

BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Joint Application of
PACIFICORP and PACIFICORP,
WASHINGTON, INC. for an Order
Approving (1) the Transfer of Distribution
Property from PacifiCorp to an Affiliate,
PacifiCorp, Washington, Inc.,
(2) the Transfer by PacifiCorp of Certain
Utility Property to an Affiliate, the Service
Company, and (3) the Proposed Accounting
Treatment for Regulatory Assets and
Liabilities, and an Order Granting an
Exemption under RCW 80.08.047 for the
Issuance or Assumption of Securities and
Encumbrance of Assets by PacifiCorp,
Washington, Inc. and/or PacifiCorp

Docket No. UE-001878

PACIFICORP

EXHIBIT TO SUPPLEMENTAL DIRECT TESTIMONY OF
GREGORY N. DUVALL

~~April~~ June 2001

~~LONG~~ SHORT-TERM POWER PURCHASE AGREEMENT

BETWEEN

PACIFICORP GENERATION COMPANY

AND

PACIFICORP, WASHINGTON, INC.

[Date]

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SHORT-TERM POWER PURCHASE AGREEMENT
BETWEEN

PACIFICORP GENERATION COMPANY
AND
PACIFICORP, WASHINGTON, INC.

This ~~LONG~~ SHORT-TERM POWER PURCHASE AGREEMENT ("Agreement") dated this ___ day of _____, 2002, is between PacifiCorp Generation Company, an Oregon corporation ("Seller") and PacifiCorp, Washington, Inc., an Oregon corporation ("Buyer"). Seller and Buyer are sometimes referred to herein collectively as "Parties" and individually as "Party."

Section 1: Definitions

As used herein, the following terms have the following meanings when used with initial capitalization, whether singular or plural:

1.0 "Active Thermal Element" means each Thermal Element for which the End Date shown in column B of Exhibit A has not been reached and which has not been deleted as a result of a Thermal Plant sale pursuant to the provisions of Subsection 13.3- 12.3.

~~1.1~~ 1.1 "Adjusted Market Price Index" has the meaning ascribed to that term in Exhibit N.

1.2 "Affiliate of Seller" means any corporation, partnership, sole proprietorship or other entity which directly or indirectly through one or more intermediaries controls, is controlled by the Seller or is under common control with the Seller.

~~1.2~~ 1.3 "Agreement" means this agreement between Seller and Buyer.

~~1.3~~ 1.4 "Base Excess Power" means energy from Thermal Elements and Dedicated New Resources deemed to have been ~~dispatched in excess of Buyer's Hourly Contract Thermal Load pursuant to Subsection 6.3~~ resold in wholesale markets in an amount ~~not exceeding in any hour the amount derived from~~ determined pursuant to the methodology set forth in Exhibit

~~L.~~ J.

~~1.4~~ 1.5 “Base Excess Power Unit Price” means the value of Base Supplemental Power ~~in each hour~~ calculated pursuant to the methodology set forth in Exhibit ~~K.~~ I.

~~1.5~~ 1.6 “Base Supplemental Power” means Power deemed ~~dispatched hereunder~~ pursuant to ~~Subsection 6.3 not exceeding in any hour the amount derived from~~ to have been purchased in wholesale markets in an amount determined pursuant to the methodology set forth in Exhibit L.

~~1.6~~ 1.7 “Base Supplemental Power Unit Cost” means the cost of Base Supplemental Power ~~in each hour~~ calculated pursuant to the methodology set forth in Exhibit ~~K.~~ I.

~~1.7~~ 1.8 “Base Thermal Fixed Charge Amount” means, with respect to each Active Thermal Element, the amount, stated in dollars per megawatt-month, shown in column ~~AA~~ AB of Exhibit A.

~~1.8~~ 1.9 “Base Thermal Fixed Charge Escalation Formula” means, with respect to each Active Thermal Element, the formula to be used to change the Base Thermal Fixed Charge Amount from month to month in accordance with Section 5, as shown in column ~~AB~~ AL of Exhibit A.

~~1.9~~ 1.10 “Base Thermal Variable Charge Amount” means ~~in,~~ with respect to each Active Thermal Element, the amount, stated in dollars per megawatt-hour, shown in column ~~AC~~ AM of Exhibit A.

~~1.10~~ 1.11 “Base Thermal Variable Charge Escalation Formula” means, with respect to each Active Thermal Element, the formula to be used to change the Base Thermal Variable Charge Amount from month to month in accordance with Section 6, as shown in column ~~AD~~ AP of Exhibit A.

~~** 1~~ 1.14 1.12 “Buyer Share” means the overall share of a Thermal ~~Plant~~ Element, Power Sale Contract, Hydro-Electric Generating Plant, Purchased Power Contract or Mine deemed allocated to Buyer as shown in column ~~AE~~ AQ of Exhibit A, and in Exhibit B.

Exhibit D and Exhibit E, respectively.

~~1.11~~ 1.13 “Buyer’s Hourly Thermal Contract Load” means the result of the equation set forth in Subsection 6.1.

~~1.12~~ 1.14 “Buyer’s Distribution Load” means the amount of energy being delivered over Buyer’s distribution system to ~~Residential and Small Non-residential Consumers~~ less the amount of energy actually delivered to Buyer from Non-Dedicated New Resources during any hour (stated in megawatt-hours).

1.15 “Buyer’s Monthly Share” means Buyer’s allocated share each month of Purchased Power Contracts and Hydro/Contract Pricing Elements as shown on Exhibits B and D, respectively.

~~1.43~~ 1.16 “Buyer’s Net Load” means the amount of Buyer’s Retail Load together with the load served under Wholesale Contracts during an hour less the amount of energy delivered to Buyer during such hour from Non-Dedicated New Resources (stated in dollars per megawatt-hour).

~~1.13~~ 1.17 “Buyer’s Retail Load” means the amount of retail load served by Buyer during any hour (stated in megawatt-hours).

~~* 1.14~~ “Buyer Share” means the overall share of a Thermal Plant, Power Sale Contract, Hydro Electric Generating Plant, Purchased Power Contract or Mine deemed allocated to Buyer as shown in column AE of Exhibit A, ~~Exhibit B Exhibit D and Exhibit E,~~ respectively.

~~1.15~~ 1.18 “Closing Date” ~~shall have~~ has the meaning ascribed to that term in the Asset Transfer Agreement between Buyer and Seller of even date herewith.

~~1.16~~ 1.19 “Dedicated New Resource” ~~means contracts, other than this Agreement, that Buyer has entered into and permitted Seller to dispatch in accordance with the provisions of~~ has the meaning ascribed to that term in Subsection 12.1 as listed from time to time on Exhibit A. 10.1.

~~1.17~~ 1.20 “Dedicated New ~~Resources~~ Resource Variable Costs” means the variable costs deemed to be associated with dispatching a Dedicated New Resource as specified from time to time by Buyer pursuant to Subsection ~~12.1~~ 11.1 and as shown in column ~~AC~~ AM of Exhibit A.

~~1.18~~ 1.21 “Delivery Limits” means the maximum amount of Power Seller may deliver under this Agreement and the Other Agreements at each Point of Delivery and Point of Injection as set forth in Exhibit F as such limits may be changed from time to time by mutual agreement of the Parties.

