enhancement Agreement represents an historic achievement which the

EXHIBIT F

PUYALLUP TRIBAL COUNCIL  
RESOLUTION NO. 190397  
Page 2

Tribe and Puget Sound Energy, Inc. achieved without the cost, uncertainty and delay of litigation;  
and

WHEREAS, the Puyallup Tribe's Electron Dam Negotiating Team has recommended that the PUYALLUP TRIBAL COUNCIL approve the Resource Enhancement Agreement, and authorize the Chairman or Vice-Chairman of the Tribal Council to execute the Resource Enhancement Agreement.

NOW THEREFORE BE IT RESOLVED that the PUYALLUP TRIBAL COUNCIL finds that it has authority to approve the Resource Enhancement Agreement under Article VI, Section 1(f) of the Constitution and Bylaws of the Puyallup Tribe; and

BE IT FURTHER RESOLVED that the PUYALLUP TRIBAL COUNCIL does hereby approve the Resource Enhancement Agreement between the Puyallup Tribe and Puget Sound Energy, Inc.; and

BE IT FURTHER RESOLVED that the PUYALLUP TRIBAL COUNCIL directs the Electron Dam Negotiating Team to make recommendations to the Tribal Council on a team and strategy to implement the Resources Enhancement Agreement; and

BE IT FINALLY RESOLVED, that the Chairman, or in his absence the Vice Chairman, is authorized to sign said Resource Enhancement Agreement on behalf of the Puyallup Tribe.

### CERTIFICATION

I, ~~Michelle Hamilton~~ hereby certify that the above resolution was duly enacted by the Puyallup Tribal Council on the 9 day of March, 1997 a quorum being present with a vote of 4 for, 0 against, 0 abstaining.

*Michelle Hamilton*  
Tribal Council Secretary  
Puyallup Tribe of Indians

ATTEST:

*Bill Sterud*  
Bill Sterud, Chairman  
Puyallup Tribe of Indians

1997	1998	1999	2000	2001	2002	2003	2004
Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4
Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4

Activity ID	Activity Description	Rem Dur	Early Start	Early Finish
<b>Electron Settlement</b>				
ES3100-01	Tribe Secure Right Of Way	41	03JAN97A	31MAR97
<b>Rearing Ponds</b>				
ES4800-01	Design	63	21FEB97	20MAY97
ES2400-01	Submit JARPA	84	04APR97	30JUL97
ES6600-01	Construction	95	31JUL97	10DEC97
ES0100-01	Fish Pond Operational	0		01JUN98*
<b>Downstream Trap &amp; Haul</b>				
ES2200-01	Permit	84	01APR97	25JUL97
ES4800-05	Design	84	28JUL97	20NOV97
ES5100-01	Procurement	84	08OCT97	02FEB98
ES6600-05	Construction	84	03FEB98	29MAY98
ES0100-20	Forebay Operational	0		29MAY98*
<b>Fish Ladder</b>				
ES2400-10	SEPA Permitting	84	04APR97	30JUL97
ES2400-05	Permit	126	14JAN99	08JUL99
ES4800-15	Design	126	09JUL99	31DEC99
ES6100-01	Bid & Award Construction Contract	126	03JAN00*	26JUN00
ES6600-10	Construction	126	01DEC00*	25MAY01
<b>Alternative to Fish Ladder: Upstream Trap &amp; Haul</b>				
ES6600-15	Design & Construct Facility	261	30JUN00*	25JUN01

Tribe Secure Right Of Way

Design

Submit JARPA

Construction

Fish Pond Operational

Permit

Design

Procurement

Construction

Forebay Operational

SEPA Permitting

Permit

Design

Bid & Award Construction Contract

Construction

Design & Construct Facility

Project Start: 01JAN92  
 Project Finish: 28JUN01  
 Date: 01FEB97  
 Plot Date: 19MAR97

Legend:  
 Early Bar  
 Progress Bar  
 Critical Activity

Project: Puget Power Generation/Plant Tech Svc  
 Classic Schedule Layout

Sheet 1 of 1

# EXHIBIT G

© Dismalwe Systems, Inc.

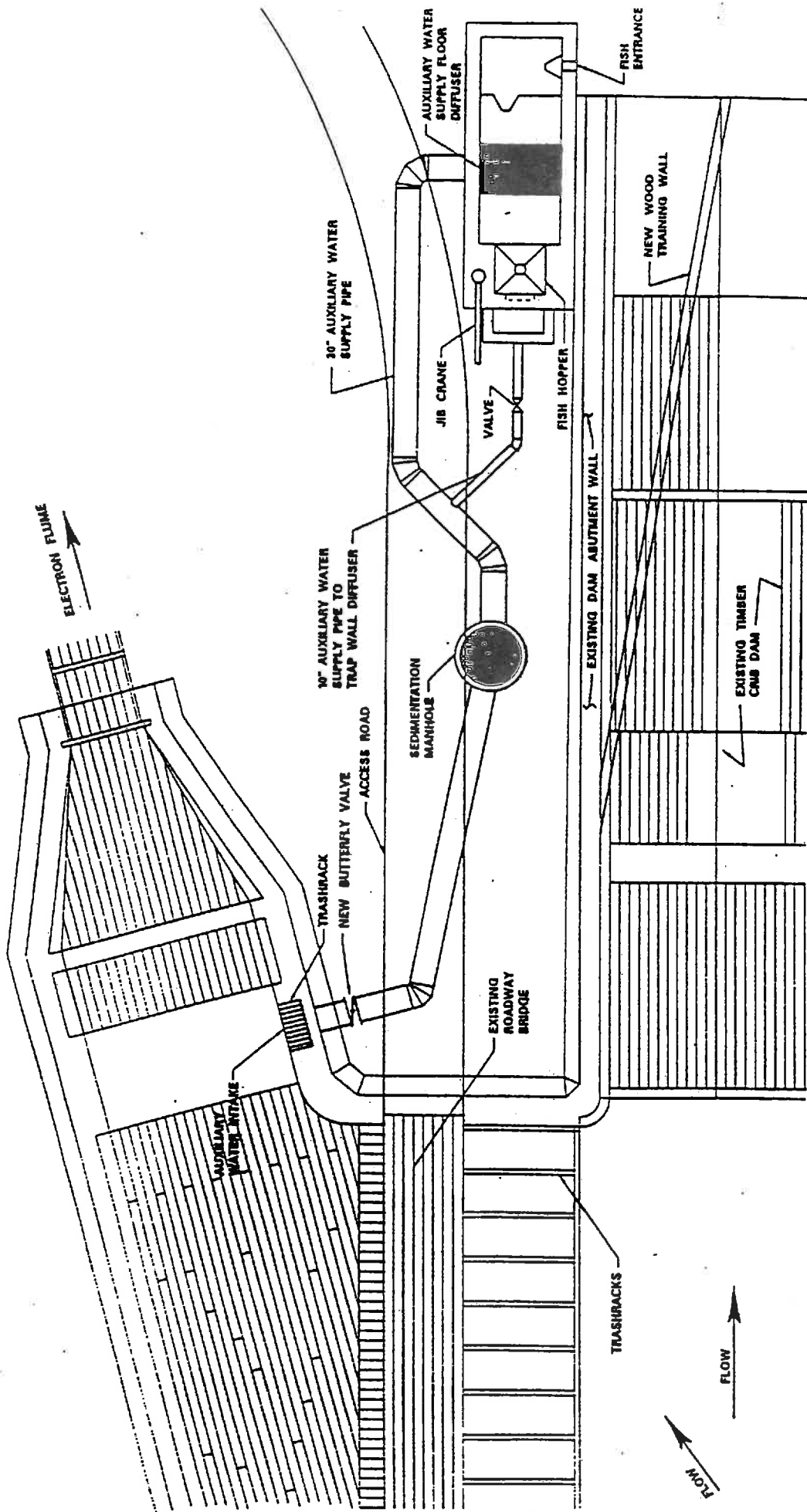


FIGURE 2  
 ELECTRON PROJECT UPSTREAM FISH PASSAGE  
 ALTERNATIVE 2  
 LEFT BANK FISH TRAP  
 OVERALL PLAN

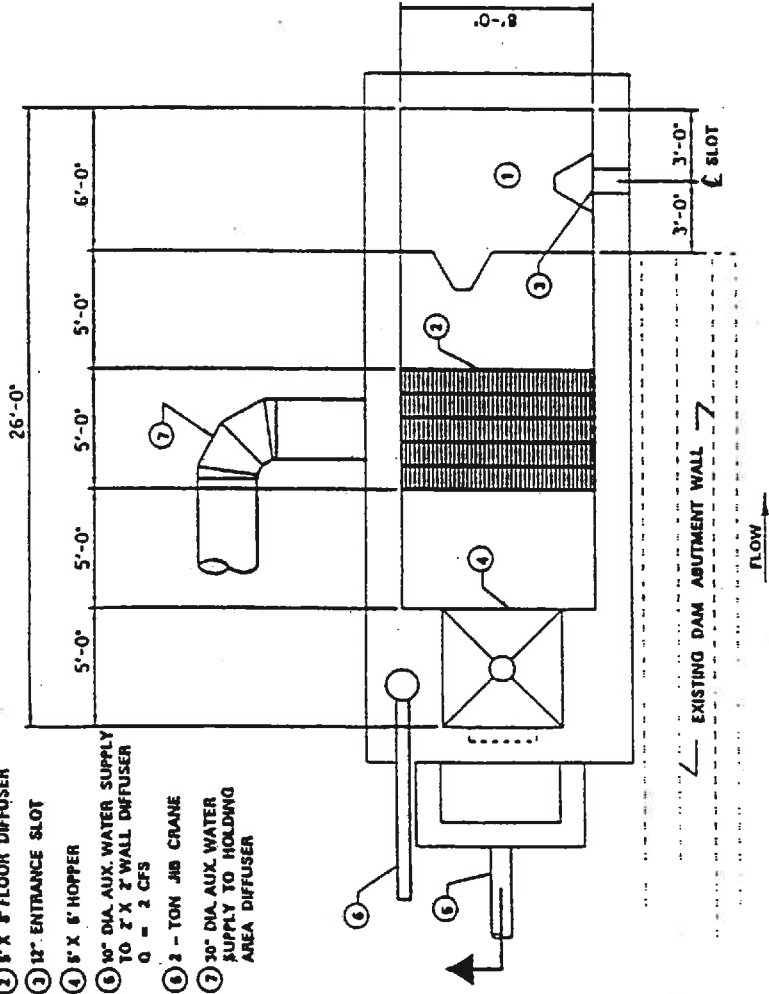
# EXHIBIT H

PROTECTED BY FEDERAL AND STATE LAWS AS CONFIDENTIAL  
 PRIVILEGED AND COMMERCIALLY  
 PROTECTED INFORMATION. ANY DISCLOSURE OR RELAYING TO SETTLEMENT DISCUSSIONS

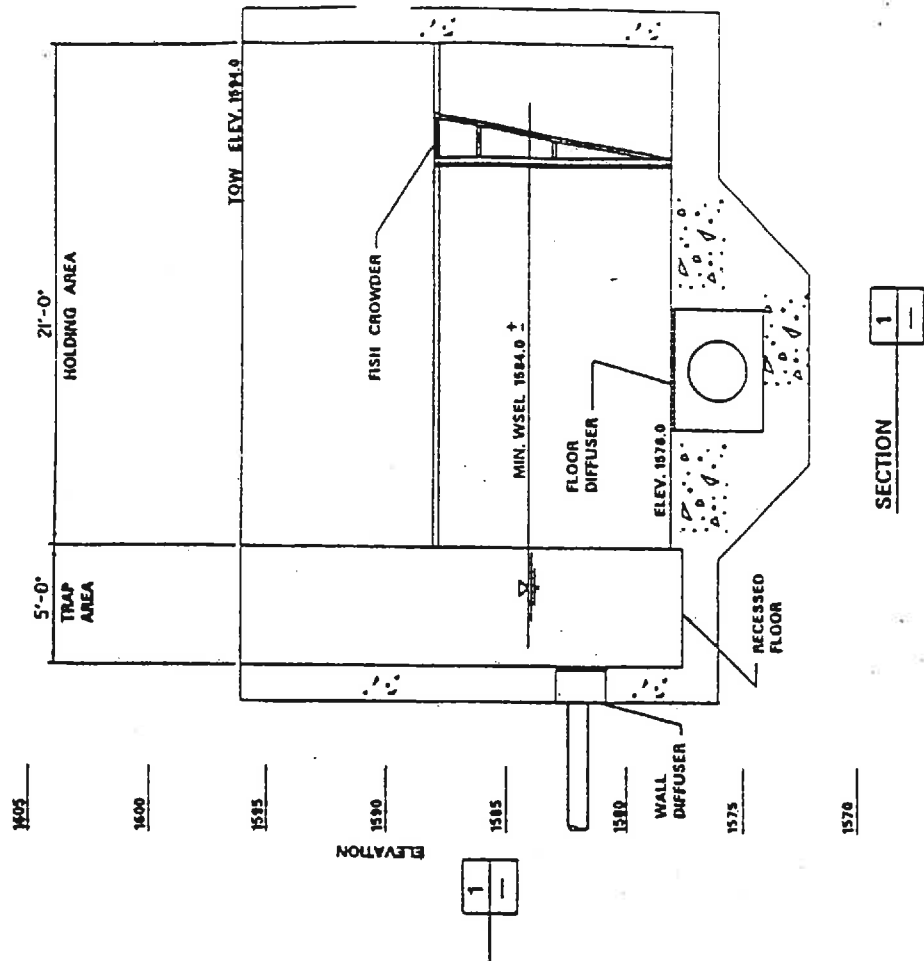


MONTGOMERY WATSON

- ① VEE TRAP
- ② 5' X 8' FLOOR DIFFUSER
- ③ 12" ENTRANCE SLOT
- ④ 5' X 8' HOPPER
- ⑤ 10" DIA. AUX. WATER SUPPLY TO 2' X 2' WALL DIFFUSER @ 2 CFS
- ⑥ 2 - TON JIB CRANE
- ⑦ 30" DIA. AUX. WATER SUPPLY TO HOLDING AREA DIFFUSER



**FISH TRAP - PLAN**



**FIGURE 3**  
**ELECTRON PROJECT UPSTREAM FISH PASSAGE**  
**ALTERNATIVE 2**  
**LEFT BANK FISH TRAP**  
**PLAN AND SECTION**

PROTECTED BY FEDERAL AND STATE LAWS OF INDIANA AND RELATING TO SETTLEMENT DISCUSSIONS





FEDERAL ENERGY REGULATORY COMMISSION

WASHINGTON, D. C. 20426

JAN 16 1997

UL97-13-000--Washington  
Electron Hydroelectric Project  
Puget Sound Power & Light

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Markham A. Quehrn  
Perkins Coie Partnership  
One Bellevue Center, Suite 1800  
108th Avenue Northeast  
Bellevue, WA 98004-5584

RECEIVED  
JAN 21 1997  
PERKINS COIE

Dear Mr. Quehrn:

Thank you for your letter of December 23, 1996, concerning the proposed fishery enhancements in and about the Puget Sound Power & Light Electron Hydroelectric Project. You requested a review of the proposed enhancements as described in Puget Power's December 2, 1996 "Agreement In Principle" (AIP) and questioned whether the enhancements would subject the Electron project to licensing by the Commission.

