

**AVISTA UTILITIES
RESPONSE TO REQUEST FOR INFORMATION**

| | | | |
|---------------|----------------------|----------------|-----------------------|
| JURISDICTION: | Washington | DATE PREPARED: | 3/6/00 |
| DOCKET NO: | UE-991606 | WITNESS: | Kelly Norwood |
| | UG-991607 | | |
| REQUESTER: | WUTC | RESPONDER: | William Johnson |
| TYPE: | Data Request | DEPT: | Resource Optimization |
| DUE DATE: | 3/6/00 | TELEPHONE: | (509) 495-4046 |
| REQUEST NO.: | Data Request No. 188 | | |

REQUEST:

Refer to the 1998 Form 10-K, page 51, last paragraph. Please provide a copy of the long-term power sales contract and all supporting information and supporting justification of the contract.

RESPONSE:

Attached is a copy of the long-term capacity contract with Portland General Electric. Please see the previously supplied response to Data Request No. 81 supporting justification of the contract.

| | | |
|-------------------------------------|--------------------------|--------------------------|
| WUTC | | |
| DOCKET NO. <u>UE-991606</u> | | |
| EXHIBIT # <u>218</u> | | |
| ADMIT | W/D | REJECT |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

**PORTLAND GENERAL ELECTRIC COMPANY
AND
THE WASHINGTON WATER POWER COMPANY**

**AGREEMENT
FOR LONG TERM
PURCHASE AND SALE OF
FIRM CAPACITY**

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THIS AGREEMENT is made by and between Portland General Electric Company, an Oregon Corporation, ("PGE"), and The Washington Water Power Company, a Washington Corporation ("WWP"), sometimes hereinafter referred to individually as "Party" and collectively as "Parties".

RECITALS

WHEREAS, PGE is engaged in the generation, transmission and distribution of Electric Power in the State of Oregon; and

WHEREAS, WWP is engaged in the generation, transmission and distribution of Electric Power in the States of Washington, Idaho and Montana; and

WHEREAS, WWP desires to sell and PGE desires to purchase firm system Capacity at the Point of Delivery in accordance with the terms and conditions set forth below; and

WHEREAS, the Parties enter into this Agreement in good faith, so that each will receive long-term benefits therefrom;

NOW THEREFORE, the Parties agree as follows:

1. DEFINITIONS

Whenever used in this Agreement, the following terms, when used with initial capitalization, shall have the following meanings. The singular of any definition shall include the plural and the plural shall include the singular.

- 1.1 Agreement means this Agreement for Long Term Purchase and Sale of Firm Capacity, as amended or replaced.
- 1.2 BPA means the Bonneville Power Administration, or its successor.
- 1.3 Capacity means firm electric generating capability, expressed in megawatts (MW), which WWP is obligated to provide to PGE pursuant to subsection 3.1 in an amount not to exceed the Contract Demand.
- 1.4 Contract Demand means 50 MW for the period starting November 1, 1992, and ending October 31, 1994, and 150 MW for the period starting November 1, 1994 through the term of this Agreement.
- 1.5 Day means any 24-Hour period commencing at 0000 Hours.
- 1.6 Effective Date means the date upon which this Agreement becomes effective pursuant to the provisions of subsection 2.1.
- 1.7 Electric Power means electric peaking capacity or electric energy or both.

- 1.8 Energy means electric energy, expressed in megawatthours (MWh), delivered by WWP to PGE pursuant to subsection 3.1.
- 1.9 FERC means the Federal Energy Regulatory Commission or its successor.
- 1.10 Heavy Load Hours means Hours ending 0700 through 2200, Monday through Saturday, except for Western Systems Coordinating Council (WSCC) designated holidays.
- 1.11 Hours or Hourly means hours measured by Pacific Time, Standard or Daylight, whichever is in effect at the pertinent time.
- 1.12 Light Load Hours means all Hours except for Heavy Load Hours.
- 1.13 Point of Delivery means the point(s) of delivery set forth in subsection 3.3.
- 1.14 Return Energy means energy delivered by PGE to WWP as a return of Energy delivered to PGE by WWP.
- 1.15 Week means the period of seven consecutive days, beginning each Monday at 0000 Hours.
- 1.16 Work Day means each Day that WWP and PGE jointly observe as a regular work day.

2. TERM

2.1 Effective Date

The Effective Date of this Agreement shall be the date on which this Agreement has been executed by both Parties.