~~1.22-~~

~~1.19~~ “End Date” means, with respect to a Thermal Element ~~associated with a Thermal Plant~~, the Year following the end of the assumed life of such Thermal ~~Plant~~ Element (as shown in Column B of Exhibit A) and with respect to a Thermal Element associated with a Purchased Power Contract, the ~~Year~~ month following the end of the term of such contract as ~~shown in column B of Exhibit A.~~

~~1.20~~ 1.23 “Energy Commodity Service” means selling electric energy and capacity to end-use customers.

1.24 “Energy Imbalance Service” means the service of providing energy or absorbing energy to reflect any differences between the amount of Power scheduled and Buyer’s Net Load.

1.25 ~~1.21~~ “Environmental Law” means all Laws for or relating to: (i) air emissions, hazardous materials, storage, use and release to the environment of Hazardous Materials, generation, treatment, storage, and disposal of hazardous wastes, wastewater discharges and similar environmental matters, and (ii) the protection and enhancement of the environment, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; the Resource Conservation and Recovery Act, 42. U.S.C. § 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C.

§ 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 et seq.; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq.; the Oil Pollution Act, 33 U.S.C. § 2701 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11001 et seq.; and the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq.; Surface Mining Control and Reclamation Act, Title 30 U.S.C. Ch. 25 (30 U.S.C. 1201 et seq.).

~~1.22~~ 1.26 “Environmental Obligations means:

a) Any capital additions, increased operating expense, or reduction in capacity at the Plants or Mines required to comply with Environmental Law;

b) Any liability, penalty, levy or assessment imposed upon the Seller or an Affiliate of Seller by any Governmental Body with respect to the operation of the Plants or the Mines;

c) Any costs associated with the offsite transport of Hazardous Materials from the real property included in the Plants or Mines or the treatment, storage or disposal of Hazardous Materials transported from the real property included in the Plants or Mines;

d) Any costs associated with the remediation of any Release of Hazardous Materials from the Plants or Mines into the atmosphere or any water course or body of water not included in the Plants or Mines;

e) Any costs associated with the removal of Hazardous Materials used as construction materials in, on or otherwise affixed to structures or improvements included in the Plants or Mines, including without limitation, asbestos, urea, formaldehyde foam insulation and lead-based paint or coatings;

f) Any costs associated with Remediation Measures with respect to Hazardous Materials introduced into the soil or groundwater of the real properties included in the Plants or Mines as well as the migration through soil or groundwater of such Hazardous Materials;

g) Any increase in the costs or burdens of any Remediation Measures required by any Governmental Body or any other third Person as a result of changes in Laws subsequent to the date hereof; or

h) Plant Decommissioning Costs.

~~1.23~~ 1.27 “FERC” means the Federal Energy Regulatory Commission or its successor agency.

1.28 “Gain On Sale” means the amount by which the gross proceeds for a Thermal Element in an auction sale conducted pursuant to Subsections 12.3 or 12.4 exceed the sum of:
(a) the depreciated book value of such Thermal Element, (b) taxes owing on the sale and
(c) the costs of conducting the sale. For purposes of computing the Gain On Sale, book value shall be calculated based upon the Element Book Depreciation Amounts and the Plant Capital Additions shown in Exhibits K and L, respectively and the taxes owing shall be calculated based upon the Plant Tax Depreciation Amounts shown in Exhibit M.

1.29 ~~1.24~~ “Governmental Body” means any federal, state, local, municipal, or other government; any governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

~~1.25~~ 1.30 “Hazardous Materials” means any chemicals, materials, substances, or items in any form, whether solid, liquid, gaseous, semisolid, or any combination thereof, whether waste materials, raw materials, chemicals, finished products, by-products, or any other materials or articles, which are listed as hazardous, toxic or dangerous under Environmental Law, including without limitation, petroleum products, asbestos, urea formaldehyde foam insulation, lead-containing paints or coatings and hazardous debris.

~~4.26~~ 1.31 “Heavy Load Hours” means the hours from 0700 hours through 2200 hours, Pacific Time Monday through Saturday except for public holidays recognized by the North American Energy Reliability Council.

~~** 3 4.41 “Monthly Heavy~~ 1.32 “Heavy Load Hour Thermal Energy Share” Amount” means the amount of energy (stated in megawatt hours) from each Active Thermal Element and Dedicated New Resource deemed to be available to Buyer for pricing purposes during each Heavy Load Hour of each month as shown in columns C, E, G, I, K, M, O, Q, S, U, W, and Y of Exhibit A.

~~1.27 “Heavy Load Hour Ratio”~~ 1.33 “Hydro/Contract Charge” means the ~~number of Heavy Load Hours in a month divided by the total number of hours in such month.~~ charge provided for in Subsection 4.1.

~~1.28~~ 1.34 “Hydro/Contract Energy Amount” means, the result of the following equation:

$$\frac{\Sigma HP + CR}{Q} = \text{Hydro/Contract Energy Amount}$$

Where:

- H= In respect to Heavy Load Hours, the amount of energy actually generated by each of the Hydro-~~electric~~ Electric Generating Plants, while such plants are licensed to Seller, during Heavy Load Hours of a month, or in respect to ~~Light Low~~ Load Hours, the amount of energy actually generated by the Hydro-~~electric~~ Electric Generating Plants, while such plants are licensed to Seller, during ~~Light Low~~ Load Hours of a month
- P= ~~The Buyer’s Monthly~~ Buyer’s Share applicable to the corresponding hydroelectric generating plant listed on Exhibit D
- C= In respect to Heavy Load Hours, the amount of energy actually delivered to Seller under each of the Purchased Power Contracts listed on Exhibit D during Heavy Load Hours of a month, or in respect to ~~Light Low~~ Load Hours, the amount of energy actually delivered to Seller under each of the Purchased Power Contracts on Exhibit D during ~~Light Low~~ Load

Load Hours of a month

R= ~~The~~ Buyer's Monthly ~~Buyer's~~ Share applicable to the corresponding Purchased Power Contract listed on Exhibit D

Q= With respect to Heavy Load Hours, the number of Heavy Load Hours in the Month and in respect to Low Load Hours, the number of ~~Light~~ Low Load Hours in the Month

~~1.29~~ 1.35 "Hydro/Contract Power" means Power made available by Seller to Buyer that is priced based upon the Buyer's share of the Hydro/Contract Pricing Elements shown on Exhibit D as calculated according to the provisions of Section 4.

~~1.30~~ 1.36 "Hydro/Contract Pricing Elements" means shares of Hydro-Electric Generating Plants and Purchased Power Contracts which are allocated to Buyer for pricing purposes hereunder as reflected on Exhibit D.

~~1.31~~ 1.37 "Hydro-Electric Generating Plants" means the hydro-electric and wind generating plants owned by Seller listed on Exhibit D.

~~1.32~~ 1.38 "Index" means the indices set forth in Exhibit C that are to be used to change costs associated with Thermal Pricing Elements.