On July 21, 1977, the United States Court of Appeals issued an opinion that the Electron Project is exempt from Commission jurisdiction primarily because it was not located on a navigable waterway and was constructed prior to 1935.

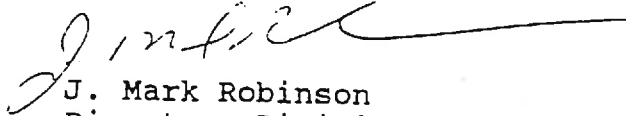
In the Commission's March 4, 1996, order for the Bend Hydroelectric Project, FERC Project No. 2643, the Commission cited what constitutes post-1935 construction. The Commission explained that if repairs or improvements do not increase the project's head, generating capacity, or water storage capacity, or otherwise significantly modify the project's pre-1935 operation, they do not constitute post-1935 construction.

We have reviewed the AIP and the details of the proposed fishery enhancements for the Electron Hydroelectric Project, which includes installing guide nets and a fish trap in forebay, and providing either upstream passage and fish ladders or fish trap and haul facilities. The fishery enhancements proposed do not constitute post-1935 construction within the meaning of the Bend Order or within the meaning of Section 23(b)(1) of the Federal Power Act. Consequently, the Project does not require licensing.

EXHIBIT I

If you have any questions regarding this matter, please contact John Blair at (202) 219-2845.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. Mark Robinson", with a long horizontal flourish extending to the right.

J. Mark Robinson  
Director, Division of  
Licensing and Compliance

# **EXHIBIT 2**



UNITED STATES DEPARTMENT OF COMMERCE  
 National Oceanic and Atmospheric Administration  
 NATIONAL MARINE FISHERIES SERVICE  
 PORTLAND OFFICE  
 1201 NE Lloyd Boulevard, Suite 1100  
 PORTLAND, OREGON 97222-1274

PNWTR

July 25, 2005

Edward Schild, Manager  
 Energy Production and Storage  
 Puget Sound Energy  
 PO Box 97034  
 Bellevue, WA 98009-9734

RE: Puget Sound Energy's Electron Hydropower Project

Dear Mr. Schild:

The National Marine Fisheries Service (NMFS) was last involved peripherally with Electron five years ago when the Puyallup Tribe of Indians was acquiring a U.S. Army Corps of Engineers permit to construct a fishway at the site of Puget Sound Energy's (PSE) Electron Diversion Dam. The project has recently come to our attention again in the context of recovery planning of Puget Sound Chinook salmon that are listed as threatened under the Endangered Species Act (ESA).

Entrainment of Chinook salmon at the Electron project was discussed at a meeting of the South Sound Chinook salmon technical committee this past April. Staff members in three NMFS divisions were contacted, along with a U.S. Fish and Wildlife Service (USFWS) biologist, and asked to assist in a fish salvage operation at Electron on May 27, 2005, prior to the annual maintenance outage at the project. In addition, two agents from our Office of Law Enforcement accompanied the Federal staff biologists. As it turned out, there were ample PSE, State, and Tribal staff present to conduct the operation, while NMFS staff observed the operation and enumerated salvaged fish. NMFS staff observed juvenile Chinook and coho salmon, bull trout, and resident rainbow, outthroat, and steelhead trout, some of which died in the salvage process.

We have briefly reviewed the history of the Electron project and understand that it is not a Federal Energy Regulatory Commission-licensed project, having been constructed in 1904, prior to the Federal Power Act, and having been ruled non-jurisdictional in the 1980s. Because the Electron project has no Federal nexus, any take associated with this project cannot be covered through an incidental take statement (ITS) in a biological opinion (ESA Section 7(a)(2) consultation). Private parties have the option of initiating conservation plans that, when approved by NMFS and the USFWS, provide an incidental take permit (ITP), which authorizes a limited amount of incidental take during the course of otherwise legal activities, such as operating an unlicensed hydropower project. Absent an ITS or an ITP, PSE has no protection from prosecution for unauthorized take of listed Chinook salmon.

NMFS is working with many local interests in the Shared Strategy Puyallup watershed group to recover ESA-listed Puget Sound Chinook salmon. As part of this group's analysis, using the



FROM PUYALLUP TRIBE FISHERIES DEPARTMENT

(THU) 7 28 2005 16:18/ST.16:18/NO.5112719335 2

2

method known as Environmental Diagnosis and Treatment (EDT). The Electron project was identified as the most serious single threat to Chinook salmon in the watershed area identified to contain the primary spawning and freshwater rearing habitats of the Puyallup Chinook salmon population. This was reported to be due to the nature of the downstream juvenile fish passage facilities at the project.

We have received and reviewed monitoring and evaluation reports regarding the juvenile fish migrations and mortality estimates covering the spring migration seasons from 1999 through 2004. PSE's actions to minimize fish mortality and improve migration success were previously not known to us, and NMFS recognizes PSE's efforts to improve fish survival at the project. Nonetheless, NMFS has some concerns and questions about the project facilities and operations, and their effects on salmon. NMFS also needs to develop well informed responses to continuing inquiries from the Puyallup Tribe, the other co-managers, and other involved local parties, on the level of threat that the project poses to recovery of the Puyallup Chinook salmon population and the threats to other salmonids.

NMFS is responsible for recovering ESA-listed Puget Sound Chinook salmon, and we have separate trust responsibilities to the area's treaty Indian tribes. The Draft Puget Sound Recovery Plan, working through the Shared Strategy Process, is due this fall. We would like PSE to work with us, and with USFWS regarding bull trout if they so choose, to develop a plan, and additional actions as necessary, to ensure that Electron project operations are consistent with the survival and recovery of Puget Sound Chinook salmon. We note that PSE was instrumental in the development of the fish ladder that made the reintroduction of anadromous and migratory fish back into the upper Puyallup River watershed possible, and we look forward to a productive process that will ensure an appropriate level of protection to downstream migrants that are becoming increasingly abundant as well.

We would like to have our Hydropower Division take the lead for NMFS in this technical process. Our contact for technical coordination and consultation is staff biologist Steve Fransen in our Lacey office. He can be reached at 360-753-6038 or email at [steven.m.fransen@noaa.gov](mailto:steven.m.fransen@noaa.gov). It is important that we move forward in a timely fashion so that the Puget Sound Recovery Plan includes a description of how the fish protection issue at the Electron project will be successfully resolved.

Sincerely,



*for*  
Keith Kirkendall, Chief  
FERC & Water Diversions Branch  
Hydropower Division

cc: Cary Feldmann, PSE  
Bill Graeber, Tim Tynan, NMFS

# **EXHIBIT C**

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of

PUGET SOUND ENERGY

For an Accounting Order Authorizing  
Accounting Treatment Related to Payments  
for Major Maintenance Activities

---

WASHINGTON UTILITIES AND  
TRANSPORTATION COMMISSION,

Complainant,

v.

PUGET SOUND ENERGY

Respondent.

---

In the Matter of the Petition of

PUGET SOUND ENERGY

For an Accounting Order Authorizing  
Accounting the Sale of the Water Rights and  
Associated Assets of the Electron  
Hydroelectric Project in Accordance with  
WAC 480-143 and RCW 80.12..

---

In the Matter of the Application of

PUGET SOUND ENERGY, INC.,

For an Order Authorizing the Sale of  
Interests in the Development Assets  
Required for the Construction and Operation  
of Phase II of the Lower Snake River Wind  
Facility.

---

DOCKET UE-130583

*(Consolidated)*

DOCKET UE-130617

*(Consolidated)*

DOCKET UE-131099

*(Consolidated)*

Declaration of Lisa A. Brautigam

DOCKET UE-131230

*(Consolidated)*

1 Lisa A. Brautigam, under penalty of perjury, declares as set forth below:

2 I am over the age of 18 years and competent to be a witness herein.

3 I am an attorney in the Law Office of the Puyallup Tribe and have been in this  
position for 7 years. I represent the Puyallup Tribe on a variety of matters including  
environmental law matters and have worked on issues involving PSE and the Electron Dam  
Facility since 2007.

4 On the afternoon of July 8, 2014, I was contacted by a tribal fisheries staff member  
and told that PSE employees had told Tribal Employees that the sale of the Electron  
Facility would be closing July 31, 2014, as soon as a “public comment period” ended. I  
then researched through the Commissions website and found the Amended Application  
filed by PSE on June 25, 2014. This was the first time the Tribe had knowledge of the  
Amended Application or any plans of the parties to the transaction to waive requirements  
that Electron Hydro execute and agreement with the Tribe and replace it with an agreement  
whereby the remaining material obligations of the REA would be transferred to Electron  
Hydro.

5 PSE has, to my knowledge, contacted the Tribe regarding the potential sale of the  
Electron Facility to Electron Hydro, through the Tribal Council or staff, by letter on two  
occasions.

6 Attached as Exhibit 1 is a true and correct copy of a letter to Herman Dillon,  
Chairman, from Paul Wetherbee, Puget Sound Energy dated September 20, 2013. The  
letter explains PSE’s desire to sell the facility to Electron Hydro and that PSE intended at  
that time to close the transaction prior to any decision by the Commission and operate the



facility until either the end of 2013 or until Electron Hydro had an agreement with the Tribe.

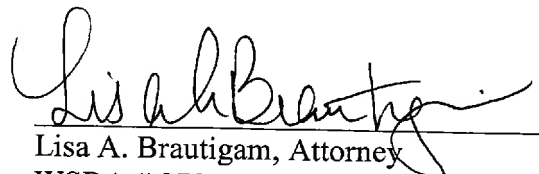
7 Attached as Exhibit 2 is a letter to Puyallup Tribal Staff listed as the contacts under the REA from Paul Weigand seeking an assignment of the REA and attaching a form of the agreement for assignment of the REA to Electron Hydro dated March 14, 2014.

8 The Puyallup Tribe has never given consent, express, written, or otherwise, to assignment of the REA.

9 The Tribe is working on the necessary notice to PSE, under the REA, to begin the dispute resolution process to resolve claims the Tribe holds for breach of the REA. Such notice shall be sent to the appropriate contacts for PSE shortly after the filing of the Tribe's Petition to Intervene.

10 In addition to the dispute resolution proceeding under the REA, the Tribe is also evaluating its claims under the Endangered Species Act against both PSE and Electron Hydro if Electron Hydro becomes the owner and operator of the Electron Facility. The Tribe's evaluation includes evaluation of filing a notice of intent to sue under the citizen suit provisions of the Endangered Species Act.

11 I certify under penalty of perjury under 28 U.S.C. § 1746 that the foregoing is true and corrected. Signed at Tacoma, Washington within the Puyallup Reservation this 16<sup>th</sup> day of July, 2014.

  
Lisa A. Brautigam, Attorney  
WSBA # 27877  
Law Office  
Puyallup Tribe of Indians

# **EXHIBIT 1**



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

September 20, 2013

**via US Mail**

Herman Dillon  
Chairman  
Puyallup Tribe of Indians  
3009 East Portland Avenue  
Tacoma, WA 98404

**Re: Electron Hydroelectric Facility Sale Notice**

Dear Chairman Dillon:

Puget Sound Energy has operated the Electron Hydroelectric Project ("the Project") for over a hundred years. Since 1997, the Project has operated under the terms and conditions set forth in the Resource Enhancement Agreement ("REA") between PSE and the Puyallup Tribe of Indians ("the Tribe").

After years of productive use and to the benefit of the local fisheries thanks to implementation of the REA, the Project requires a large capital investment in the near term in order to continue operations. After careful deliberation and analysis of viable alternatives, PSE elected to offer the Electron assets for sale and conducted a limited request for proposals in early 2012. Electron Hydro, LLC was selected from interested parties and PSE entered into final negotiations in 2013. In May of this year, PSE and Electron Hydro executed the definitive agreements for the purchase and sale of the Project, including its fisheries facilities. Closure of the transaction is subject to approval of the transaction by the Washington Utilities and Transportation Commission ("WUTC") and the execution of an operating agreement between Electron Hydro and the Tribe.