2.2 Commencement of Deliveries

Delivery of Capacity and associated Energy will commence the later of:

- (1) the date on which BPA agrees to increase PGE's contract demand at PGE's point of integration at the Vantage Substation under the BPA/PGE IR General Transmission Agreement (Contract No. DE-MS79-89BP92273), or PGE Arranges other transmission acceptable to PGE and WWP, that will permit PGE to transmit the Capacity and associated Energy purchased pursuant to this Agreement between the Point of Delivery and PGE's system,
- (2) November 1, 1992,
- (3) the date this Agreement is either accepted for filing or permitted to become effective by FERC pursuant to Section 11.

2.3 Date of Termination

This Agreement shall terminate at 2400 Hours on December 31, 2016. All liabilities accrued under this Agreement prior to termination shall be preserved until satisfied.

3. PURCHASE AND SALE OF FIRM CAPACITY**3.1 Firm Capacity**

Upon the date of commencement of deliveries pursuant to subsection 2.2 through the remaining term of this Agreement, WWP shall make available to PGE, and PGE shall purchase, Capacity in an amount equal to the Contract Demand. At PGE's request, WWP shall deliver Energy to PGE at up to the maximum rate of delivery in any Hour equal to the Contract Demand. Energy may be scheduled for delivery during:

- a) all Light Load Hours;
- b) Heavy Load Hours, provided however, Heavy Load Hour Energy deliveries shall not exceed:

500 MWh per day and 2,500 MWh per week for the period starting November 1, 1992, through October 31, 1994, and

1,500 MWh per day and 7,500MWh per week for the period starting November 1, 1994, through the termination of this Agreement.

3.2 Return Energy

Within 168 Hours of receiving Energy from WWP, PGE shall deliver an amount of Return Energy to WWP equal to such Energy received. PGE may deliver Return Energy at any rate of delivery up to a maximum rate of delivery in any Hour equal to the Contract Demand. PGE shall not accrue a cumulative obligation to deliver Return Energy in excess of 2,500 MWh starting with commencement of deliveries through October 31, 1994 and 7,500 MWh starting November 1, 1994 through the term of this Agreement (partial weeks shall be pro rated).

3.3 Points of Delivery

Unless otherwise agreed by the Parties' schedulers or dispatchers, the primary Point of Delivery for both Capacity and Return Energy shall be at the point where Public Utility District No. 2 of Grant County's Wanapum 230 kilovolt (kV) Switchyard (Wanapum) interconnects with BPA's Vantage 500/230 kV Substation

(Vantage). PGE shall have the option to deliver Return Energy to WWP at either the primary Point of Delivery or Wanapum. Either Party may request any interconnecting point on PGE's or WWP's system that has unused transfer capability available be used as an alternative Point of Delivery. Neither Party shall be obligated to accept deliveries at such an alternate Point of Delivery, however, acceptance of an alternate Point of Delivery shall not be unreasonably withheld. The Party requesting an alternate Point of Delivery shall incur any increased costs (as compared to deliveries at the primary Point of Delivery) for wheeling and losses associated with such deliveries. PGE shall be responsible for all transmission costs and losses associated with transmitting Capacity and Return Energy between the primary Point of Delivery and PGE. WWP shall be responsible for all transmission costs and losses associated with transmitting Capacity and Return Energy between the primary Point of Delivery and WWP.

3.4 Schedules

PGE shall submit preschedules to WWP for delivery of Energy or Return Energy by 1000 Hours on the last Work Day prior to delivery, or at such other times as mutually agreed by PGE and WWP. PGE shall endeavor to avoid excessive requests for changes from the prescheduled amounts of Energy or Return Energy. PGE may change Energy or Return Energy schedules at any time up to 30 minutes prior to the Hour on which deliveries are scheduled to occur.

3.5 Price

PGE shall pay WWP for Capacity a monthly amount equal to the Contract Demand expressed in MW multiplied by the rates shown in Exhibit 1.

3.8 Service Interruptions

All deliveries of Energy and Return Energy shall be deemed to be made during the Hours and in the amount scheduled; provided that, if scheduled deliveries are interrupted due to uncontrollable forces, as described in Section 4, such schedules shall be adjusted to reflect such interruptions. Any scheduled deliveries so interrupted shall be rescheduled at a later date as mutually agreed by the Parties' dispatchers or schedulers.