~~1.33~~ 1.39 "Laws" ~~shall mean~~ means all statutes, rules, consent decrees, regulations, ordinances, orders, common law and their legal and equitable principles, and codes of federal, foreign, state and local governmental and regulatory authorities presently in effect or enacted or adopted during the term of this Agreement.

** 4 ~~1.36~~ 1.40 "Load Following Amount" ~~shall have~~ has the meaning ascribed to that term in Subsection 10.8.

1.41 "Loss On Sale" means the amount by which the gross proceeds from the sale of a Thermal Element in an auction sale conducted pursuant to Subsections 12.3 or 12.4 is less than the sum of: (a) the depreciated book value of the Thermal Element, (b) taxes owing on the sale and (c) the costs of conducting the sale. For purposes of computing the Loss On Sale, book value shall be calculated based upon the Plant Book Depreciation Amounts and the Plant

Capital Additions shown in Exhibits K and L, respectively and the taxes owing shall be calculated based upon the Plant Tax Depreciation Amounts shown in Exhibit M.

1.42 ~~1.34~~ “Low ~~Light~~ Load Hours” means hours during any month that are not Heavy Load Hours.

~~** 5~~ 1.42 “Monthly Light 1.43 “Low Load Hour Thermal Energy Share” Amount” means the amount of energy (stated in megawatt hours) from each Active Thermal Element and Dedicated New Resource deemed to be available to Buyer for pricing purposes during each ~~Light~~ Low Load Hour of each month as shown in columns D, F, H, J, L, N, P, R, T, V, X, and Z of Exhibit A.

~~1.35~~ “~~Light Load Hour Ratio~~” means the number of ~~Light Load Hours~~ in a month divided by the total numbers of hours in such month.

~~* 4~~ ~~1.36~~ “~~Load Following Amount~~” shall have the meaning ascribed to that term in Subsection 10.8.

~~1.37~~ “~~Market Purchase Index~~” means the ~~[Index]~~ adjusted in accordance with Exhibit M with respect to each Heavy Load Hour and the ~~[Index]~~ adjusted in accordance with Exhibit M with respect to each Low Load Hour (stated in dollars per megawatt hour).

~~1.38~~ “~~Market Sale Index~~” means the ~~[index]~~ adjusted in accordance with Exhibit E with respect to each Heavy Load Hour and the ~~[index]~~ adjusted in accordance with Exhibit E with respect to each Low Load Hour (stated in dollars per megawatt hour).

~~1.39~~ 1.44 “Maximum Monthly Hydro/Contract Power Purchase Amount” means Buyer’s share (as shown on Exhibit D) of the amount of energy actually produced during Heavy Load Hours and ~~Light~~ Low Load Hours for the account of Seller by resources included in the Hydro/Contract Pricing Elements during any month.

~~1.40~~ 1.45 “Mines” means mines owned by Seller or an Affiliate of Seller that have been a source of fuel for any ~~of the Thermal Generating Plants~~ coal-fired plant owned by Sellers as shown on Exhibit E.

~~* 3 1.41 “Monthly Heavy Load Hour Thermal Energy Share” means the amount of energy (stated in megawatt hours) from each Active Thermal Element and Dedicated New Resource deemed to be available to Buyer for pricing purposes during each Heavy Load Hour of each month as shown in columns C, E, G, I, K, M, O, Q, S, U, W, and Y of Exhibit A.~~

~~* 5 1.42 “Monthly Light Load Hour Thermal Energy Share” means the amount of energy (stated in megawatt hours) from each Active Thermal Element and Dedicated New Resource deemed to be available to Buyer for pricing purposes during each Light Load Hour of each month as shown in columns D, F, H, J, L, N, P, R, T, V, X, and Z of Exhibit A.~~

~~* 2 1.43 “Net Load” means the amount of Buyer’s Retail Load together with the load served under Wholesale Contracts during an hour less the amount of energy delivered to Buyer during such hour from Non-Dedicated New Resources (stated in dollars per megawatt hour).~~

1.46 “New Resources” means purchased power contracts (other than this Agreement) entered into by Buyer and generating plants owned by Buyer.

~~1.44~~ 1.47 “New Taxes” means any tax or assessment that is generally applicable to electric generation facilities enacted subsequent to January 1, 2002 by the United States or any state or local government that is based upon the electric output or emissions from such facilities including, without limitation, a carbon tax or generation tax.

~~1.45~~ 1.48 “Non-Dedicated New Resources” ~~means purchase power contracts, other than this Agreement, that Buyer has entered into which Buyer has not permitted Seller to dispatch in accordance with the provisions of~~ has the meaning ascribed to that term in Subsection 12.1. 10.1.

~~1.46~~ 1.49 “Other Agreements” means power sale agreements entered into with Other Buyers contemporaneously with this Agreement.

1.50 “Other Buyers” means PacifiCorp, Idaho, Inc.;² PacifiCorp, Oregon, Inc.;² PacifiCorp, Utah, Inc.; and PacifiCorp, Wyoming, Inc. and PacifiCorp, Utah, Inc.

~~* 6 1.47~~ “Points of Delivery” for all transactions hereunder means the points of delivery identified in Exhibit F to this Agreement as such Exhibit F may be amended from time to time by mutual agreement of the Parties.

~~1.48~~ 1.51 “Plant Decommissioning Costs” means any decontamination or remediation of any portion of a site included in the Assets which is not required to be undertaken under Environmental Law (including as a result of action by a Governmental Body in connection with the administration of Environmental Law) until (i) the dismantling or demolition of all or a portion of the Plant on such site, including all or any portion of the substructure or foundation of the Plant, in a fashion that disturbs or exposes the soil or groundwater beneath such site, or (ii) the restoration of the real property on which the Plant or such material portion thereof is located to unrestricted use or a use not associated with generation of electrical power.

~~1.49~~ 1.52 “Plants” means the Hydro-Electric Plants and the Thermal ~~Plants~~ Elements.

~~** 6 1.47~~ 1.53 “Points of Delivery” means, for all transactions hereunder means, the points of delivery identified in Exhibit F to this Agreement as such Exhibit F may be amended from time to time by mutual agreement of the Parties.

1.54 “Points of Injection” means the Points of Injection listed in Exhibit F.

1.55 ~~1.50~~ “Power” means electric capacity and energy supplied by Seller to Buyer pursuant to the terms of this Agreement.

~~1.51~~ 1.56 “Power Sale Contract Revenue Amount” means the Buyer’s Share of revenues actually received during any month by Seller from Power Sales Contracts.

~~1.52~~ 1.57 “Power Sales Contracts” means the contracts under which Seller sells or exchanges energy and/or capacity at wholesale that are listed in Exhibit B.

~~1.53~~ 1.58 “Power Sales Contract Energy Amount” means, the result of the following equation:

$$\frac{\sum ME}{Q} = \text{Power Sales Contract Energy Amount}$$

Where:

M= In respect to Heavy Load Hours, the amount of energy actually delivered under each of the Power Sales Contracts listed on Exhibit B during Heavy Load Hours of a month, or in respect to ~~Light~~ Low Load Hours, the amount of energy actually delivered under each of the Power Sales Contracts listed on Exhibit A during ~~Light~~ Low Load Hours of a month

E= ~~The Buyer~~ Buyer’s Monthly Share applicable to the corresponding Power Sales Contract on Exhibit B

Q= With respect to Heavy Load Hours, the number of Heavy Load Hours in the Month and in respect to Low Load Hours, the number of Light Load Hours in the Month

~~1.54~~ 1.59 “Premium Excess Power” means energy deemed ~~dispatched hereunder to~~ have been sold in wholesale markets in addition to Base Excess Power ~~which is priced based upon the formula set forth in Subsection 6.4.~~

~~1.55~~ 1.60 “Premium Excess Power Unit Price” means the value of Premium Excess Power calculated in accordance with Exhibit H.