The purpose of this letter is to inform the Tribe that, because the WUTC is under no time constraint to consider our request for the approval of the Project's sale, PSE anticipates waiving WUTC's approval as a condition to close the Electron sale, likely within the next month. Further, PSE plans to continue to operate the plant either until the earlier of the end of the year, or until Electron Hydro has executed its new operating agreement with the Tribe and PSE closes the sale of the Project. At that time, we expect that PSE and the Tribe will terminate the REA as it will have been replaced by a new operating agreement.

We look forward to working with the Tribe to complete this transaction.

Sincerely,

Paul Wetherbee  
Director, Hydroelectric Resources

cc: Bill Sullivan, Puyallup Tribe of Indians  
Russ Ladley, Puyallup Tribe of Indians  
Lisa Braughtigam, Puyallup Tribe of Indians

# **EXHIBIT 2**



# PUGET SOUND ENERGY

*The Energy To Do Great Things*

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

March 14, 2014

Bill Sullivan  
Natural Resources Director  
Puyallup Tribe of Indians  
3009 E Portland Avenue  
Tacoma, WA 98404

Russell Ladley  
Fishery Biologist, Fishery Department  
Puyallup Tribe of Indians  
6824 Pioneer Way East  
Puyallup, WA 98371

John Bell  
Lisa Brautigam  
Tribal Attorney  
Puyallup Tribe of Indians  
3009 E Portland Avenue  
Tacoma, WA 98404

**Re:** Consent to Assignment of Resource Enhancement Agreement dated March 21, 1997 (the "REA") between Puget Sound Energy, Inc. ("PSE") and the Puyallup Tribe of Indians (the "Tribe")

To Whom It May Concern:

We are writing to request the consent of the Tribe to PSE's assignment of the REA to Electron Hydro, LLC ("Electron Hydro").

As you recall, the existing REA was a historic achievement for PSE and the Tribe, balancing the benefits of fishery enhancements with the benefits of hydroelectric generation related to PSE's Electron Hydroelectric Facility (the "Electron Facility"). The REA contains obligations of both PSE and the Tribe with respect to the operations of the Electron Facility, as well as agreements regarding fishery enhancements in and about the upper reaches of the Puyallup River.

After consideration of many alternatives with respect to the Electron Facility, PSE entered into an asset purchase agreement with Electron Hydro in May 2013, under which PSE will sell the Electron Facility to Electron Hydro, an experienced hydroelectric development company that has the expertise and financial backing to repower the Electron Facility, install the fish protections (e.g., fish screens), and maintain a 100 cfs minimum instream flow.

PSE and Electron Hydro had anticipated that the Tribe and Electron Hydro would be able to negotiate a new Renewable Resource Agreement (an "RRA") to replace the REA's commitments for the operations of the Electron Facility and fishery enhancements, but we understand that the Tribe has declined to execute an RRA at this time.

It has been ten months since the execution of the asset purchase agreement, and PSE and Electron Hydro now need to close their transaction. As an interim solution while the Tribe considers the new RRA with Electron Hydro, PSE proposes to assign the existing REA – including all of its rights and obligations – to Electron Hydro. This assignment will allow PSE to close the sale of the Electron Facility and permit Electron

Hydro to begin operations, and there will be no impact to the Tribe as Electron Hydro will be under the same obligations with respect to the Electron Facility as PSE.

Pursuant to Section 18.1 of the REA, PSE respectfully requests that the Tribe consent to the assignment of the existing REA to Electron Hydro. PSE and Electron Hydro request that the Tribe consider and act on this request by no later than April 15, 2014. To assist with part of your review, we have attached a draft of the Assignment and Assumption Agreement between PSE and Electron Hydro, pursuant to which Electron Hydro will assume PSE's obligations under the REA. At the bottom, you will see that we have included a signature line for the Tribe's consent to the assignment. We would look forward to the chance to work with you on any comments you or your attorneys may have to this document.

We would like to schedule a meeting between members of the Tribal Council, our executive team and the Electron Hydro team to discuss any questions you may have about our request for consent to the assignment of the REA.

Thank you for your consideration, and we look forward to further discussions.

Sincerely,



Paul M. Wiegand  
Senior Vice President, Energy Operations

Encl. Draft of Assignment and Assumption Agreement

cc: Thom Fischer, Electron Hydro

## ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this "**Assignment**") dated this \_\_\_ day of March, 2014, is made by and between ELECTRON HYDRO, LLC, a Delaware limited liability company ("**Buyer**"), and PUGET SOUND ENERGY, INC., a Washington corporation ("**Seller**"). Buyer and Seller are referred to herein each individually as a "**Party**," and collectively as the "**Parties**."

Buyer and Seller are parties to that certain Asset Purchase Agreement, dated May 30, 2013, as amended (the "**Agreement**"), pursuant to which Seller agreed to sell and Buyer agreed to buy the Transferred Assets related to the Electron Facility. Terms not otherwise defined herein shall have the meaning ascribed to them in the Agreement.

Pursuant to the Agreement, Seller agreed to assign and Buyer agreed to assume all continuing liabilities, rights and obligations of Seller under the Resource Enhancement Agreement between Seller and the Puyallup Tribe of Indians (the "**Tribe**"), dated March 21, 1997 (the "**REA**").

NOW, THEREFORE, in consideration of the valuable consideration paid by Buyer to Seller, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### ARTICLE I ASSIGNMENT AND ASSUMPTION

Section 1.1. Assignment and Assumption. Seller does hereby assign and transfer to Buyer all of Seller's right, title, and interest to the REA. Buyer hereby accepts this assignment, expressly assumes Seller's interest in the REA and agrees to be bound by all the terms, conditions and covenants thereof and agrees to assume all of the obligations of Seller under the REA arising after the date hereof.

Section 1.2. Further Assurances. At any time or from time to time after the date hereof, at Buyer's request and without further consideration, Seller shall use commercially reasonable efforts to execute and deliver to Buyer such other instruments of transfer, conveyance, assignment and confirmation, provide such materials and information and take such other actions as Buyer may reasonably deem necessary in order to effectuate the transactions contemplated by this Assignment. Each Party shall bear its own reasonable costs and expenses in compliance with this Section 1.2.

Section 1.3. Buyer Indemnification. Buyer agrees to indemnify, defend and hold Seller harmless from and against any and all claims, losses, expenses, liabilities, damages, including, without limitation, interest and penalties, attorneys' fees, and all amounts paid in settlement of any claim, which may be asserted against Seller, or which Seller may incur or suffer, and which results from or relates directly or indirectly to the performance or nonperformance of Buyer's obligations under or related to the REA after the date hereof.

Section 1.4. Seller Indemnification. Seller agrees to indemnify, defend and hold Buyer harmless from and against any and all claims, losses, expenses, liabilities, damages, including, without limitation, interest and penalties, attorneys' fees, and all amounts paid in settlement of any claim, which may be asserted against Buyer, or which Buyer may incur or suffer, and which results from or relates directly or indirectly to the performance or nonperformance of Seller's obligations under or related to the REA prior to and on the date hereof.

**ARTICLE II  
REPRESENTATIONS AND WARRANTIES**

Each Party hereto represents and warrants that it has all necessary power, capacity and authority to enter into this Assignment, it has taken all necessary action to execute and has duly executed this Assignment and this Assignment constitutes its legal, valid and binding obligation, enforceable in accordance with its terms.

**ARTICLE III  
GOVERNING LAW; DISPUTE RESOLUTION; ATTORNEYS' FEES**

Section 3.1. Governing Law; Dispute Resolution. This Assignment shall be governed by and construed in accordance with the laws of the State of Washington without regard to conflicts-of-laws principles that would require the application of any other law. Disputes arising out of this Assignment shall be addressed by the Parties pursuant to Article 11 of the Agreement.

Section 3.2. Attorneys' Fees. Notwithstanding Section 3.1 of this Assignment, in the event of litigation between the Parties hereto, declaratory or otherwise, in connection with this Assignment, the prevailing party shall recover its costs and attorneys' fees actually incurred, which shall be determined and fixed by the court as part of the judgment. The Parties covenant and agree that they intend by this Section to compensate for attorneys' fees actually incurred by the prevailing party to the particular attorneys involved at such attorneys' then normal hourly rates and that this Section shall constitute a request to the court that such rate or rates be deemed reasonable.

**ARTICLE IV  
BINDING NATURE; SUCCESSORS AND ASSIGNS**

This Assignment shall inure to the benefit of and be binding upon the successors and permitted assigns of the Parties hereto. This Assignment shall not be assigned by either Party (whether pursuant to a merger, by operation of law or otherwise) without the prior written consent of the other Party.

**ARTICLE V  
MISCELLANEOUS**

Section 5.1. Severability. If any term or other provision of this Assignment is invalid, illegal or incapable of being enforced by any rule of law, or public policy, all other conditions and provisions of this Assignment shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner adverse to either Party.

Section 5.2. Notices. All notices under this Assignment shall be given to the Parties in the manner prescribed in Section 13.1 of the Agreement.

Section 5.3. Counterparts. This Assignment may be executed in one or more counterparts, and by the different parties hereto in separate counterparts, and delivered electronically or by facsimile, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

*[remainder of page left intentionally blank]*



IN WITNESS WHEREOF, this Assignment has been duly executed and delivered by each Party as of the date first above written.

**ELECTRON HYDRO, LLC**

**PUGET SOUND ENERGY, INC.**

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

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

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

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

Its: \_\_\_\_\_

Its: \_\_\_\_\_

**CONSENT TO ASSIGNMENT**

In connection with the foregoing Assignment:

1. The Tribe hereby acknowledges, waives any objections and conditions, and consents to the assignment of the REA to Electron Hydro, LLC, without waiver of the restriction contained in the REA concerning further assignment.

2. The Tribe further agrees that all future notices required to be sent to PSE under the REA shall be sent, in addition to any other party, to:

Electron Hydro LLC  
3633 Alderwood Avenue  
Bellingham, WA 98225  
Phone: 360-738-9999  
Attn: Thom A. Fischer, Chief Operating Officer

3. The terms and conditions of this Consent shall inure to the benefit of and be binding upon the respective successors and assigns of the parties. Nothing in this Consent express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations or liabilities under or by reason of the Assignment, except as expressly provided in this Assignment.

IN WITNESS WHEREOF, this Consent to Assignment is executed as of the date first above written.

**PUYALLUP TRIBE OF INDIANS**

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

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

Its: \_\_\_\_\_

# **EXHIBIT D**

## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "Agreement") dated as of May 30, 2013 (the "Effective Date"), is made and entered into by and between ELECTRON HYDRO, LLC, a Delaware limited liability company ("Buyer"), and PUGET SOUND ENERGY, INC., a Washington corporation ("Seller"). Buyer and Seller are referred to herein each individually as a "Party", and collectively as the "Parties".

## RECITALS

A. Seller owns that certain hydroelectric facility located in Pierce County, Washington with a nameplate generating capacity of 25.8 megawatts commonly known as the Electron Hydroelectric Facility, as more specifically described in Exhibit A-5 (the "Electron Facility").

B. Seller desires to sell, and Buyer desires to purchase, the Electron Facility on the terms and conditions set forth in this Agreement.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements set forth in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## ARTICLE 1

## PURCHASE AND SALE

1.1 Purchase and Sale of Assets. Except for the Excluded Assets, on and subject to the terms and conditions of this Agreement, on the Closing Date, Buyer agrees to purchase from Seller, and Seller agrees to sell, transfer, convey, assign and deliver to Buyer, all of Seller's right, title and interest in and to the Electron Facility and all properties, assets, rights and claims exclusively used by Seller in the operation of the Electron Facility, free and clear of all Encumbrances, other than Permitted Exceptions as defined in Section 3.1.1 (collectively, the "Transferred Assets"), including (without limitation) the following assets:

1.1.1 the real property described on Exhibit A-1 (the "Real Property"), including the appurtenant water rights generally described in Exhibit A-2 (collectively, the "Water Rights"), the Neisson Creek Water Right (as that term is defined in Exhibit A-2) and the road interests generally described on Exhibit A-3 (the "Road Interests");

1.1.2 the buildings, fixtures, landscaping and other improvements upon and attached to the Real Property (the "Improvements");

1.1.3 to the extent not included as part of the Real Property or the Improvements, the Electron Facility itself, as well as buildings, fixtures and other improvements upon and associated with the Electron Facility;

1.1.4 all tangible property located at, in or on the Electron Facility, including all of the machinery, equipment, tooling, supplies, inventory, and furniture (collectively, the "Personal Property");

1.1.5 the vehicles, trailers and other rolling stock listed on the attached Exhibit B (collectively, the “**Fleet Vehicles**”);

1.1.6 the agreements, contracts, use permits and other similar arrangements listed on Exhibit C-1, and all rights thereunder (collectively, the “**Contracts**”);

1.1.7 all approvals, permits, licenses, orders, registrations, certificates, variances, and similar rights obtained from governments and governmental agencies (collectively, the “**Permits**”), listed on Exhibit C-2;

1.1.8 Seller’s FCC authority to operate the radio facilities on frequencies 451.250 MHz and 456.250 MHz at “Location 1” and “Location 2” as currently specified on the license for FCC Call Sign WNRJ531 (the “**FCC License**”);

1.1.9 the 115kv line generally shown on Exhibit D (the “**Facility Line**”); and

1.1.10 all books, records, ledgers, files, documents, correspondence, lists, plats, architectural plans, drawings, and specifications, studies, reports, and other printed or written materials in Seller’s possession related primarily to the Electron Facility (the “**Books and Records**”), all general intangibles relating primarily to the design, development, operation and use of the Electron Facility, and all goodwill related to the Electron Facility.

1.2 Excluded Property. The Transferred Assets do not include, and Buyer will have no, right, title or interest in and to the Seller Retained Property (defined in Section 3.3.1), or assets of Seller or its affiliates described in Exhibit E (the “**Excluded Assets**”). Without limiting the generality of the foregoing and for avoidance of doubt, Seller or its affiliates are retaining, and nothing in this Agreement or any instrument made in connection herewith will be construed as assigning or conveying, any right, title or interest in and to any of the Excluded Assets.