4. UNCONTROLLABLE FORCES AND LIABILITY

4.1 Uncontrollable Forces

Neither Party to this Agreement shall be considered to be in default in performance of any obligation other than the payment of money hereunder if failure of performance shall be due to uncontrollable forces. The term "uncontrollable forces" means any cause beyond the control of the Party affected, including, but not limited to, failure or loss of facilities, flood, earthquake, storm, fire, lightning, epidemic, war, riot, civil disturbance, labor disturbance, sabotage, and restraint by court order or public authority, which by exercise of due foresight such Party could not reasonably have been expected to avoid, and which by exercise of due diligence it shall be unable to overcome. A Party shall not, however, be relieved of liability for failure of performance if such failure be due to causes arising out of its own negligence or to removable or remediable causes which it fails to remove or remedy with reasonable dispatch. Any Party rendered unable to fulfill any obligation by reason of uncontrollable forces shall exercise due diligence to remove such inability with all reasonable dispatch. Nothing contained herein, however, shall be construed to require a Party to prevent or settle a strike against its will. Damage to the electrical system of either PGE or WWP caused by or arising out of an electrical disturbance shall be governed under subsection 4.2 and not under the provisions of subsection 4.1.

4.2 Liability

Subject to applicable state and federal law which specifically limits a Party's ability to enter into this Agreement, and except for any damage, loss, claim, cost, charge, or liability resulting from action knowingly or intentionally taken, or failed to be taken, with intent that injury or damage be inflicted, or which action is wantonly reckless or grossly negligent, no Party ("First Party") shall be liable whether in contract, warranty, tort, or strict liability, to the other Party ("Second Party") for damage to the Second Party's electric system or facilities caused by or arising out of actions taken by the First Party or out of any electric disturbance originating on the First Party's electric system, whether or not such actions or electric disturbance constituted or resulted from the First Party's negligent act or omission. Each Party releases the other Party from any such liability. This limitation and release does not apply to liability for compensatory damages from a breach of any obligation to deliver Capacity or Energy under this Agreement or any obligation to pay money under this Agreement. In the event of a breach of

any obligation to deliver Capacity, Energy, or Return Energy under this Agreement or any obligation to pay money under this Agreement, a party may pursue any remedy available at law or equity.

5. SETTLEMENTS

5.1 Accounting

All transactions shall be accounted for on the basis of scheduled Hourly quantities. The Parties shall maintain records of Hourly energy schedules for accounting and operating purposes. Except as otherwise agreed by the parties, the accounting period for transactions hereunder shall be the calendar month.

5.2 Payment dates

By the 10th day of each calendar month, WWP shall submit invoices for the dollar amount due for services provided under this Agreement during the previous month. PGE shall pay the amount by electronic wire transfer on or before the 20th day of the calendar month. Amounts due shall be paid pursuant to subsection 5.3. Simple interest shall accrue on any unpaid amounts at a rate of fifteen percent (15%) per year until paid, or the highest rate allowed by law, whichever is lower. Interest shall be accrued from the due date to the date of payment, and shall be computed on the actual number of days elapsed.

5.3 Method of Payment

Payments shall be made by electronic fund transfers to WWP :

Seattle First National Bank (ABA #125000024)

for credit to

The Washington Water Power Company, account #13972203

WWP may change its transfer account specified in this subsection by giving PGE notice of such change as provided in Section 7.

6. FIXED RATES

The rates for service specified in this Agreement shall remain in effect for the term of the Agreement and shall not be subject to change through application to the Federal Energy Regulatory Commission pursuant to the provisions of Sections 205 or 206 of the Federal Power Act absent the agreement of both Parties hereto.

7. NOTICES

Any notice provided for in, or served, given or made in connection with this Agreement, shall be in writing and shall be deemed properly served, given or made and shall be effective if delivered in person or sent by certified United States mail, as follows:

If to WWP:

The Washington Water Power Company
P. O. Box 3727
Spokane, Washington 99220-3727
Attn: Senior Vice President, Rates and Resources

If to PGE:

Portland General Electric Company
121 S.W. Salmon
Portland, OR 97204
Attn: Manager, Power Contracts

Either Party may change its address specified in this subsection by giving the other Party notice of such change as provided herein.