1.61 “Premium Supplemental Power” means ~~energy deemed dispatched hereunder~~ Power deemed to have been purchased in wholesale markets in addition to Base Supplemental Power ~~which is priced based upon the formula set forth in Subsection 6.4.~~

~~1.56~~ 1.62 “Premium Supplemental Power Unit Cost” means the cost of Premium Supplemental Power calculated in accordance with Exhibit H.

1.63 “Prudent Utility Practice” means those practices, methods and acts which:

(a) when engaged in are commonly used in prudent engineering and operations to operate electric equipment and associated mechanical and civil facilities lawfully and with safety, reliability, efficiency and expedition; or

(b) in the exercise of reasonable judgment considering the facts known when engaged in, could have been expected to achieve the desired result consistent with applicable law, safety, reliability, efficiency and expedition.

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

~~1.57~~ 1.64 “Purchased Power Contracts” means contracts under which Seller purchases or exchanges energy and/or capacity at wholesale which are listed in Exhibit D.

~~1.58~~ 1.65 “Rate of Return” means ~~{formula for after tax equity/debt return derived from a published index of a long term bond yield}~~. the result of the following equation:

$$1.59(D \times C) + (P \times F \times (1/1-T)) + (E \times G \times (1/1-T)) = \text{Rate of Return}$$

Where:

D= Percentage of debt deemed to be in Seller’s capital structure (as determined from time to time by the FERC)

C= Average percentage interest rate on Seller’s outstanding debt (as determined from time to time by the FERC).

P= Percent of preferred stock deemed to be in Seller’s capital structure (as determined from time to time by the FERC)

F= Average percentage yield on Seller’s outstanding preferred stock (as determined from time to time by the FERC)

T= Seller’s actual composite federal and state statutory tax rate

E= Percent of common stock deemed to be in Seller's capital structure (as determined from time to time by the FERC)

G= Fair rate of return on common equity on Seller's outstanding common stock (as determined from time to time by the FERC)

1.66 "Release" means any release, spill, emission, leaking, pumping, emptying, dumping, injection, abandonment, deposit, disposal, discharge, dispersal, leaching, or migration of Hazardous Materials (including, without limitation, the abandonment or discarding of Hazardous Materials in barrels, drums, or other containers) into or within the environment, including, without limitation, the migration of Hazardous Materials into, under, on, through, soil, subsurface strata, surface water, groundwater, drinking water supply, any sediments associated with any water bodies, or any other environmental medium, regardless of where such migration originates.

~~1.66~~ 1.67 "Remediation Measures" means any (i) investigation, monitoring, clean-up, containment, remediation, mitigation, removal, disposal or treatment of Soils Contamination to remediation standards required by applicable Laws in effect during the Term of this Agreement, including without limitation the preparation and implementation of any work plans and the obtaining of authorizations, approvals and permits from Governmental Bodies with respect thereto, and (ii) any response to, or preparation for, any inquiry, order, hearing or other proceeding by or before any Governmental Body with respect to any Soils Contamination.

1.68 "Replacement Transmission Contracts" means transmission contracts entered into by Seller to replace or otherwise reasonably compensate for transmission rights lost under Transmission Contracts for any reason.

1.69 ~~1.64~~ "Reserve Price" means the sum of Buyer's and ~~other~~ Other Buyers' estimates of fair market value established pursuant to Subsection ~~13.3~~ 12.3.

~~1.62~~ 1.70 “Retail Load” means the amount of Buyer’s Distribution Load during any hour for which Buyer is responsible for providing Energy Commodity Service.

~~1.63~~ 1.70 “Soils Contamination” ~~shall mean~~ means the presence of Hazardous Materials in the soil, subsurface strata, surface water, groundwater, drinking water supply, any sediments associated with any water bodies, or any other environmental medium (other than ambient air) (“environmental media”) of the real properties where Plants are located, as well as the migration through soil or groundwater of Hazardous Materials through the environmental media of the real properties where the Plants or Mines are located.

1.71 “Thermal Charge” means the charge provided for in Subsection 5.1.

1.72 ~~1.64~~ “Thermal Plants” Elements means the geothermal, coal and natural gas fired generating plants owned by Seller listed on Exhibit A.

~~1.65~~ 1.73 “Total Entitlement Amount” means, for any hour, the Hydro/Contract Energy Amount together with the sum of either the Monthly ~~Light~~ Low Load Hour Thermal Energy Shares or the Monthly Heavy Load Hour Thermal Energy Shares for all Active Thermal Elements.

~~1.66~~ 1.74 “Transmission Charge” means the charge described in Subsection 5.2.

1.75 “Transmission Contracts” means all transmission contracts under which the merchant function of PacifiCorp is entitled to receive transmission services as of the day prior to the Closing Date.

1.76 “Transmission Costs” means charges incurred by Seller under Transmission Contracts and Replacement Transmission Contracts, but not including charges under such contracts for ancillary services.

1.77 “Transmission Losses” means transmission losses assessed under Transmission Contracts and Replacement Transmission Contracts.

1.78 ~~1.67~~ “Uncontrollable Force” means an event described in Section 19.

~~1.68~~ 1.79 “Variable Charge” means the charge calculated pursuant to Section 6.

~~1.69~~ 1.80 "Variable Thermal Pricing Elements" means the amounts shown in column ~~AC~~ AM of Exhibit A adjusted by the corresponding formula shown in column ~~AD~~ AP of Exhibit A.

~~1.70~~ 1.81 "Wholesale Contracts" means sales for resale of energy and capacity entered into by Buyer pursuant to Subsection 3.2.

~~1.71~~ 1.82 "WSCC" means the Western Systems Coordinating Council or any successor entity.

~~1.83-~~

~~1.72~~ "Year" means each partial or full calendar year during the term of this Agreement.

Section 2: Effective Date and Termination

2.1 Term of this Agreement. This Agreement shall be effective at 0000 hours, Pacific time, on the day following the Closing Date. Unless extended by ~~Buyer as provided for in Subsection 2.2~~ mutual agreement of the Parties, except as provided in Subsection 2.3 and except in regard to a final billing hereunder, this Agreement shall terminate at 2400 hours, Pacific time, ~~December 31, 2035.~~ five years following the Closing Date.

~~2.2 Extension of Term. By providing Seller written notice at least one year in advance of any date~~ 2.2 Assignment of Transmission Contracts. On the day that this Agreement would otherwise terminate, ~~Buyer may continue to extend the term of this Agreement for an additional five Year term beyond the date upon which this Agreement would otherwise terminate~~ terminates (other than a termination pursuant to Subsection 2.3), Seller shall assign all its interest in the Transmission Contracts and the Replacement Transmission Contracts to Buyer and the Other Buyers or to such other entity that Buyer and the Other Buyers designate.