1.3 Transfer of Certain Liabilities to Buyer. On the Closing Date, Buyer will assume the following liabilities and obligations of Seller: (1) all continuing liabilities and obligations of Seller under the transferred Contracts, Permits, Water Rights and FCC License; (2) all liabilities and obligations set forth on Exhibit F; (3) liabilities relating to the Transferred Assets or arising out of the operation or ownership of the Transferred Assets after the Closing Date; (4) any Taxes allocated to Buyer pursuant to Article 5; and (5) any and all transaction expenses incurred by Buyer or any of its Affiliates in connection with this Agreement and the transactions contemplated hereby (collectively, the “**Assumed Liabilities**”). For the avoidance of doubt, Buyer shall not assume or otherwise become responsible for any liabilities arising from or related to the Transferred Assets other than the Assumed Liabilities, including (without limitation) the following liabilities (collectively, “**Excluded Liabilities**”): (a) any Indebtedness of Seller or any of its Affiliates; (b) any liabilities to the extent arising out of or relating to an Excluded Asset; (c) any liabilities to the extent arising from the conduct of any business of the Seller or its Affiliates; (d) liabilities relating to the Transferred Assets or arising out of the operation or ownership of the Transferred Assets prior to or on the Closing Date; (e) liabilities relating to or arising out of the employment of Seller’s employees, or the employment or termination of the Buyer Employees by Seller prior to or on the Closing Date; (f) any liabilities or obligations pursuant to any labor relations agreement, including but not limited to the Collective Bargaining Agreement between International Brotherhood of Electrical Workers Local Union No. 77 and Puget Sound Energy, September 1, 2010 through March 31, 2014; (g) any liabilities for any unfair labor practices of Seller; (h) any Taxes allocated to the Seller and its Affiliates pursuant to Article 5; and (i) any and all transaction expenses incurred by Seller or any of its Affiliates in connection with this Agreement and the transactions contemplated hereby.

## ARTICLE 2

### PURCHASE PRICE; EARNEST MONEY

2.1 Purchase Price. The total purchase price (the "**Purchase Price**") for the Transferred Assets is Thirteen Million Seven Hundred Thousand Dollars (\$13,700,000.00).

2.2 Earnest Money. Within two (2) business days of the Effective Date, Buyer will deliver to First American Title Insurance Company (the "**Title Company**") the amount of One Million Two Hundred Thousand Dollars (\$1,200,000) (the "**Earnest Money**"). The Earnest Money will be held by the designated escrow agent in a federally insured interest-bearing escrow account acceptable to Seller and will be disbursed in accordance with this Agreement. The Earnest Money will be applied to the Purchase Price and is nonrefundable after ninety (90) days from the Effective Date, absent (a) Seller's default in or inability to perform the transactions contemplated hereunder or (b) termination of this Agreement pursuant to ARTICLE 12 (except as provided for in Section 12.2). **IN THE EVENT BUYER FAILS, WITHOUT LEGAL EXCUSE, TO COMPLETE THE PURCHASE OF THE TRANSFERRED ASSETS, THE EARNEST MONEY WILL BE FORFEITED TO SELLER AS LIQUIDATED DAMAGES AS THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO SELLER.** Seller and Buyer agree that the liquidated damages represent a reasonable sum considering all of the circumstances existing on the date of this Agreement and represent a reasonable estimate of the losses that Seller will incur if Buyer fails to purchase the Transferred Assets.

2.3 Allocation. Buyer and Seller shall allocate the Purchase Price (including, for the avoidance of doubt, the Assumed Liabilities to the extent treated as "amount realized" for U.S. federal income tax purposes) among the Transferred Assets in accordance with the attached Schedule 2 (the "**Purchase Price Allocation**"). Buyer, Seller and their Affiliate shall file all Tax Returns (including, but not limited to Internal Revenue Service Form 8594) in all respects and for all purposes consistent with such Purchase Price Allocation and shall not take any position (whether in audits, Tax Returns or otherwise) that is inconsistent with such Purchase Price Allocation unless otherwise required to do so by applicable law.

2.4 Withholding. To the extent that any taxes may be required to be deducted or withheld under any applicable provision of federal, state, local, or non-U.S. Tax law or under any applicable law, Buyer shall be entitled to deduct and withhold such taxes from any consideration payable or otherwise deliverable in connection with the transactions contemplated by this Agreement. To the extent such amounts are so deducted or withheld and properly remitted to the appropriate taxing authority, such amounts shall be treated for all purposes under this Agreement as having been paid to the person to whom such amounts would otherwise have been paid.

## ARTICLE 3

### TITLE INSURANCE; REAL PROPERTY SEPARATION; EASEMENTS

3.1 Title Insurance.

3.1.1 The Title Company has provided Buyer and Seller with (i) a preliminary commitment, and (ii) a copy of all documents and exceptions referenced in the preliminary commitment pertaining to the Transferred Assets (collectively, the "**Title Report**"). Seller has also provided Buyer with notification of any Encumbrances or potential Encumbrances that are both (A) not reflected in the Title Report and (B) within Seller's Knowledge. The following Encumbrances shall be deemed accepted by Buyer: (a) any Encumbrance for Taxes not yet due and payable; (b)

zoning, planning, and other similar limitations and restrictions, and all rights of any governmental authority to regulate any property that do not, in the aggregate, materially detract from the value of the affected portion of the Transferred Assets; (c) any Encumbrances created by or through Buyer; and (d) any Encumbrance that Buyer has accepted by giving written notice of such acceptance to Seller (collectively, "**Permitted Exceptions**").

3.1.2 Buyer will give written notice to Seller of any Encumbrances in Seller's title to the Transferred Assets to which it objects on or before the date which is forty-five (45) calendar days from the Effective Date ("**Title Objection Deadline**"). Any Encumbrances not objected to by Buyer by the Title Objection Deadline shall be deemed Permitted Exceptions. Seller shall have fifteen (15) calendar days after Seller's receipt of Buyer's notice of title objections to notify Buyer of which Encumbrances Seller will cure. Failure by Seller to provide such notice within the timeframe provided shall be deemed Seller's election not to cure such objected-to Encumbrances. In the event Seller elects not to cure such objected-to Encumbrances, Buyer may, within fifteen (15) calendar days after either receipt of Seller's notice of its election regarding Encumbrances, or expiration of Seller's fifteen (15) calendar day response period: (A) elect, by written notice to Seller, to accept such Encumbrances as Seller declines to cure (which Encumbrances will thereafter be deemed Permitted Exceptions); or (B) elect to terminate this Agreement. Without limiting the foregoing, Seller may, with Buyer's written consent, extend Closing for a period not to exceed thirty (30) calendar days to remove or obtain an endorsement with respect to any Encumbrance that Seller elects to cure. On the Closing Date, Seller shall convey the Transferred Assets to Buyer free and clear of all Encumbrances except the Permitted Exceptions.

3.1.3 If additional Encumbrances are disclosed in a supplemental title report, Buyer and Seller will review and respond to such Encumbrances in accordance with the provisions of subsections 3.1.1 and 3.1.2 hereof, except that Buyer shall have seven (7) calendar days to provide any objections to Encumbrances disclosed in the supplemental title report, and Seller shall have seven (7) calendar days to indicate whether it intends to cure the objected-to Encumbrances. Buyer shall thereafter have seven (7) calendar days after either receipt of Seller's notice of its election regarding Encumbrances, or expiration of Seller's seven (7) calendar day response period, to elect: (A) by written notice to Seller, to accept such Encumbrances as Seller declines to cure (which Encumbrances will thereafter be deemed Permitted Exceptions); or (B) to terminate this Agreement.

3.1.4 In addition, Buyer, at its own expense, may elect to have an ALTA survey prepared within forty-five (45) days from the Effective Date. Buyer and Seller will review and respond to any ALTA survey in accordance with the provisions of subsections 3.1.1 and 3.1.2 hereof.

3.2 [Reserved]

3.3 Real Property Separation: Seller and Buyer Easements.

3.3.1 Seller shall complete all boundary line adjustments and/or such other processes, and obtain all applicable government and/or regulatory authority consents and approvals (collectively, the "**Real Property Separation**") as are required so that each of the Real Property and the property to be retained by Seller (the "**Seller Retained Property**") constitute legally conveyable parcels. The Seller Retained Property is described on Exhibit A-4. Final boundary lines of the Seller Retained Property shall be determined in the Real Property Separation, which shall be subject to the mutual agreement of both Parties prior to being finalized.

3.3.2 Within sixty (60) days from the Effective Date, Seller and Buyer shall agree upon (A) the form of the easement agreement (collectively, the “**Seller Easement Agreements**”) for the blanket easements to be retained by Seller for (i) construction, maintenance, removal, repair and/or replacement of existing and future Seller infrastructure and equipment; and (ii) access to the Seller Retained Property from a public right of way or private easement area (collectively, the “**Seller Easements**”); and (B) the form of the easement agreement (collectively, the “**Buyer Easement Agreements**”) for Buyer’s easements over the Seller Retained Property for operation of the Electron Facility, including, without limitation, maintaining existing electrical and communications lines, installing new electrical and communications lines, road access, storage of dry materials, and other activities required for the repowering and maintenance of the Electron Facility, subject to certain limitations as set forth in Section 9.3.1 (collectively, the “**Buyer Easements**”). Such forms shall include estimated width and location of each of the Seller Easements and Buyer Easements, if applicable, and as may be reasonably modified upon Seller’s survey work as part of the Real Property Separation, subject to the mutual agreement of both Parties prior to any such modifications being finalized.

## ARTICLE 4

### CLOSING; CONDITIONS TO CLOSING; DELIVERIES

4.1 Time and Place of Closing. Unless this Agreement shall have been terminated in accordance with ARTICLE 12, the closing of the transactions contemplated by this Agreement (the “**Closing**”) will take place at the offices of legal counsel to Seller, Riddell Williams P.S., 1001 Fourth Avenue, Suite 4500, Seattle, WA 98154, on a date and at a time to be agreed upon by Seller and Buyer, which date shall be no later than the tenth (10th) business day after the satisfaction or waiver of the last to be satisfied of the conditions set forth in Section 4.2 (excluding conditions that by their terms are to be satisfied on the Closing Date, but subject to the satisfaction or waiver of such conditions), or at such other location, date and time as Seller and Buyer shall mutually agree upon in writing.

4.2 Conditions to Closing. Closing is subject to the fulfillment of each of the following conditions (all or any of which may be waived in whole or in part by the mutual agreement of the Parties in their respective sole discretion):

4.2.1 Seller has obtained the approval of the State of Washington Utilities and Transportation Commission (“**WUTC**”), and the Seller and the Buyer have obtained the approval of the Federal Energy Regulatory Commission (“**FERC**”), to Seller’s sale of the Transferred Assets on terms reasonably satisfactory to Seller and Buyer;

4.2.2 (i) Buyer has executed a Renewable Resource Agreement (“**RRA**”) with the Puyallup Tribe (the “**Tribe**”), in form and substance satisfactory to Buyer in its sole discretion; and (ii) Seller has received the consent of the Tribe to the termination of the current Resource Enhancement Agreement between Seller and the Tribe;

4.2.3 Buyer and Seller have executed a Power Purchase Agreement, the form of which is attached hereto as Exhibit I (the “**PPA**”), and approval of the PPA by the WUTC, if applicable, shall have been received;

4.2.4 The Federal Communications Commission has accepted the FCC Application for Assignments of Authorization relating to the transfer of the FCC License to Buyer, without new limitations or conditions that would adversely impact operation of the Electron Facility, in Buyer’s sole discretion;

4.2.5 The Title Company is irrevocably committed to issue to Buyer an Owner's ALTA Standard Form (or, if Buyer elects to have an ALTA survey prepared pursuant to Section 3.1.3, then an Owner's ALTA Extended Form) Policy of Title Insurance (the "**Title Policy**") for the Real Property and Buyer Easements, subject only to the Permitted Exceptions;

4.2.6 Seller has completed the Real Property Separation;

4.2.7 Seller has completed all survey work necessary for the Seller Easements and the Buyer Easements;

4.2.8 Seller has received the written consent of the applicable counterparty to the assignment to Buyer of each of the Contracts and Permits identified on Exhibit C-1 and Exhibit C-2;

4.2.9 The Transferred Assets have been released from the lien and security interest created under that certain First Mortgage dated as of June 2, 1924 from Puget Sound Power & Light Company, as supplemented and amended, and all other Encumbrances, except for Permitted Exceptions;

4.2.10 Seller has taken such steps as are necessary to release the Personal Property and Fleet Vehicles from its internal accounting procedures;

4.2.11 The Parties have agreed to a transition plan ("**Transition Plan**"), which describes, among other things: (i) how the Seller will disconnect the Electron Facility from its internal communication and computer systems, including the removal of any equipment that is an Excluded Asset; (ii) steps necessary to ensure full operation of Seller's infrastructure remaining on the Seller Retained Property; and (iii) proposed timeframes for all transition-related activities, some of which the Parties acknowledge will occur after Closing;

4.2.12 There will not be in effect, pending or threatened on the Closing Date any order or law restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement;

4.2.13 No Material Adverse Effect shall have occurred;

4.2.14 The Parties have agreed on an initial work plan for activities that, to Buyer's Knowledge, it will need to engage in on the Seller Retained Property, subject to the requirements and limitations of Section 9.3.1;

4.2.15 The Parties have agreed to the portions of the Real Property in which Buyer shall be deemed to have notice of potential Pre-Existing Releases (collectively, "**Known Pre-Existing Release Zones**") for purposes of determining whether Buyer's activities in such Known Pre-Existing Release Zones could expose Buyer to liability for exacerbating known Pre-Existing Releases in accordance with Section 9.3.3(d), and a list and map of such Known Pre-Existing Release Zones have been attached as Exhibit N;

4.2.16 The Parties have agreed on an initial work plan for activities that, to Buyer's Knowledge, it will need to engage in within the Known Pre-Existing Release Zones, subject to the requirements and limitations of Section 9.3.3(d);

4.2.17 Seller has completed the removal from the Real Property of certain materials that may constitute and/or contain Pre-Existing Releases in compliance with that certain



Access Permit between John Hancock Life & Health Insurance Company, acting through its limited agent Hancock Forest Management Inc. (“**Hancock**”), and Seller, dated November 2, 2011;

4.2.18 The Parties have agreed to a one hundred fifty-five dollar (\$155.00) per month lease relating to that certain microwave tower owned by Seller and installed on the Seller Retained Property (“**Microwave Tower**”), which lease shall provide for the placement of the Electron Facility’s radio antenna;

4.2.19 Assignment to Buyer of, or execution of a new easement to replace, that certain Easement between Champion International Corporation and Puget Sound Power & Light Company, dated as of November 20, 1985;

4.2.20 Hancock and Buyer have executed: (i) an easement, in form and substance satisfactory to the Buyer, sufficient for the Buyer to access certain facilities required pursuant to the RRA; and (ii) a boundary line agreement addressing portions of the Electron Facility’s flume that may cross property boundary lines;

4.2.21 The representations and warranties set forth in Article 7 shall be true and correct in all material respects as of the Effective Date and the Closing Date; and

4.2.22 Seller has delivered the items set forth in Section 4.3 to Buyer, and Buyer has delivered the items set forth in Section 4.4 to Seller; provided, that each Party may, in its sole discretion, waive the delivery of any item(s) to be delivered by the other Party.