8. ASSIGNMENT

This Agreement shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. This Agreement shall not be assigned or transferred by either Party, except in connection with a merger or sale of all or a substantial portion of such Party's properties or as expressly authorized in writing by the other Party; provided however, such authorization shall not be unreasonably withheld. No assumption by any third party of any of the obligations hereunder shall discharge either Party from liability in respect of prior obligations hereunder unless the other Party shall have given its written consent to such discharge. Any attempted or purported transfer of this Agreement other than in accordance with this Section 8 shall be void and of no effect.

9. NO THIRD-PARTY BENEFICIARIES

There are no third-party beneficiaries of this Agreement. This Agreement shall not confer any right or remedy upon any person or entity other than the Parties and their respective successors and assigns permitted under Section 8. No action may be commenced or prosecuted against any Party by any third party claiming to be a third-party beneficiary of this Agreement or the transactions contemplated hereby. This Agreement shall not release or discharge any obligation

or liability of any third party to any Party or give any third party any right of subrogation or action over or against any Party.

10. NO DEDICATION OF FACILITIES

No undertaking by one Party to the other Party under any provision of this Agreement shall constitute a dedication of the electric system of such Party (or any portion thereof) to the public or to the other Party.

11. IMPLEMENTATION

This Agreement is subject to acceptance for filing by FERC, without any change or condition by FERC which is unacceptable to either WWP or PGE. WWP shall timely file this Agreement, together with the required supporting documentation and data, with the FERC. Each Party shall take such additional action as may be reasonably required for the implementation and performance of this Agreement in accordance with its terms.

12. OBLIGATIONS SEVERAL

The duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. Nothing in this Agreement shall be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability on or with regard to either Party. Each Party shall be individually and severally liable for its own obligations under this Agreement.

13. SEVERABILITY

13.1 Negotiation of Replacement Clauses

If it appears that any Section, subsection, paragraph, clause, or provision of this Agreement may be finally adjudicated by a court of competent jurisdiction to be invalid or unenforceable then: 1) the remaining terms of this Agreement shall remain in full force and effect to the maximum extent permitted by law, and 2) the Parties shall meet and negotiate in good faith to substitute or supplement provisions to preserve the intent and benefits of the Agreement.

13.2 Termination for Unenforceability or Invalidity

If any Section, subsection, clause, or provision of this Agreement or any agreement referred to in this Agreement shall be finally adjudicated by a court of competent jurisdiction to be invalid or unenforceable, and the invalidity or unenforceability materially impairs the benefits of this Agreement to any Party, and the Parties are unable to negotiate substitute or supplemental provisions as

provided in subsection 13.1, then the aggrieved Party may terminate this Agreement by providing ten (10) days written notice of its intention to do so within thirty (30) days of the effective date of such adjudication.

14. NO WAIVER

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

15. ARBITRATION

15.1 Matters to be Arbitrated

The determination of any disputed matter between the Parties arising out of or relating to this Agreement shall be subject to resolution by binding arbitration in accordance with subsections 15.2, 15.3, and 15.4 below.

15.2 Initiation and Selection of Arbitrators

The Party calling for arbitration shall serve notice in writing upon the other Party, setting forth in detail the question or questions to be arbitrated, the relief sought, and the arbitrator appointed by such Party. The other Party shall, within twenty-five business days after the receipt of such notice, appoint the second arbitrator by notice in writing to the Party calling for arbitration, and the two so appointed shall choose and appoint a third (if the Parties have not agreed upon and appointed a third). If such other Party fails to appoint the second arbitrator within said twenty-five business days, or if a third arbitrator has not been appointed by agreement between the Parties within twenty-five business days after receipt of notice of appointment of the second arbitrator (or, in the absence of such agreement, by the two arbitrators who have been appointed), either Party, upon five business days' written notice delivered to the other Party, may apply to the Chief Justice of the Supreme Court of the State of Washington for appointment of the second or third arbitrator, as the case may be. Neither Party may discuss any matter to be arbitrated with any arbitrator after such arbitrator is appointed but prior to the arbitrators' determination, without providing notice to the other Party and reasonable opportunity to participate. The Parties intend that every arbitrator be an unbiased person with experience in the subject matter to be arbitrated.