2.3 Federal Energy Regulatory Commission Filing. Seller shall promptly file this Agreement with the Federal Energy Regulatory Commission ("FERC"). If the FERC issues an

order not approving or accepting this Agreement for filing in its entirety and without material change, this Agreement shall terminate.

Section 3: Power Purchase

3.1 Sale and Purchase of Power. During each hour of the Term of this Agreement, Seller shall make available to Buyer and Buyer shall purchase an amount of Power and associated transmission losses equal to Buyer's Net Load.

3.2 Wholesale Contracts. During the term of this Agreement, Buyer may resell Power under Wholesale Contracts only under the following circumstances:

a) ~~The points of delivery under any such contracts shall be~~ Seller shall only be obligated to make Power available to Buyer for resale under such contracts at the Points of Delivery, Injection.

b) The ~~combined~~ coincident annual, monthly and daily load factors under all such contracts in effect at any time shall not be less than 80 percent and

c) The combination of all such contracts shall not result in ~~Buyer's Net Load deliveries~~ of Power to Buyer exceeding 105 percent of the sum of Buyer's Distribution Load and the Power Sales Contract Energy Amount during any hour.

3.3 Consideration. In consideration of Seller's obligations hereunder, Buyer shall pay Seller each month the sum of the Hydro/Contract Charge described in Section 4, the Thermal Charge described in Subsection 5.1, the Transmission Charge described in Subsection 5.2, the Variable Charge described in Section 6, the Environmental Cost Assessment described in Section 7 and reimburse Seller for any New Taxes as provided for in Section 8. ~~Seller shall credit against such charges any Direct Access Credit owing to Buyer pursuant to the provisions of Section 9.~~

Section 4: Hydro/Contract Charge

4.1 Calculation of Charge. Each month, Buyer shall pay Seller a Hydro/Contract Charge equal to the result of the following equation:

$$\frac{\sum (BR + E) S + DS + \sum PQ - \sum TX}{12} = \text{Monthly Hydro/Contract Charge}$$

Where:

- B= Depreciated book value of each Hydro-electric Generating Plant as recorded in Section 337 and _____ of Seller's FERC Form 1 for the Year to which the charge applies
- R= The Rate of Return
- E= Seller's actual annual expenses (other than depreciation expense) associated with each Hydro-electric Electric Generating Plant as recorded in Sections 406, 407 and _____ of Seller's FERC Form 1 for the Year to which the charge applies
- S= ~~Maximum Monthly Hydro/Contract Percentage~~ Buyer Share of each Hydro-electric Electric Generating Plant as listed on Exhibit B
- D= Seller's actual Hydro-Electric Plant depreciation expense as recorded in Section 336 of Seller's FERC Form 1 for the Year to which it applies.
- P= Seller's actual expense incurred under each of the Purchased Power Contracts as recorded in Sections 326 and 327 of Seller's FERC Form 1 for the Year to which the charge applies
- Q= ~~Maximum Monthly Hydro/Contract Percentage~~ Buyer Share of each Purchased Power Contract as listed on Exhibit D B
- T= Seller's actual revenues received under each of the Power Sales Contracts as recorded in Sections 310 and 311 of Seller's FERC Form 1 for the Year to which the revenues apply.
- X= Buyer Share of each Power Sale Contract as listed on Exhibit B.

4.2 Estimated Billing. Following each month, the Hydro/Contract Charge shall be calculated and billed on an estimated basis and subsequently adjusted to reflect Seller's actual costs in accordance with the provisions of Section 11.3.

Section 5: Thermal Charge and Transmission Charge

5.1 Thermal Charge. Each month, Buyer shall pay Seller a Thermal Charge equal to the sum of the amounts ~~result of the following equation:~~

$$A (HP + LQ) = \text{Monthly Thermal Charge}$$

Where:

~~A = For each Active Thermal Element, the amount shown in column AA AB of Exhibit A adjusted in accordance with the Base corresponding formula in column AC of Exhibit A~~

~~H = For each Active Thermal Fixed Charge Escalation Formula Element, the corresponding Monthly Heavy Load Hour Thermal Energy Share for the month for which the charge is being calculated~~

~~P = The Heavy Load Hour Ratio for the month for which the charge is being calculated~~

~~L = For each Active Thermal Element, the corresponding Monthly Light Load Hour Thermal Energy Share for the month for which the charge is being calculated~~

~~Q = The Light Load Hour Ratio for the month for which the charge is being calculated~~

5.2 Transmission Charge. Each month Buyer shall ~~pay~~ reimburse Seller a for 9.17 percent of Seller's Transmission ~~Charge equal to Seller's cost for transmission charges incurred in connection with delivering Power to the Buyer at the Points of Delivery~~ Costs.

Section 6: Variable Charge

6.1 Calculation of Buyer's Hourly Thermal Contract Load. In order to calculate the Variable Charge for any hour of any month, Buyer's Hourly Thermal Contract Load shall first be determined for such hour by applying the following equation:

$$R + L + C - H N = \text{Buyer's Hourly Thermal Contract Load}$$

Where:

R = The Distribution Load for the hour

L = ~~Seller's transmission losses~~ Transmission Losses during the hour associated with delivering an amount of Power equal to Buyer's Net Retail Load to the Points of Delivery calculated according to the methodology set forth in Exhibit I.

C = The Power Sales Contract Energy Amount for the hour

H = The Hydro/Contract Energy Amount for the hour

~~N = The amount of energy actually delivered to the Buyer from Non-Dedicated New Resources~~

And, where all of the foregoing terms are expressed in megawatt-hours.

6.2 Calculation of Variable Thermal Pricing Elements. For each Active Thermal Element, a Variable Thermal Pricing Element shall be calculated by adjusting the amounts shown in column ~~AC~~ AM of Exhibit A by the corresponding formula shown in column ~~AD~~ AP of Exhibit A. ~~The resulting amounts shall be~~ Variable Thermal Pricing Elements shall then rank ordered in ascending order of cost along with any Dedicated New Resource Variable Costs as reflected in column ~~AC~~ AM of Exhibit A.