4.3 Seller’s Deliveries at Closing. At Closing, Seller will deliver to Buyer the following items:

4.3.1 an original bargain and sale deed substantially in the form set forth in Exhibit G-1 for the Real Property and the Water Rights, duly executed and acknowledged by Seller (the “**B&S Deeds**”);

4.3.2 an original Quit Claim Deed substantially in the form set forth in Exhibit G-2, duly executed by and acknowledged by Seller, for any gaps between the parcels, if any, as shown through the Real Property Separation or other survey work, for any real property interests in the Neisson Creek Water Right, and for Seller’s real property interests in the Road Interests (collectively, the “**QC Deeds**”; together with the B&S Deeds, the “**Deeds**”);

4.3.3 the Books and Records, including, without limitation, copies of any surveys and other records in the possession of Seller that may be useful (as reasonably determined by the Parties) for the management of the Transferred Assets;

4.3.4 the original of the Non-Foreign Affidavit, substantially in the form set forth in Exhibit H, duly executed and acknowledged by Seller;

4.3.5 original counterparts of all necessary State of Washington real estate excise Tax and use Tax affidavits for the transfer of the Real Property, Personal Property and Fleet Vehicles, duly executed and acknowledged by Seller;

4.3.6 An original of the PPA, duly executed by Seller;

4.3.7 An original Large Generator Interconnection Agreement in substantially the form attached hereto as Exhibit J, duly executed by Seller (the "LGIA");

4.3.8 an original assignment and assumption agreement in substantially the form attached hereto as Exhibit K, duly executed by Seller (the "Assignment and Assumption Agreement");

4.3.9 an original bill of sale in substantially the form attached hereto as Exhibit L, duly executed by Seller ("Bill of Sale");

4.3.10 an original of each of the Seller Easement Agreements, duly executed and acknowledged by Seller;

4.3.11 an original of each of the Buyer Easement Agreements, duly executed and acknowledged by Seller;

4.3.12 a copy of that certain Road and Utility Easement Agreement, dated October 31, 2007, by and between 730 Texas Timberlands II, Ltd. and Seller, which Seller will record in the real property records;

4.3.13 endorsed certificates of title for any titled vehicles listed on Exhibit B; and

4.3.14 any other documents required by this Agreement to be delivered by Seller.

4.4 Buyer's Deliveries at Closing. At Closing, Buyer will deliver to Seller the following items:

4.4.1 an original of each of the Seller Easement Agreements, duly executed and acknowledged by Buyer;

4.4.2 an original of each of the Buyer Easement Agreements, duly executed and acknowledged by Buyer;

4.4.3 original counterparts of all necessary State of Washington real estate Tax and use Tax affidavits for the transfer of the Real Property, Personal Property and Fleet Vehicles, duly executed and acknowledged by Buyer;

4.4.4 an original of the PPA, duly executed by Buyer;

4.4.5 an original of the LGIA, duly executed by Buyer;

4.4.6 an original of the Assignment and Assumption Agreement, duly executed by Buyer;

4.4.7 any other documents required by this Agreement to be delivered by Buyer; and

4.4.8 the balance of the Purchase Price in immediately available funds.

## ARTICLE 5

### PRORATIONS AND CLOSING COSTS

5.1 Prorations. Real property and personal property ad valorem Taxes, and any similar Taxes imposed by any jurisdiction in Washington State, assessed with respect to the year of Closing for the Transferred Assets will be prorated as of the Closing Date, based upon the actual days involved. Seller will be responsible for and pay all such ad valorem Taxes and expenses prorated for any period prior to and on the Closing Date, and Buyer will be responsible for and pay all such ad valorem Taxes and expenses prorated for any period after the Closing Date. To the extent that the amounts of such charges are unavailable on the Closing Date, or in the event prorations were incorrect because of erroneous information, clerical errors or because of reassessment by the applicable governmental or regulatory authority, or if there is a Tax charge to the incorrect Party due to processing delay or error by the applicable governmental or regulatory authority, a readjustment of these items will be made and reimbursements, if any, will be paid within thirty (30) calendar days after the Closing Date or as soon as practical after any reassessment, or the discovery of any erroneous information, clerical error, or delay. In the event either Party pays any real property or personal property ad valorem Taxes for the Transferred Assets that are allocable to the other Party under this Section 5.1, such other Party will reimburse the paying Party for such amounts within thirty (30) calendar days of the paying Party's request for the same, which shall include the applicable Tax statement or documentation supporting such reimbursement.

5.2 Buyer's Closing Costs. Buyer will pay (i) one-half of the Title Company's fees; (ii) one-half of the applicable sales and use Tax, and any similar Taxes imposed by any jurisdiction in Washington State, on any of the Personal Property or Fleet Vehicles that may be included in the transaction; (iii) the extended coverage portion of the title insurance premium, if any, and the costs of any additional surveys needed for such extended coverage; (iv) the costs related to any title endorsements that Buyer may desire, and all costs associated with any mortgagee policy; (v) the costs associated with any survey requested by Buyer that is in addition to the survey work for the Real Property Separation, the Seller Easements and the Buyer Easements; (vi) one-half of the State of Washington excise Tax, and any similar Taxes imposed by any jurisdiction in Washington State, due upon the conveyance of the Real Property; (vii) recording fees relating to the recording of the Deeds, conveyance instruments or other documents; and (viii) one-half of any filing fees related to FERC, WUTC or FCC approvals for the sale of the Transferred Assets. Buyer is responsible for its own legal fees, expenses and costs incurred by Buyer in the consummation of the transactions contemplated herein.

5.3 Seller's Closing Costs. Seller will pay (i) the premium for the standard form of the Title Policy; (ii) one-half of the Title Company's fees; (iii) one-half of the applicable sales and use Tax, and any similar Taxes imposed by any jurisdiction in Washington State, on any of the Personal Property or Fleet Vehicles that may be included in the transaction; (iv) one-half of the State of Washington excise Tax, and any similar Taxes imposed by any jurisdiction in Washington State, due upon the conveyance of the Real Property; (v) the costs of the Real Property Separation; (vi) costs associated with any survey work for the Seller Easements and the Buyer Easements; (vii) one-half of any filing fees related to FERC, WUTC or FCC approvals for the sale of the Transferred Assets; and (viii) any general or special assessments relating to the Transferred Assets up to Closing, together with any compensatory or roll back Taxes, interest and penalties on any portion of the Real Property arising from a termination of a preferential tax classification of all or any portion of the Real Property as a result of its conveyance. Seller is responsible for its own legal fees, expenses and costs incurred by Seller in the consummation of the transactions contemplated herein.

5.4 Other Taxes. With respect to all Taxes not described in Sections 5.1, 5.2, or 5.3 (including Taxes computed on the basis on income) relating to the ownership or operation of the

Transferred Assets, Seller shall be responsible for all such Taxes for taxable periods or portions thereof ending before or on the Closing Date and Buyer shall be responsible for all other such Taxes, it being understood that for any taxable period that begins before or on the Closing Date and ends after the Closing Date, such taxable period shall be treated as if it consisted of two (2) taxable years or periods, one which ended at the close of the Closing Date and the other which began at the beginning of the day following the Closing Date.

## ARTICLE 6

### AS IS, WHERE IS; LIMITATION ON LIABILITIES

6.1 As Is, Where Is. Buyer acknowledges and agrees that, except for Seller's representations and warranties set forth in this Agreement and the B&S Deeds, including (without limitation) Section 7.1 hereof:

6.1.1 at Closing the Transferred Assets will be conveyed by Seller and accepted by Buyer "AS IS," "WHERE IS" and "WITH ALL FAULTS AND DEFECTS" and that neither Seller nor its Representatives have made or will be making any warranty or representation, express or implied, or arising by operation of law, regarding the Transferred Assets, including, without limitation, any warranty of quality, condition, merchantability, and/or fitness for a particular purpose or title; and

6.1.2 Buyer has been provided the opportunity to inspect and make such investigations regarding the Transferred Assets and has performed such due diligence inspection and investigation of the Transferred Assets and their suitability for Buyer's purposes (including review of documents and information provided), as Buyer deems appropriate, necessary and prudent for Buyer to enter into this Agreement and, except as expressly provided otherwise in this Agreement or the Exhibits attached hereto, consummate the transactions contemplated hereunder.

6.2 Limitation of Liability. UNDER NO CIRCUMSTANCES WILL EITHER PARTY OR ITS AFFILIATES BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES UNDER OR PURSUANT TO THIS AGREEMENT FOR INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOST PROFITS, LOSS OF BUSINESS OR USE OF PROPERTY, OR COST OF CAPITAL, WHETHER IN AN ACTION FOR CONTRACT OR TORT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OR EXISTENCE OF SUCH DAMAGES.

## ARTICLE 7

### REPRESENTATIONS, WARRANTIES AND COVENANTS

7.1 By Seller. As an inducement to Buyer to enter into this Agreement and to consummate the transactions contemplated hereby, Seller represents and warrants that as of the date of this Agreement and as of the Closing Date:

7.1.1 Seller is a corporation, duly organized and validly existing under the laws of the State of Washington.

7.1.2 Seller has all requisite corporate power and authority to enter into, execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby.

7.1.3 The execution and delivery by Seller of this Agreement and the performance by Seller of its obligations hereunder have been duly and validly authorized by all necessary corporate action on its behalf.

7.1.4 This Agreement constitutes Seller's legal, valid and binding obligation, enforceable against it in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws relating to or affecting the rights of creditors generally or by general equitable principles.

7.1.5 The execution and delivery by Seller of this Agreement does not, and the performance by Seller of its obligations hereunder and the consummation of the transactions contemplated hereby will not:

(a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the organizational documents of Seller or any resolution adopted by its board of directors; or

(b) be in violation of or result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which Seller is a party or by which it or the Transferred Assets may be bound where such violation or default would have a Material Adverse Effect on Seller's ability to consummate the transactions contemplated in this Agreement; or

(c) require the consent, approval, authorization or permit, or filing with or notification to, any governmental or regulatory authority or any person or entity except for those approvals described in Section 4.2 above, or

(d) subject to Seller obtaining the approvals specified in clause (c) above, materially conflict with or result in a material violation or breach of any term or provision of any laws or order applicable to Seller or any of the Transferred Assets.

7.1.6 Except as disclosed on Schedule 7.1.6 of the Disclosure Schedule, there are no actions or proceedings involving or before any governmental or regulatory authority that are pending or, to Seller's Knowledge, threatened against Seller (i) relating to the Transferred Assets or (ii) which would reasonably be expected to result in the issuance of an order restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement.

7.1.7 Except as disclosed on Schedule 7.1.7 of the Disclosure Schedule, to Seller's Knowledge, since January 1, 2012 Seller has been in material compliance with all applicable laws with respect to the Transferred Assets, and the Transferred Assets have otherwise been utilized during such period in material compliance with all applicable laws.

7.1.8 Except as disclosed on Schedule 7.1.8 of the Disclosure Schedule, to Seller's Knowledge, Seller currently has all material permits and other governmental authorizations, and has made all registrations or filings with or notices to any governmental entity, which are required for the operation of the Electron Facility as conducted since January 1, 2012 (collectively, the "Seller Permits"). To Seller's Knowledge, since January 1, 2012, Seller has not been in default or violation (and no event has occurred which, with notice or the lapse of time or both, would constitute a default or violation) of any material term, condition, or provision of any Seller Permits.

Seller has received no notification that any proceeding to modify, suspend, revoke, withdraw, terminate or otherwise materially limit any such Seller Permits is pending and, to Seller's Knowledge, no such proceeding is threatened. Seller has received no notice that any action by any governmental entity has been taken or, to Seller's Knowledge, threatened, in connection with the expiration, continuance or renewal of any Seller Permits.