15.3 Procedure

Unless otherwise agreed by the Parties and except as otherwise provided herein, the arbitration shall be conducted pursuant to the Washington Arbitration Act, Chapter 7.04 of the Revised Code of Washington, as the same may have been or may be amended. The rules of procedure for the conduct of the arbitration shall be determined by a majority of the arbitrators. Such rules of procedure shall direct the expeditious evaluation of the merits of the matter and rendering of decision consistent with the complexity of the matter being arbitrated. In any such arbitration, each Party thereto shall have:

- (a) full access to the records of the other Party that pertain to the subject matter or the controversy;
- (b) the power to call for testimony of any director, officer, employee, agent, or representative of the other Party having knowledge relevant to the controversy, and
- (c) all other rights of discovery afforded to Parties in civil actions under the then applicable Federal Rules of Civil Procedure (or rules or laws applicable to Federal Court proceedings adopted in lieu thereof).

Disputes regarding the extent of discovery shall be resolved by the arbitrators.

Unless otherwise agreed upon by the Parties, the Parties hereby instruct the arbitrators that they should render a determination of the matters submitted and the relief awarded within thirty calendar days of the completion of the arbitration proceeding. In determining matters submitted for arbitration, no arbitrator shall be required to adhere to or advance the position of any particular Party. The determination of the matters submitted for arbitration shall be made by a majority of the arbitrators, and shall be binding as between the Parties. The determination shall be in writing and shall affirm or deny each contention of the Parties and shall set forth the reasons therefore. The determination of the arbitrators shall be final and binding and shall be enforceable by a court of competent jurisdiction at the request of either Party.

15.4 Costs

Each Party shall pay for the services and expenses of the arbitrator appointed by or for it, and for all of its own costs including its own attorney fees, and compensation for its witnesses and consultants. The costs for the services and

expenses of the third arbitrator and all administrative costs of the arbitration shall be paid equally by the Parties.

16. GOVERNING LAW

This Agreement shall be interpreted, construed and enforced in accordance with the laws of the State of Washington or the laws of the United States of America, whichever is applicable, as if executed and to be performed wholly within the State of Washington.

17. ENTIRE AGREEMENT

This Agreement, including the exhibits hereto, constitutes and expresses the entire agreement between the Parties concerning the subject matter hereof and shall not be amended or modified except by written agreement of PGE and WWP, provided however, the Parties may establish operating procedures.

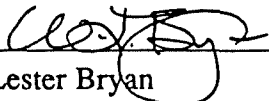
18. EFFECT OF SECTION HEADINGS


Section headings and subheadings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text.

19. SIGNATURE CLAUSE

The signatories hereby represent that they have been appropriately authorized to execute this Agreement on behalf of the Party for whom they sign. This Agreement shall not become effective and binding upon WWP or PGE until and unless the Board of Directors of WWP approves and/or ratifies the Agreement at its regularly scheduled meeting during August, 1992. WWP shall notify PGE in writing of the Board of Directors decision within 7 days of such meeting.

THE WASHINGTON WATER
POWER COMPANY

By: 
W. Lester Bryan
Senior Vice President,
Rates and Resources
Date: _____

Approved as to form: 
6-24-92

PORTLAND GENERAL
ELECTRIC COMPANY

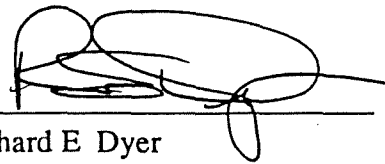

Richard E Dyer
Vice President,
Marketing, Power Supply & Planning
Date: 6/26/92

EXHIBIT 1

| <u>Calendar</u> <u>Year</u> | <u>Rates</u> <u>\$/Mw-Mo</u> |
|---------------------------------------|---------------------------------|
| 1992 | \$5,400 |
| 1993 | \$5,640 |
| January 1, through October 31, 1994 | \$5,900 |
| November 1, through December 31, 1994 | \$6,280 |
| 1995 | \$8,650 |
| 1996 | \$10,780 |
| 1997 | \$10,590 |
| 1998 | \$10,400 |
| 1999 | \$10,240 |
| 2000 | \$10,080 |
| 2001 | \$9,920 |
| 2002 | \$9,970 |
| 2003 | \$10,020 |
| 2004 | \$10,080 |
| 2005 | \$10,130 |
| 2006 | \$10,180 |
| 2007 | \$10,240 |
| 2008 | \$10,290 |
| 2009 | \$10,340 |
| 2010 | \$10,390 |
| 2011 | \$10,440 |
| 2012 | \$10,500 |
| 2013 | \$10,550 |
| 2014 | \$10,610 |
| 2015 | \$10,660 |
| 2016 | \$10,710 |