6.3 Deemed Dispatch of Thermal Elements and Dedicated New Resources. For each hour, Active Thermal Elements and Dedicated New Resources shall be deemed to be dispatched in their ascending order ~~of variable cost to meet Buyer's Hourly Thermal Contract Load~~ as established in Subsection 6.2. As each Active Thermal Element or Dedicated New

Resource is deemed dispatched, there shall be a deemed ~~satisfaction of~~ reduction in Buyer's Hourly Thermal Contract Load equal to the applicable Monthly Light Load Hour Thermal Energy Share or Monthly High Load Hour Thermal Energy Share of such Active Thermal Element or Dedicated New Resource. This deemed dispatch process shall continue until either: a) ~~there is no additional~~ the variable cost of all Active Thermal Elements and Dedicated New Resources that have not been dispatched is greater than the Adjusted Market Price Index applicable to such Active Thermal Element or Dedicated New Resource ~~left to dispatch or the variable cost of the next Active Thermal Element or Dedicated New Resource that would be deemed to be dispatched is greater than the applicable Base Supplemental Power Unit Cost or~~ b) ~~Buyer's Hourly Thermal Contract Load is zero. If such dispatch process ends while Buyer's Hourly Thermal Contract Load is positive, the balance of Buyer's Hourly Thermal Contract Load will be deemed to have been met with Base Supplemental Power, or to the extent Buyer has exceeded its entitlement to Base Supplemental Power set forth in Exhibit L, Premium Supplemental Power. If such dispatch process ends because Buyer's Hourly Thermal Contract Load has been reduced to zero, there shall then be deemed to be a further dispatch of Active Thermal Elements and Dedicated New Resources until such time as the variable cost of the next Active Thermal Element or Dedicated New Resource that would be deemed dispatched is greater than the applicable Base Excess Power Unit Price. Energy that is deemed dispatched which is in excess of Buyer's Hourly Thermal Contract Load shall be deemed Base Excess Power or, to the extent Buyer has exceeded its entitlement to Base Excess Power set forth in Subsection 1.4, Premium Excess Power as established in Exhibit N.~~ In the course of the deemed dispatch process, a portion of the applicable Monthly Light Load Hour Thermal Energy Share or Monthly Heavy Load Hour Thermal Energy Share of the last Thermal Element or Dedicated New Resource may be deemed to have been dispatched so as to avoid an over-dispatch of resources.

6.4 Calculation of Hourly Variable Charge. For each hour, the Variable Charge shall equal the result of the following equation:

$$\Sigma VC + SP + FQR - \underline{SP + QR - NL - GKX} \underline{KX} = \text{Hourly Variable Charge}$$

Where:

V = Variable Thermal Pricing Element for each Active Thermal Element deemed to have been dispatched during the hour

C = Applicable Monthly ~~Light~~ Low Load Hour Thermal Energy Share or Heavy Load Hour Thermal Energy Share for each Active Thermal Element deemed to have been dispatched during the hour, or in regard to the last Active Thermal Element deemed to have been dispatched, a portion of such share representing the portion of such last Active Thermal Element deemed dispatched

S = Amount of Base Supplemental Power deemed to have been dispatched during the hour, as determined pursuant to Exhibit I

P = Base Supplemental Power Unit Cost

Q = Amount of Premium Supplemental Power deemed to have been dispatched during the hour, as determined pursuant to Exhibit I

R = Premium Supplemental Power Unit Cost ~~R = Market Purchase Index~~ for the hour

~~F = Mark Up Percentage [to be determined]~~

N = Amount of Base Excess Power deemed to have been dispatched during the hour as determined pursuant to Exhibit I

L = Base Excess Power Unit Price

K = Amount of Premium Excess Power deemed to have been dispatched during the hour

~~X = Market Sale Index~~ Premium Excess Power Unit Price for the hour

~~G = Discount Percentage [to be determined]~~

6.5 Calculation of Monthly Variable Charge. The monthly Variable Charge shall consist of the sum of the hourly Variable Charges for the month calculated pursuant to Subsection 6, ~~less the Power Sales Contract Revenue Amount for the month.~~

Section 7: Environmental Cost Assessment

Seller shall record on a Plant-by-Plant basis capital costs and operating expenses incurred by Seller or an Affiliate of Seller associated with fulfilling Environmental Obligations with respect to each Hydro-electric Generating Plant, and with respect to each Thermal ~~Plant~~ Element and Mine associated with an Active Thermal Element as they are incurred. Such costs and expenses shall be amortized over 15 years with an annual interest rate equal to the Rate of Return applied to the unamortized balance. Each month, Seller shall bill Buyer for the Buyer's Share of the monthly amortization of such costs and expenses as they relate to each Hydro-electric Plant, Thermal ~~Plant~~ Element and Mine and Buyer shall pay such amount. Except as provided for in Section 12, Buyer shall not be required to continue to pay such costs and expenses in connection with a Thermal Element that has been sold by the Seller.

Section 8: Reimbursement of New Taxes

Buyer shall reimburse Seller for the Buyer Share of any New Taxes incurred by Seller associated with the operation of any Hydro-electric Generating Plant or Thermal ~~Plant~~ Element during such time as the costs of operating any such Plant are being reflected in the price of Power hereunder.

Section 9: Direct Access Credit

~~If Buyer's Distribution Load is greater than Buyer's Retail Load in any hour because Buyer does not have the exclusive right to provide Energy Commodity Service within the area where Buyer distributes electricity, Seller shall credit against the charges that would otherwise be owing hereunder by Buyer to Seller for Power delivered during such hour an amount equal to the result of the following equation:~~

$$\underline{FAP + DC + G(R - N - Q - E)M} = \text{Direct Access Credit}$$

Where:

A = The lesser of: a) the amount of Premium Supplemental Power deemed to have been dispatched during the hour or b) the amount by which Buyer's Distribution Load exceeds Buyer's Net Load during the hour

P = Applicable Market Purchase Index

D = The lesser of: (a) the amount of Base Supplemental Power deemed to have been dispatched during the hour or (b) the amount by which Buyer's Distribution Load exceeds Buyer's Net Retail Load during the hour less the amount of Premium Supplemental Power deemed to have been dispatched during the hour

R = Buyer's Distribution Load during the hour

N = Buyer's Net Load During the Hour

Q = Amount of Premium Supplemental Power deemed dispatched during the hour

E = Amount of Base Supplemental Power deemed dispatched during the hour

M = Applicable Market Sale Index

F = Mark Up Percentage [to be determined]

~~G = Discount Percentage [to be determined]~~

~~And where (R N Q R) is not less than zero~~

~~Section 10: Scheduling and Redispatch~~

~~10.1~~ 9.1 Projected Monthly Requirements. At least 30 days prior to the expected Closing Date and each September 1 thereafter during the term of this Agreement, Buyer shall submit to Seller in writing projections of Buyer's Net ~~Retail~~ Load for each hour of the following Year. Such projections shall represent a good faith estimate by Buyer of its anticipated requirements hereunder; provided, that such estimates shall not be binding and shall be used by Seller for planning and information purposes only.

~~10.2~~ 9.2 Daily Preschedules by Buyer. Buyer shall inform Seller on a daily basis before 1000 hours, Pacific Time, on each prescheduling day mutually observed by the Parties immediately preceding any day or days that Power is to be delivered hereunder, of the amount of Buyer's expected Net Load for each hour of such day or days. The Parties' schedulers or dispatchers may, from time to time, mutually agree on a different time for receipt of Buyer's preschedule.

~~10.3~~ 9.3 Delivery Preschedules by Seller. No later than 1200 hours, Pacific Time, on each prescheduling day mutually observed by the Parties, Seller shall provide Buyer with a schedule showing for each hour of the day prescheduled, the Points of Delivery at which Seller intends to deliver Buyer's expected Power requirements and the amount to be delivered at each such Point of Delivery. Seller's delivery preschedule of Power. Seller shall:

- (a) Provide for deliveries of Power consistent with Prudent Utility Practice.
- (b) Provide for deliveries of Power at each Point of Delivery and Point of

Injection at a level no higher than the Delivery Limits.