7.1.9 To the extent that failure to do so would adversely affect Buyer's ownership or use of the Transferred Assets, Seller has (i) timely and accurately filed or caused to be filed, all written or electronic returns, reports or statements with respect to any Tax ("Tax Returns") required to be filed with the appropriate taxing authorities in all jurisdictions in which such Tax Returns are required to be filed (taking into account any extension of time to file granted or to be obtained on behalf of Seller); and (ii) paid all material Taxes payable whether or not shown on such Tax Returns. There are no liens for Taxes on any of the Transferred Assets, other than liens for Taxes that are not yet due and payable.

7.1.10 To Seller's Knowledge, and except as set forth on Schedule 7.1.10 of the Disclosure Schedule, since January 1, 2012, there has not been any (i) material destruction of, damage to, or loss affecting any of the Transferred Assets or any assets that would be material to the operation of the Electron Facility in substantially the same manner as it has been operated by the Seller since January 1, 2012; (ii) commencement of any lawsuit, arbitration or similar dispute resolution process involving the Transferred Assets or otherwise related to the Electron Facility; or (iii) agreement by Seller or any of its Affiliates to do any of the foregoing.

7.1.11 Assuming Buyer obtains all necessary permits, governmental authorizations and related approvals necessary for the utilization of the Transferred Assets and the operation of the Electron Facility, and subject to achieving the closing conditions described in Article 4, the Transferred Assets, together with the rights to be provided to Buyer under this Agreement and the other agreements and instruments entered into in connection herewith, considered together, include such assets as are required for Buyer to operate the Electron Facility immediately following the Closing in substantially the same manner it has been operated by the Seller since January 1, 2012.

7.1.12 Except for the Permitted Exceptions and subject to achieving the closing conditions described in Article 4, the Transferred Assets are solely and exclusively owned beneficially by Seller, or Seller has valid, transferrable rights therein, and in either case are free and clear of all Encumbrances, and Seller has good and marketable title or valid transferrable interests thereto.

7.1.13 Except as set forth on Schedule 7.1.13 of the Disclosure Schedule, with respect to employees or independent contractors who have performed services for Seller at the Electron Facility at any time since January 1, 2009 (collectively, "Seller Service Providers"), Seller is not a party to or bound by any injunction, order, consent decree, ruling or similar mandate of any governmental or regulatory authority that would have a continuing obligation on the Buyer regarding such Seller Service Providers following Closing.

7.2 By Buyer. As an inducement to Seller to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer represents and warrants that as of the date of this Agreement and as of the Closing Date:

7.2.1 Buyer is a limited liability company, duly organized and validly existing under the laws of the State of Delaware.

7.2.2 Buyer has all requisite power and authority to enter into, execute and deliver this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby.

7.2.3 The execution and delivery by Buyer of this Agreement and the performance by Buyer of its obligations hereunder have been duly and validly authorized by all necessary action on its behalf.

7.2.4 This Agreement constitutes Buyer's legal, valid and binding obligation, enforceable against it in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, arrangement, moratorium or other similar laws relating to or affecting the rights of creditors generally or by general equitable principles.

7.2.5 The execution and delivery by Buyer of this Agreement, the performance by Buyer of its obligations hereunder and the consummation of the transactions contemplated hereby will not (with or without the giving of notice or lapse of time or both):

(a) conflict with or result in a violation or breach of any of the terms, conditions or provisions of the organizational documents of Buyer or any resolution adopted by its members;

(b) be in violation of or result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which Buyer is a party or by which any of its assets or property may be bound where such violation or default would have a Material Adverse Effect on Buyer's ability to consummate the transactions contemplated in this Agreement;

(c) require the consent, approval, authorization or permit, or filing with or notification to, any governmental or regulatory authority or any person or entity except for those approvals described in Section 4.2 above; or

(d) materially conflict with or result in a material violation or breach of any term or provision of any laws or order applicable to Buyer or any of its assets and properties.

7.2.6 There are no actions or proceedings involving or before any governmental or regulatory authority that are pending or, to Buyer's Knowledge, threatened against Buyer which would reasonably be expected to result in the issuance of an order restraining, enjoining or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement.

### 7.3 Buyer Employees.

7.3.1 After the Effective Date, and a reasonable time prior to Closing, the Buyer will interview and make an offer of employment to the employees of Seller listed on the attached Exhibit M, on the terms and conditions to be determined by the Buyer in the Buyer's sole discretion. Any such individual who accepts an offer of employment from the Buyer will become a "Buyer Employee" effective as of the day after the Closing Date.

7.3.2 Without limiting Section 7.3.1, except to the extent prohibited by law, the Seller agrees to use commercially reasonable efforts to facilitate the transition of Buyer Employees

to employment with the Buyer, including without limitation taking any necessary action to document the separation of the Buyer Employees from employment with the Seller.

7.3.3 The provisions of this Section 7.3 are for the sole benefit of the Parties and their permitted successors and assigns, and nothing herein, expressed or implied, will give or be construed to give any Person, other than the Parties hereto and such permitted successors and assigns, any legal or equitable rights hereunder.

7.3.4 Buyer and Seller will not elect to utilize the alternate procedure set forth in Revenue Procedure 2004-53 with respect to wage withholding for the Buyer Employees.

## ARTICLE 8

### DAMAGE OR CONDEMNATION

Following the occurrence of any event prior to the Closing Date, causing damage to or destruction of the Transferred Assets or any portion thereof, Seller will use good faith efforts to notify Buyer of such occurrence. Under any such circumstances the provisions of this Article 8 will apply.

8.1 Casualty Loss. If there is any casualty loss equal to or less than One Hundred Thousand Dollars (\$100,000), the obligations of each Party under this Agreement will continue, and Seller will retain the proceeds of all insurance related to such damage and reduce the Purchase Price by the amount reasonably necessary, as determined by mutual agreement of the Parties, to repair such damage or, if repair is impractical, to reflect the diminution of the value of the Transferred Assets, and the Purchase Price, as so adjusted, will be paid without further reduction by reason of such loss. If there is any casualty loss in excess of One Hundred Thousand Dollars (\$100,000) then, in Buyer's sole discretion, either (a) the obligations of each Party under this Agreement will continue, and Seller will retain the proceeds of all insurance related to such damage and reduce the Purchase Price by the amount reasonably necessary, as determined by mutual agreement of the Parties, to repair such damage or, if repair is impractical, to reflect the diminution of the value of the Transferred Assets, and the Purchase Price, as so adjusted, will be paid without further reduction by reason of such loss, or (b) Buyer may terminate this Agreement in accordance with Section 12.1.5.

8.2 Eminent Domain. If at any time after the Effective Date, Seller receives any notice of any condemnation proceedings, or other proceedings in the nature of eminent domain, it will promptly send a copy of such notice to Buyer. If all or any part of the Real Property, the Improvements or the Electron Facility constituting the Transferred Assets is taken by condemnation or eminent domain and the value of the portion of the Real Property so taken exceeds Two Hundred Fifty Thousand Dollars (\$250,000), Buyer and Seller will each have the right to terminate this Agreement in the manner specified by this Section 8.2. Such election may be exercised only by the Party so electing to terminate giving written notice of termination to the other Party within ten (10) calendar days after receipt of actual notice of such condemnation proceedings, or other proceedings in the nature of eminent domain. Upon effective exercise of such termination election by either Party, this Agreement will terminate, and the Earnest Money will be returned to Buyer. If neither Party affirmatively exercises the right to terminate provided for by this Section 8.2, such right will lapse, and the Purchase Price adjustment provisions of Section 8.1 will apply.



## ARTICLE 9

### COVENANTS

#### 9.1 Pre-Closing Covenants.

9.1.1 Cooperation. Each of the Parties shall use their respective commercially reasonable efforts to (i) take all actions necessary or appropriate to consummate the transactions contemplated by this Agreement, and (ii) cause the fulfillment at the earliest practicable date of all of the conditions to their respective obligations to consummate the transactions contemplated by this Agreement; provided that nothing herein shall be construed to require any Party to waive the benefit of any condition to its obligations to close under Article 4.

9.1.2 Operating Covenant. Seller covenants that prior to Closing, Seller will use commercially reasonable efforts to continue to operate the Electron Facility and the Transferred Assets, as applicable, in substantially the same manner as it did prior to the Effective Date. Notwithstanding the foregoing, Buyer understands and acknowledges that, except pursuant to Section 8.1, Seller will have no obligation to make any repairs to or replace any equipment or other components of the Transferred Assets prior to Closing.

9.2 Further Assurances. From time to time (including after the Closing), the Parties will execute and deliver such other documents, certificates, agreements and other writings and take such other actions as may reasonably be necessary or requested by the other Party in order to consummate, evidence or implement expeditiously the transactions contemplated by this Agreement. Without limitation on the foregoing, the Parties agree as follows:

9.2.1 On or prior to the Closing Date, Seller shall cause (a) all Indebtedness related to the Transferred Assets, and (b) all Encumbrances on the Transferred Assets, except the Permitted Exceptions, to be paid, settled, discharged, cancelled and/or released.

9.2.2 The Seller will have access to, and the right to copy, at Seller's expense for bona fide business purposes, or to comply with any applicable law or regulation, and during usual business hours, upon ten (10) days prior notice to the Buyer, all Books and Records relating to the Electron Facility. Subject to Buyer's internal records retention policies and practices, Buyer will use reasonable efforts to retain and preserve all such Books and Records, and will notify Seller prior to the disposal of any Books and Records for a period of five (5) years after the Closing Date.

9.2.3 Prior to and after the Closing Date, the Parties will reasonably cooperate with the other in the implementation of the Transition Plan, which may include Seller removing equipment from the Electron Facility as will be further described in the Transition Plan. As part of the Transition Plan, Seller shall reasonably cooperate with Buyer in the transition and/or replacement of the control operating software for the Electron Facility, but in no event shall Seller be obligated to purchase new control operating software or equipment for Buyer.

9.2.4 Between the Effective Date and the Closing Date, Seller shall promptly notify Buyer (in writing after Seller has notice thereof), and Buyer shall promptly notify Seller (in writing after Buyer has notice thereof), and keep such other Party advised, as to any action pending or otherwise known to such Party or, to Buyer's Knowledge or Seller's Knowledge (respectively), threatened against such Party that challenges the transactions contemplated hereby. Without limiting the foregoing, Seller shall notify Buyer (in writing after Seller has notice thereof) of any notices,

reports, and other material correspondence or other items delivered to or received by Seller from any third party relating to the Transferred Assets or otherwise related to the Electron Facility.

9.3 Environmental Matters. The Parties acknowledge that certain Pre-Existing Releases may be present on the Real Property, the Seller Retained Property or on adjacent property. In light of the foregoing, the Parties wish to set forth the Parties' obligations with respect to any Pre-Existing Releases. The Parties further wish to set forth the Parties' obligations with respect to any Hazardous Substances (other than Pre-Existing Releases) on the Real Property and on the Seller Retained Property.

9.3.1 Seller Retained Property. Seller shall grant the Buyer Easements across Seller Retained Property subject to the following restrictions:

(a) Buyer will not excavate, remove soil, move soil, begin construction activity or conduct any other similar activity that may disturb the surface of the soil (collectively, "**Soil Excavation**") on the Seller Retained Property, unless expressly permitted by Seller pursuant to a work plan that has been reviewed and approved by Seller.

(b) Without limiting the foregoing, Buyer may only use the Seller Retained Property upon written permission from Seller. In order to obtain such permission Buyer must propose a specific work plan in writing containing at least the following information: (i) Buyer's proposed use of the Seller Retained Property, including mitigation measures such as the use of impermeable membranes, (ii) measures Buyer will take to ensure that the integrity of such mitigation measures are maintained, and (iii) any necessary Soil Excavations and measures Buyer will take to avoid any other Soil Excavations. Such permission shall be withheld or conditioned in Seller's sole discretion; provided, that solely with respect to Buyer-proposed actions that are reasonably necessary for the safe and efficient operation of the Electron Project, if Seller initially determines such actions pose an unacceptable risk to Seller then: (A) Seller shall explain the basis of its objections to Buyer in writing, and (B) the Parties shall use commercially reasonable and good faith efforts to develop a revised work plan, a revised work site, or other means which allows Buyer to proceed with work that is necessary for the safe and efficient operation of the Electron Project while addressing the basis for Seller's objections.

(c) Subject to Buyer's compliance with the requirements of the Buyer Easements and any work plan agreed to in accordance with this Section 9.3.1, Seller shall release, indemnify and defend Buyer and its partners, members, officers, directors, employees, agents, and representatives from and against any Losses suffered by Buyer related to all Pre-Existing Releases on the Seller Retained Property. For the avoidance of doubt, the foregoing release and indemnity shall not apply to Losses arising from or relating to a Release of Hazardous Substances on the Seller Retained Property (except Hazardous Substances from Pre-Existing Releases) by Buyer or its employees, agents, contractors, consultants or invitees occurring on or after Closing Date.

(d) Buyer will release, indemnify and defend Seller for Losses (i) related to Buyer's noncompliance with the terms of the Buyer Easements and any work plan agreed to in accordance with this Section 9.3.1, or (ii) arising from or relating to a Release of Hazardous Substances on the Seller Retained Property by Buyer or its employees, agents, contractors, consultants or invitees occurring on or after the Closing Date (a "**Buyer Release**"), provided, however, that Buyer shall not be responsible for Hazardous Substances from Pre-Existing Releases, other than to the extent a Release of such Hazardous Substances is caused by Buyer's noncompliance with the terms of the Buyer Easements or any work plan.

9.3.2 Real Property. Seller shall release, indemnify and defend Buyer and its partners, members, officers, directors, employees, agents, and representatives from and against any

Losses suffered by Buyer related to any Pre-Existing Release on the Real Property. This indemnity obligation is expressly conditioned upon the following:

(a) Buyer will not engage in Soil Excavation on the Real Property, other than as is commercially reasonably necessary or useful for the Buyer's operation of the Electron Facility.

(b) Buyer will provide Seller with no less than ten (10) days prior written notice of any Soil Excavation in the Known Pre-Existing Release Zones (or, in the event of an emergency or other exigent circumstances, such advance notice as is reasonable under the circumstances) and provide Seller with a description and the location of such planned Soil Excavation. Seller will have the right (but not the obligation) to have one or more observers present at all times during any such Soil Excavation.

(c) In the event Buyer discovers Hazardous Substances during any Soil Excavation, Buyer will provide immediate notice to Seller's Environmental Program Services Department, or notice as required by a work plan, and the Parties will cooperate in good faith to determine whether the Hazardous Substance is a Pre-Existing Release and minimize the extent of any impact from any Pre-Existing Release.

9.3.3 Remediation. Seller shall conduct any required remedial action of (i) a Pre-Existing Release on the Real Property or the Seller Retained Property (as applicable) or (ii) a Buyer Release on the Seller Retained Property, in either event in accordance with the following:

(a) Seller will conduct any required remedial action of a Pre-Existing Release at Seller's sole cost and expense and at such times and in such manner so as to minimize any impact on and not unreasonably interfere with the repowering or operation of the Electron Facility.

(b) Seller will conduct any required remedial action of a Buyer Release on the Seller Retained Property at Buyer's sole cost and expense, and at such times and in such manner as may be determined by Seller so as to not unreasonably interfere with the repowering or operation of the Electron Facility.

(c) All such remedial actions will be undertaken in compliance with applicable laws including, without limitation, Washington's Model Toxics Control Act (RCW Chapter 70.105D).

(d) Notwithstanding anything herein to the contrary, if a Pre-Existing Release is exacerbated by Buyer's actions, Buyer will be responsible for the costs and expenses of any required remedial action in proportion to such exacerbation; provided, that the foregoing shall only apply to exacerbation of Pre-Existing Releases in agreed Known Pre-Existing Release Zones. Prior to conducting work in Known Pre-Existing Release Zones, Buyer shall prepare a work plan for Seller's review and approval (which approval shall not be unreasonably withheld and shall be deemed to satisfy Buyer's obligation to provide notice pursuant to Section 9.3.2(b)). For the avoidance of doubt, any activity of Buyer conducted in full compliance with a Seller-approved work plan shall be deemed not to be exacerbation of a Pre-Existing Release.

9.3.4 Limitations. Notwithstanding anything in this Section 9.3 to the contrary, Seller's indemnity of Buyer pursuant to Section 9.3.2 will be null and void, solely with respect to the portion of the Real Property actually affected, if (a) Buyer fails at any time to comply with its notice obligations under Section 9.3.2(b) and proceeds to perform work on the Real Property without providing such notice, (b) Buyer takes an affirmative action to materially change the use of the Real

Property from its current use, or (c) Buyer sells or otherwise transfers the Real Property, except that Seller's indemnity will remain in full force and effect notwithstanding (i) transfers or collateral assignments in accordance with Section 13.4(b) or (ii) other transfers to any other third party with the consent of Seller to the indemnity's continued effectiveness, which consent shall not be unreasonably withheld. Without limiting the foregoing, it shall be unreasonable for Seller to withhold consent to transfer of Seller's indemnity to a third party with similar or greater experience in owning and operating hydroelectric projects and with similar or greater financial resources who will agree to the Buyer's obligations in this Section 9.3 and does not materially increase Seller's exposure to liability for Pre-Existing Releases. For the avoidance of doubt, Seller's consent shall not be required for any transfer of the property itself but only for the transfer of Seller's indemnity of Buyer (and any transferee) with respect to Pre-Existing Releases on the Real Property.

9.3.5 Buyer Indemnity. Buyer shall indemnify Seller and its officers, directors, employees, agents, representatives, successors and assigns from and against any Losses related to the Release of any Hazardous Substance by Buyer or its employees, agents, contractors, consultants or invitees on the Real Property on or after the Closing Date. This indemnification shall apply to Losses arising from Buyer's exacerbation of Pre-Existing Releases only to the extent that Buyer or its employees, agents, contractors, consultants or invitees are responsible, if at all, for a share of Losses pursuant to Section 9.3.3(d).

9.3.6 Survival. Notwithstanding any provision of this Agreement to the contrary, the provisions of this Section 9.3 will survive the Closing of the transaction contemplated herein.

## ARTICLE 10

### INDEMNIFICATION

10.1 Survival. All of the representations and warranties contained in this Agreement will survive the Closing hereunder thereafter (subject to any applicable statute of limitations).

10.2 Indemnification Provisions for Benefit of the Buyer. In addition to the indemnity for the environmental matters as described in Section 9.3, in the event the Seller breaches any of its representations and warranties in Section 7.1 above or elsewhere herein, the Seller agrees to indemnify the Buyer Indemnified Parties from and against the entirety of any Losses the Buyer Indemnified Parties may suffer resulting from or caused by the breach. In addition, the Seller agrees to indemnify the Buyer Indemnified Parties from and against the entirety of any Losses the Buyer Indemnified Parties may suffer resulting from or caused by: (i) Seller's failure to pay the Taxes or costs that are the obligation of Seller under Sections 5.1 and 5.3; (ii) Seller's nonfulfillment or breach of any covenant, agreement or other provision by the Seller under the Agreement or any of agreements or instruments executed by Seller in relation hereto; (iii) the Excluded Assets; or (iv) the Excluded Liabilities.

10.3 Indemnification Provisions for Benefit of the Seller. In addition to the indemnity for the environmental matters as described in Section 9.3, in the event the Buyer breaches any of its representations and warranties contained in Section 7.2 above, the Buyer agrees to indemnify the Seller Indemnified Parties from and against the entirety of any Losses the Seller Indemnified Parties may suffer resulting from or caused by the breach. In addition, the Buyer agrees to indemnify the Seller Indemnified Parties from and against the entirety of any Losses the Seller Indemnified Parties may suffer resulting from or caused by: (i) Buyer's failure to pay the Taxes or costs that are the obligation of Buyer under Sections 5.1 and 5.2; (ii) any nonfulfillment or breach of any covenant, agreement or other provision by the Buyer under the Agreement or any of agreements or instruments executed by Buyer in relation hereto; or (iii) any Assumed Liabilities.

## ARTICLE 11

### DISPUTE RESOLUTION

11.1 Executive Level Review. For all disputes relating to the interpretation, construction, application or requirements of this Agreement, prior to the commencement of any litigation, the aggrieved Party shall promptly notify the other Party of the dispute. If the Parties fail to resolve the dispute within ten (10) business days after delivery of such notice, then each Party shall, within five (5) business days thereafter, nominate a senior officer of its management (the "Executive Parties"), who agree to negotiate in good faith to come to a mutually agreeable resolution of the dispute. If the Executive Parties are unable to resolve the dispute within ten (10) business days, then either Party may commence litigation upon the expiration of the Executive Parties review. Further, either Party may commence litigation within thirty (30) days prior to the date after which the commencement of litigation could be barred by any applicable statute of limitations or other law, rule, regulation, or order of similar import or in order to request injunctive or other equitable relief necessary to prevent irreparable harm.

11.2 Governing Law. This Agreement and all questions concerning the performance of this Agreement will be interpreted, construed and enforced in all respects in accordance with applicable laws of the State of Washington, without reference to rules relating to choice of law.

11.3 Miscellaneous. Notwithstanding the foregoing, the Parties may mutually agree to use a different dispute resolution method.

## ARTICLE 12

### TERMINATION

12.1 Termination. This Agreement may be terminated, and the transactions contemplated hereby may be abandoned, at any time prior to Closing by written notice from the terminating Party to the nonterminating Party, as follows:

12.1.1 *Mutual Agreement.* By mutual written agreement of Seller and Buyer;

12.1.2 *Illegality.* By either Buyer or Seller in the event that any order or law becomes effective restraining, enjoining, or otherwise prohibiting or making illegal the consummation of any of the transactions contemplated by this Agreement, upon notification of the nonterminating Party by the terminating Party;

12.1.3 *Buyer Breach.* By Seller, if Buyer is in material breach with respect to the due and timely performance of any of its covenants or agreements contained herein and such breach has not been waived by Seller, or if any of the representations and warranties of Buyer contained in this Agreement are untrue, inaccurate or breached in any material respect as of Closing, and such breach or untrue or inaccurate representation or warranty, if capable of being cured, has not been cured or made true by Buyer within twenty (20) calendar days following receipt by Buyer of written notice thereof;

12.1.4 *Seller Breach.* By Buyer, if Seller is in material breach with respect to the due and timely performance of any of its covenants or agreements contained herein and such breach has not been waived by Buyer, or if any of the representations and warranties of Seller contained in this Agreement are untrue, inaccurate or breached in any material respect as of Closing, and such breach or untrue or inaccurate representation or warranty, if capable of being cured, has not been

cured or made true by Seller within twenty (20) calendar days following receipt by Seller of written notice thereof;

12.1.5 *Damage or Condemnation.* By either Buyer or Seller, at any time before Closing, pursuant to the terms and conditions set forth in Article 8;

12.1.6 *Seller's Failure to Resolve Encumbrances.* By Buyer, in accordance with Section 3.1;

12.1.7 *Failure to Agree on Seller Easements or Buyer Easements.* By either Buyer or Seller, if the form of either the Seller Easements or Buyer Easements are not agreed to by the date provided in Section 3.3.2;

12.1.8 *Failure to Achieve Conditions Precedent.* By either Buyer or Seller, at any time after October 31, 2013, if Closing has not occurred on or before such date due to a Party's failure to fulfill any of the conditions to Closing set forth in Section 4.2 required to be fulfilled by it; or

12.1.9 *Termination Date.* By either Buyer or Seller at any time after December 31, 2013, if Closing has not occurred on or before such date and such failure to close is not caused by a breach of this Agreement by the terminating Party (but may be caused by such terminating Party's failure to fulfill any of the conditions to Closing set forth in Section 4.2).

12.2 Liability upon Termination. If this Agreement is validly terminated pursuant to this Article 12, there will be no liability or obligation on the part of Seller or Buyer (or any of their affiliates or any of its or their respective officers, directors, employees, agents or other Representatives); provided, however, that (i) if the Agreement is terminated by mutual agreement, or is terminated by Seller pursuant to Sections 12.1.3, 12.1.7, 12.1.8, or 12.1.9, the Parties shall share equally in any costs relating to the Real Property Separation incurred as of the termination date, and (ii) the Earnest Money will be refunded to Buyer in the event of any termination, expiration or other cancellation of this Agreement, within five (5) business days of the effectiveness of any such termination, expiration or cancellation, except a termination pursuant to Section 12.1.3.

## ARTICLE 13

### MISCELLANEOUS

13.1 Notices. Unless this Agreement specifically requires otherwise, any notice, demand or request provided for in this Agreement, or served, given or made in connection with it, must be in writing and will be deemed properly served, given or made if delivered in person or sent by registered or certified mail, postage prepaid, or by an internationally recognized overnight courier service that provides a receipt of delivery, in each case, to the Parties at the addresses specified below:

If to Buyer:

Electron Hydro, LLC  
3633 Alderwood Avenue  
Bellingham, WA 98225  
Phone: (360) 738-9999  
Fax: (360) 733-3056  
Attn: Thom A. Fischer, Chief Operating Officer

with a copy to:

Wilson Sonsini Goodrich & Rosati, P.C.  
701 5th Avenue  
Suite 5100  
Seattle, WA 98104  
Phone: (206) 883-2571  
Fax: (206) 883-2699  
Attn: Todd G. Glass

If to Seller:

Puget Sound Energy, Inc.  
10885 NE 4th Street (8004-5591)  
P.O. Box 97034  
Bellevue, WA 98009-9734  
Fax: (425) 462-3300  
Attn: Senior Vice President, Energy Operations

with a copy to:

Puget Sound Energy, Inc.  
10885 NE 4th Street (8004-5591)  
P.O. Box 97034  
Bellevue, WA 98009-9734  
Fax: (425) 462-3300  
Attn: General Counsel

Notice given by personal delivery, mail or overnight courier pursuant to this Section 13.1 will be effective upon physical receipt.

13.2 Defined Terms. Unless otherwise defined herein, capitalized terms shall have the meaning set forth in Schedule 1 of this Agreement.

13.3 Entire Agreement; Amendment. This Agreement and the other agreements and instruments to be entered into in connection herewith constitute the entire agreement of the Parties and supersede all prior agreements and understandings, both written and oral, with respect to the subject matter hereof. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by or on behalf of each Party.

13.4 Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of, and shall be enforceable by, the Parties and their respective successors and permitted assigns. Neither this Agreement nor any right hereunder, may be assigned by any Party without the prior written consent of the other Party; provided that Buyer and its permitted assigns may at any time after Closing, without the prior written consent of Seller: (a) assign, in whole or in part, its rights and obligations under this Agreement to one or more of its Affiliates or to any subsequent purchaser of Buyer or the Electron Facility and (b) assign its rights under this Agreement for collateral security purposes to any lenders providing financing to Buyer or any of its Affiliates.

13.5 Invalid Provisions. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction will not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

13.6 Further Assurances. Upon the request of a Party from time to time before and after the Closing Date, the other Party will execute, acknowledge and deliver such other acts, consents,

instruments, documents and other assurances as may be reasonably necessary to carry out and perform the transactions contemplated by this Agreement.

13.7 No Waiver. Any failure of a Party to enforce any of the provisions of this Agreement or to require compliance with any of its terms at any time during the pendency of this Agreement shall in no way affect the validity of this Agreement, or any part hereof, and shall not be deemed a waiver of the right of such Party thereafter to enforce any and each such provision.