~~10.4~~ 9.4 Dispatch of Dedicated New Resources. Seller shall include all Dedicated ~~New Resources into its load control area and~~ shall have the right to dispatch all Dedicated New

Resources to serve its total system loads. Seller shall not dispatch Dedicated New Resources when it is not economical to Buyer for it to do so.

~~10.5~~ 9.5 System Logs. All deliveries shall be made in accordance with the Parties' schedules which are in effect 30 minutes prior to each hour of delivery, ~~except deliveries associated with load following service which shall reflect the integrated amount accumulated over the hour and shall be deemed to be made during the hours and in the amounts as accounted for in the Buyer and Seller system logs. If scheduled deliveries are interrupted due to an Uncontrollable Force which requires use of operating reserves, such schedules shall be adjusted to reflect deliveries received at alternate Points of Delivery associated with Seller's use of operating reserves as a result of such Uncontrollable Force.~~

~~10.6~~ 9.6 Operating Reserves. Seller shall ~~maintain~~ provide sufficient spinning and non-spinning reserves to meet its obligation to deliver Power under this Agreement consistent with WSCC minimum operating reliability criteria; provided however, Seller shall not be obligated to ~~provided~~ provide for spinning and non-spinning reserves during any hour for any amount of Power in excess of the Total Entitlement Amount.

9.7 Energy Imbalance Service. Seller shall provide Energy Imbalance Service +/- of 5 megawatts per hour. Arrangements for ~~spinning and nonspinning reserves related to Power deliveries in excess of the Total Entitlement Amount~~ Energy Imbalance Service above this level shall be established by mutual agreement of the Parties.

~~10.7~~ 9.8 Power Quality. Seller shall make Power available at a leading/lagging power factor of +/- five percent; provided however, Seller shall not be obligated to maintain such power quality for an amount of Power in excess of the Total Entitlement Amount. Arrangements to assure power quality for deliveries in excess of the Total Entitlement Amount shall be established by mutual agreement of the Parties.

~~10.8 Load Following. Seller shall provide load following services to Buyer during each hour to the extent that Buyer's Net Load during any hour is not _____ megawatts greater or less than the amount of Power scheduled by Buyer for such hour (hereinafter referred to as the "Load Following Amount". The Load Following Amount shall be reduced in accordance with Exhibit J as: a) Hydro electric Generating Plants are no longer licensed to Seller, b) Purchased Power Contracts expire and c) the End Date associated with Thermal Plants is reached. Arrangements for load following services in excess of the Load Following Amount shall be established by mutual agreement of the Parties.~~

~~Section 11~~ Section 10: Billing

~~11.1~~ 10.1 Payments. Commencing with the Effective Date and continuing through the balance of the term of this Agreement, Buyer shall pay Seller each month as follows:

- (a) The monthly Hydro/Contract Charge established pursuant to Section 4.
- (b) The monthly Thermal Charge established pursuant to Subsection 5.1.
- (c) The monthly Transmission Charge pursuant to Subsection 5.2
- (d) The monthly Variable Charge established pursuant to Section 6.
- (e) The Environmental Cost Assessment established pursuant to Section 7.
- (f) The reimbursement of New Taxes established pursuant to Section 8.

~~11.2 Credits. Seller shall credit to Buyer each month any Direct Access Credit amount established pursuant to Section 9.~~

~~11.3~~ 10.2 Annual Adjustments. By ~~June~~ July 1 of each Year, Seller shall determine Buyer's payment obligation in respect to the Hydro/Contract Charge for the preceding Year, based on prices determined pursuant to Section 4, using actual as opposed to estimated data. In the event the amount so determined is greater than the amount actually paid by the Buyer during the Year, the Seller shall add the amount of such difference, ~~together with accrued interest equal to the Rate of Return calculated pursuant to Exhibit G, to its June invoice~~ to its invoice for Power delivered in July. In the event the amount so determined is

less than the amount actually paid by the Buyer during the Year, the Seller shall subtract the amount of such difference, together with accrued interest equal to the Rate of Return calculated pursuant to ~~Exhibit G~~ from its ~~June invoice~~. invoice for Power delivered in July.

~~11.4~~ 10.3 Billing and Payment. Seller shall bill Buyer each month by facsimile (with a copy of such bill transmitted to Buyer by certified mail) for amounts owing pursuant to Subsection _____. Buyer shall pay the amount of such bill, including any disputed amounts, by electronic wire transfer within 15 days of facsimile receipt of such bill to [Bank] for the credit of _____, Account No. _____, Attention _____ or such other financial institution or account number as Seller may specify from time to time in writing. Simple interest shall accrue on any unpaid amounts at a rate equal to 125 percent of the time-weighted average prime rate as established by The Morgan Guaranty Trust Company of New York during the period of delinquency, if any.

Section ~~12~~ 11: New Resources

~~12.1~~ 11.1 Designation. ~~From time to time during the term of this Agreement, it is expected that Buyer will enter into additional purchased power contracts with Seller or third parties.~~ At least 30 days in advance of the first delivery ~~under any new purchased power contract~~ from any New Resource, Buyer shall provide written notice to Seller of the following information with respect to such ~~contract~~: New Resource:

- ~~a) Identification of the seller under the contract,~~
- b) a) Identification of the point or points of delivery under the ~~contract~~, New Resource,
- c) b) Identification of the amount of energy that will be available ~~under~~ from the ~~contract~~ New Resource during Heavy Load Hours and Light Load Hours of each month of the term of the contract, ~~and~~
- ~~d) Identification of the ancillary services to be provided in connection with the contract and the provider of such services.~~

At least 30 days in advance of first delivery ~~under any new purchased power contract,~~

from any New Resource Buyer shall make a written election as to whether it wishes to have the capacity and energy available under such ~~new purchased power contract~~ New Resource delivered to Seller for Buyer's account and dispatched as part of Seller's entire system, in which event such ~~purchased power contract~~ New Resource shall be deemed to be a "Dedicated New Resource". ~~Purchase power contracts~~ New Resources that are not deemed to be Dedicated New Resources shall be deemed "Non-Dedicated New Resources". Upon one-year advance written notice to Seller, Buyer may change the designation of a Dedicated New Resource to a Non-Dedicated New Resource or the designation of a Non-Designated New Resource to a Dedicated New Resource.

~~12.2~~ 11.2 Dedicated New Resource Variable Costs. At least 30 days in advance of first delivery under a Dedicated New Resource and 30 days in advance of the commencement of each Year thereafter during the term of a Dedicated New Resource, Buyer shall advise Seller of the variable costs associated with dispatching such Dedicated New Resource. That information, together with information regarding the amount of energy available each month from the Dedicated New Resource shall be reflected on Exhibit A and used for purposes of calculating the Variable Charge pursuant to Subsections 6.3 and 6.4.

~~12.3~~ 11.3 Cost Responsibility. Buyer shall be responsible for and directly pay to the purchased power contract counter-party any and all costs associated with Dedicated New Resources and Non-Dedicated New Resources and indemnify and hold Seller harmless in respect to any such costs.