13.8 No Third Party Beneficiaries. No third party will have any rights under this Agreement or any right to enforce its terms.

13.9 Relationship of the Parties. This Agreement shall not be interpreted or construed to create an association, joint venture or partnership between or among the Parties or impose any partnership obligation or liability on any Party. Other than as expressly set forth herein, no Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or act as or be an agent or representative of, or otherwise bind, the other Party.

13.10 Time Is of the Essence; Counterparts. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence. This Agreement may be executed in any number of counterparts and delivered electronically or by facsimile, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

*[remainder of page left intentionally blank]*



IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by each Party as of the date first above written.

**ELECTRON HYDRO, LLC**

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

Name: Victor Budzinski

Its: President and Chief Executive  
Officer

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

Name: Thom Fischer

Its: Chief Operating Officer and  
Manager

**PUGET SOUND ENERGY, INC.**

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

Name: Paul M. Wiegand

Its: Senior Vice President, Energy  
Operations

## **SCHEDULES & EXHIBITS**

- Schedule 1 – Defined Terms
- Schedule 2 – Purchase Price Allocation
- Schedule 3 – Seller’s Disclosure Schedule
- Exhibit A-1 – Description of Real Property
- Exhibit A-2 – Description of Water Rights
- Exhibit A-3 – Description of Road Interests
- Exhibit A-4 – Description of Seller Retained Property
- Exhibit A-5 – Electron Facility Description
- Exhibit B – Fleet Vehicles
- Exhibit C-1 – Assigned Contracts
- Exhibit C-2 – Assigned Permits
- Exhibit D – 115kv line
- Exhibit E – Excluded Assets
- Exhibit F – Assumed Liabilities
- Exhibit G-1 – Form of Bargain & Sale Deed
- Exhibit G-2 – Form of Quitclaim Deed
- Exhibit H – Non-Foreign Affidavit
- Exhibit I – Form of Power Purchase Agreement
- Exhibit J – Form of Large Generator Interconnection Agreement
- Exhibit K – Form of Assignment and Assumption Agreement
- Exhibit L – Form of Bill of Sale
- Exhibit M – Buyer Employees
- Exhibit N – Known Pre-Existing Release Zones

## SCHEDULE 1

### DEFINED TERMS




1. **"Affiliate"** means, with respect to a person or entity, another person or entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person or entity. For purposes of this definition, the term "control" means: (a) the direct or indirect ownership of more than fifty percent (50%) of the total voting power of securities or other evidences of ownership interest in an entity; or (b) the power to direct or cause the direction of the management and policies of such entity, directly or indirectly, whether through ownership of voting securities, by contract, or otherwise.
2. **"Buyer Indemnified Parties"** means Buyer and its Affiliates and each of their respective Representatives.
3. **"Buyer's Knowledge"** means the actual knowledge of Thom Fischer and Roland Bailey, in each case after due inquiry, as of the Effective Date and the Closing Date.
4. **"Closing Date"** means the date upon which the Closing shall actually occur pursuant the Agreement.
5. **"Encumbrance"** means any mortgage, pledge, bailment (in the nature of a pledge or for purposes of security), deed of trust, the grant of power to confess judgment, conditional sale or title retention agreement (including any lease in the nature thereof), lien, charge, claim, option, equitable interest, security interest, third party right, assignment, hypothecation, restriction on voting, sale, transfer or disposition, assessments, easements, variances, encroachments, power of sale, encumbrance, exclusive license, other agreement or arrangement (whether voluntary or involuntary, choate or inchoate or imposed by law) that has the same or a similar effect to the granting of security or of any similar right of any kind (including any conditional sale or other title retention agreement) or any arrangement or obligation to create the foregoing.
6. **"Hazardous Substances"** has the same meaning as defined in RCW 70.105D.020.
7. **"Indebtedness"** means any of the following: (a) any indebtedness for borrowed money or indebtedness issued or incurred in substitution or exchange for any such indebtedness for borrowed money; (b) any obligations evidenced by bonds, debentures, notes or other similar instruments; (c) any obligations as lessee under leases which have been, or are required under GAAP to be, treated as capital leases; (d) all obligations for the deferred purchase price of any property or services (other than trade accounts payable or accrued liabilities incurred in the ordinary course of business); (e) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property; (f) all indebtedness secured by a purchase money mortgage or other Encumbrance to secure all or part of the purchase price of the property subject to such Encumbrance; (g) any liability in respect of bankers' acceptances or letters of credit (except to the extent undrawn); (h) any obligations under any interest rate, foreign exchange, currency, commodity, credit or equity swap, cap, collar, floor, option, forward, cross right or other hedging agreement or derivative contract, net of any obligations of the debtor thereunder; (i) all indebtedness referred to in clauses (a) through (h) above which is directly or indirectly guaranteed by the debtor or which the debtor has agreed (contingently or otherwise) to purchase or otherwise acquire or in respect of which it has otherwise assured a creditor against loss; and (j) all accrued and unpaid interest, fees, change of control payments, prepayment

premiums and other expenses owed with respect to the indebtedness referred to in clauses (a) through (i) above.

8. **“Losses”** means any and all losses, liabilities, damages, demands, claims, actions, judgments, causes of action, assessments, liens, penalties, attorneys’ fees, costs and expenses including, without limitation, any claims, actions or penalties: (A) initiated or instituted by any governmental agency; or (B) initiated or instituted by a third party who is not a signatory to this Agreement.
9. **“Material Adverse Effect”** means any effect, change, event, circumstance or development (any such item, an **“Effect”**) that, individually or when taken together with all other Effects that have occurred prior to the date of determination of the occurrence of the Material Adverse Effect, is materially adverse to the condition of the Transferred Assets as a whole or the operation of the Electron Facility; provided, however, that in no event shall any of the following, alone or in combination, be deemed to constitute, nor shall any of the following be taken into account in determining whether there has been, a Material Adverse Effect on the Transferred Assets or the Electron Facility, as applicable: (i) the taking of any action that is required by this Agreement (in and of itself, excluding the effects of such action on the condition of the Transferred Assets or the operation of the Electron Facility); (ii) any Effect that results from changes affecting the industry in which the Electron Facility operates, the United States or worldwide economy generally or general conditions in the securities or financial markets in the United States or any other country, except to the extent that such changes or conditions have a disproportionate effect on the condition of the Transferred Assets or the operation of the Electron Facility; (iii) any Effect resulting from political conditions (or changes in such conditions), acts of war, military action, sabotage or terrorism (including any escalation or general worsening of any such acts of war, military action, sabotage or terrorism) in the United States or any other country in which the Buyer conducts business, except to the extent that such changes or conditions have a disproportionate effect on the condition of the Transferred Assets or the operation of the Electron Facility; (iv) any Effect resulting from earthquakes, hurricanes, tsunamis, tornadoes, floods or other natural disasters, weather conditions and other force majeure events in the United States or any other country in which the Buyer conducts business, except to the extent that such changes or conditions have a disproportionate effect on the condition of the Transferred Assets or the operation of the Electron Facility; (v) any Effect resulting from any change in United States GAAP or in any applicable law or in the interpretation thereof, in any case, applicable to Seller or otherwise applicable to the Transferred Assets, except to the extent that such changes or conditions have a disproportionate effect on the condition of the Transferred Assets or the operation of the Electron Facility; or (vi) Seller not making any repairs to or replacing any equipment or other components of the Transferred Assets prior to Closing, as permitted by Section 9.1.2, subject to the requirements of Article 8.
10. **“Pre-Existing Release”** means any Release on, under or within the Real Property, the Seller Retained Property or any adjacent property, that occurred prior to Closing or is a continuing, passive Release of Hazardous Substances that were placed or came to be located on the Real Property, the Seller Retained Property or adjacent property prior to Closing.
11. **“Release”** has the same meaning as defined in RCW 70.105D.020.
12. **“Representative”** means, with respect to any person or entity, such person’s or entity’s directors, officers, employees, representatives, consultants, attorneys, accountants, advisors and agents.

13. **“Seller Indemnified Parties”** means Seller and its Affiliates and each of their respective Representatives.
14. **“Seller’s Knowledge”** means the actual knowledge of John Rork, Paul Wetherbee, Michael Mullally, Lorna Luebbe and Scott Lichtenberg, in each case after due inquiry, as of the Effective Date and the Closing Date.
15. **“Tax” or “Taxes”** means any and all taxes, fees, levies, duties, tariffs, imposts and other charges of any kind (together with any and all interest, penalties, additions to tax and additional amounts imposed with respect thereto) imposed by any governmental authority or taxing authority, including, without limitation: (i) taxes or other charges on or with respect to income, franchises, windfall or other profits, gross receipts, property, sales, use, capital stock, payroll, employment, social security, workers’ compensation, unemployment compensation, or net worth; (ii) taxes or other charges in the nature of excise, withholding, ad valorem, stamp, transfer, value added, or gains taxes; (iii) license, registration and documentation fees; and (iv) any liability for the payment of amounts with respect to payments of a type described in clauses (i), (ii) or (iii) as a result of being a member of an affiliated, consolidated, combined or unitary group, or as a result of any obligation under any Tax sharing agreement or Tax indemnity arrangement.

**SCHEDULE 2  
ALLOCATION**

<b>Real Property:</b>	
<b>Personal Property:</b>	
<b>Intangibles:</b>	
<b>Purchase Price:</b>	<b><u>\$13,700,000</u></b>

**REDACTED  
VERSION**

**SCHEDULE 3**  
**DISCLOSURE SCHEDULE**  
**to**  
**ASSET PURCHASE AGREEMENT**  
**by and between**  
**PUGET SOUND ENERGY, INC. and**  
**ELECTRON HYDRO, LLC**

This Disclosure Schedule (this "Schedule") is being furnished by Puget Sound Energy, Inc. ("Seller") to Electron Hydro, LLC ("Buyer") in connection with the execution and delivery of that certain Asset Purchase Agreement, dated as of May 30, 2013 (the "Agreement"), by and between Seller and Buyer. All capitalized terms used, but not otherwise defined, herein have the meanings given them in the Agreement.

This Schedule and the information and disclosures contained in this Schedule are intended only to qualify and limit the representations and warranties of Seller (but not the obligations or liabilities of Seller) contained in the Agreement and shall not be deemed to expand in any way the scope of any such representation or warranty. Certain information set forth in this Schedule is included solely for informational purposes and may not be required to be disclosed pursuant to the Agreement, and the inclusion of such information shall not be deemed to enlarge or enhance any of the representations of Seller or otherwise alter in any way the terms of the Agreement.

#### Schedule 7.1.6

See disclosure under “Environmental” in Schedule 7.1.7 below with respect to open proceedings at the Department of Ecology.

#### Schedule 7.1.7

Environmental. Two sites at the Electron Facility appear on the Washington State Department of Ecology’s Confirmed and Suspected Contaminated Sites List (CS ID 6003 and 4595). Pre-treated timber and similar material, which may contain Hazardous Substances, is present on the Real Property in areas that are inaccessible, and therefore cannot be removed or otherwise remediated. Additionally, the Known Pre-Existing Release Zones are areas of known historical releases of Hazardous Substances.

Seller Exemption from NEC Standards. The primary and secondary distribution system that will be conveyed to Buyer is currently exempt from compliance with NEC Standards because Seller is a regulated utility. Upon conveyance of the Transferred Assets, Buyer may need to comply with these regulations.

Incidental Take Permit. Seller does not hold, but may be required to hold an incidental take permit (an “ITP”) related to the operation of the Electron Facility. An ITP would be issued by the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) (collectively the “Services”) under Section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. Such a permit may be required if there is incidental taking of endangered species at the Electron Facility. In preparation for an application for an ITP, Seller has prepared a Habitat Conservation Plan, which is still in draft form. A copy of this draft Habitat Conservation Plan has been provided to Buyer.

#### Schedule 7.1.8

Seller Exemption from NEC Standards. The primary and secondary distribution system that will be conveyed to Buyer is currently exempt from compliance with NEC Standards because Seller is a regulated utility. Upon conveyance of the Transferred Assets, Buyer may need to comply with these regulations.

Incidental Take Permit. Seller does not hold, but may be required to hold an incidental take permit (an “ITP”) related to the operation of the Electron Facility. An ITP would be issued by the U.S. Fish and Wildlife Service (USFWS) and the National Marine Fisheries Service (NMFS) (collectively the “Services”) under Section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. Such a permit may be required if there is incidental taking of endangered species at the Electron Facility. In preparation for an application for an ITP, Seller has prepared a Habitat Conservation Plan, which is still in draft form. A copy of this draft Habitat Conservation Plan has been provided to Buyer.

FERC Licensing. The Electron Facility as operated by Seller is currently exempt from licensing by the Federal Energy Regulatory Commission (FERC) because it was not located on a navigable waterway and was constructed prior to 1935. If repairs or improvements are made to increase the Electron Facility’s head, generating capacity, or water storage capacity, or changes are made that otherwise significantly modify the project’s pre-1935 operation, such changes may be considered post-1935 construction and as a result the Electron Facility may be subject to licensure by FERC.



#### **Schedule 7.1.10**

In an email to Thom Fischer from Michael Mullally, Seller previously disclosed to Buyer information relating to property claims and workers' compensation claims for the past five (5) years (the "**Reported Losses**"). For the avoidance of doubt, Seller acknowledges that all Losses related to, arising under, or in any way associated with such Reported Losses, whether arising before, on or after the Effective Date, shall be deemed Excluded Liabilities for all purposes under the Agreement.

#### **Schedule 7.1.11**

The current Resource Enhancement Agreement with the Puyallup Tribe of Indians (the "REA") anticipates releases by the Puyallup Tribe of Minimum Instream Flow to Seller for use by Seller for generation. The REA will be terminated in connection with Closing.

#### **Schedule 7.1.13**

None.