Section ~~13~~ 12: Maintenance and Sale of Resources

~~13.1~~ 12.1 Hydro Electric Resources. During the term of this Agreement, Seller shall:

- a) Not sell or assign any interest in a Hydro-electric Generating Plant,
- b) Use best efforts to maintain all permits and licenses related to Hydro-electric Generating Plants in full force and effect, consistent with Prudent Utility Practice,

c) Operate all Hydro-Electric Generating Plants in a manner that is consistent with all applicable laws and regulations, and

d) Use best efforts to maintain all Hydro-Electric Generating Plants in good working order, consistent with Prudent Utility Practice.

~~13.2~~ 12.2 Contracts. During the term of this Agreement, Seller shall not sell or assign any interest in a Power Sale Contract or Purchased Power Contract and shall not agree to any amendment to any Power Sale Contract or Purchased Power Contract that results in any: ~~i) decrease~~ i) decrease in the amount of energy or capacity available to Seller under any Purchased Power Contract, ii) increase in the amount of energy or capacity that must be made available under any Power Sale Contract or (iii) increase in the price of Power hereunder.

~~13.3~~ 12.3 Sale of Thermal ~~Plants~~ Elements Prior to End Date. Seller shall only sell or dispose of any interest in a Thermal ~~Plant~~ Element prior to its End Date in accordance with the provisions of this subsection. If Seller determines that it would be appropriate to sell or otherwise dispose of its entire interest in a Thermal ~~Plant~~ Element prior to its applicable End Date, Seller shall provide 180 days advanced written notice to Buyer and the Other Buyers prior to any such proposed sale or disposal. Within 120 days of receipt of such notice, Buyer shall provide Seller with its estimate of the fair market value of the Buyer Share of such Thermal ~~Plant~~ Element. The sum of such estimates received from Buyer and the Other Buyers shall be deemed the "Reserve Price". Within 60 days of when the Reserve Price is established, Seller may either determine not to sell its interest in the Thermal ~~Plant~~ Element or shall proceed to promptly auction the Thermal ~~Plant~~ Element in accordance with the Auction Protocols set forth in Exhibit H. If an auction is conducted and the successful bid ~~in the auction~~ is higher than the Reserve Price: a) the Thermal Element ~~(s) associated with~~ shall be sold b) the Thermal ~~Plant~~ Element shall no longer be deemed an Active Thermal Element and b) _____ percent of any auction proceeds in excess of the sum of: (a) the depreciated book value of the Thermal Plant, (b) income taxes due on the sale and (c) sale expenses, c) the Buyer

Share of any Gain on Sale shall be distributed paid over to Buyer and the other Buyers in proportion to their respective Buyer Shares Buyer Share of any Loss On Sale shall be paid by Buyer to Seller and d) the balance of the sale proceeds shall be retained by Seller. Buyer shall reimburse Seller for any costs associated with Environmental Obligations associated with Thermal Elements that are sold pursuant to this Subsection, to the extent they accrue subsequent to the sale. If the successful bid in the auction is lower than the Reserve Price, Seller shall retain the Thermal ~~Plant~~ Element, but thereafter, until the End Date associated with such Thermal ~~Plant~~ Element is reached, it shall no longer be treated as an Active Thermal Element but shall instead be treated for pricing purposes in the same manner as Hydro-electric Generating ~~Plants~~ Elements with Buyer paying the Buyer Share of the actual costs of owning and operating such Thermal ~~Plant~~ Element and with the Buyer Share of the actual generation of such Thermal ~~Plant~~ Element during any hour included in the Hydro/Contract Energy Amount for purposes of calculating the Buyer's Hourly Thermal Contract Load pursuant to Subsection 6.1. Notwithstanding the foregoing, unless required to do so by Governmental Bodies, Seller shall not sell or dispose of Thermal ~~Plants~~ Elements pursuant to the terms of this Subsection during the term of this Agreement that collectively have a Buyer Share of name plate capacity in excess of —140 megawatts. Seller shall not exchange Thermal Elements for other generating units absent the consent of the Buyer, not to be unreasonably withheld.

12.4 13.4 Sale of Thermal ~~Plants~~ Elements at End Date. During the Year prior to the End Date of each Thermal ~~Plant~~ Element, Seller shall conduct an auction sale of such Thermal ~~Plant~~ Element structured so that the closing of the sale occurs as of January 1 of the End Date pursuant to the Auction Protocols. If Seller has constructed any other generating facility on the site of the Thermal ~~Plant~~ Element to be auctioned, prior to the sale, the site shall be equitably partitioned and only the portion of the site reasonably necessary to the safe and economical operation of the Thermal ~~Plant~~ Element to be auctioned shall be included in the auction. If the added generating facility and the Thermal ~~Plant~~ Element to be auctioned share

common facilities, the auction shall be conducted on the basis of a joint use of facilities agreement that equitably allocates joint costs between Seller and the auction purchaser and permits the safe and economic operation of both the added generating facility and the Thermal Plant Element to be auctioned.

~~Proceeds of any auction shall be allocated on the basis of the following formula:~~

~~$X(P - C - T - D - B)BS = \text{Buyer Distribution}$~~

~~D~~

~~P = Total Auction Proceeds~~

~~C = Sale Expenses~~

~~T = Income taxes due on sale~~

~~D = Total depreciated book value of thermal plant~~

~~B = Amount of depreciated book value of facility Any Gain on Sale or Loss on Sale shall be allocated between Buyer and Seller in proportion to the ratio of (a) the total accumulated depreciation expense of the Thermal Element that is not attributable to investments made by the Seller to increase plant capacity or repower the generator~~

~~S = Buyer Share of Thermal Element to (b) the total accumulated depreciation expense of the Thermal Element; provided, however, Seller shall in all instances reimburse Buyer for at least 10 percent of any Loss on Sale and receive at least 10 percent of any Gain on Sale. Otherwise, all sale proceeds Plant~~

~~X — Sharing Ration [to be determined]~~

~~If the result is a positive number, it shall be paid over from Seller to Buyer. If result is a negative number, it shall be paid over from Buyer to Seller~~ retained by Seller. Buyer and Seller shall share any costs associated with any Environmental Obligations associated with any Thermal Element that is sold pursuant to this Subsection, to the extent that they accrue after the sale, in proportion to their respective shares of any Gain on Sale or Loss on Sale.

Section 14 13: Audit Rights

During the term of this Agreement, Buyer may review Seller's accounting records and supporting documents relevant to any billing hereunder made during the prior 18 months. If Buyer believes there are any errors in the determination of a bill including prices, it shall pay the full amount of such bill and the Parties shall meet to review the accounting records and supporting documents and agree on any adjustments that may be appropriate. If the Parties agree that the billing is incorrect, a corrected bill shall be prepared and the difference between the incorrect bill and corrected bill, including simple interest at a rate equal to 125 percent of the time-weighted average prime rate as established by Morgan Guaranty Trust of New York for the period of under or overpayment. Buyer shall take all steps reasonably available to secure the confidentiality of Seller's accounting records and supporting documents and shall use them only for the purpose of confirming the accuracy of billings under this Agreement. Disclosure of accounting records and supporting documents to the Buyer is not intended to, and shall not be interpreted to, waive Seller's right to maintain that such records and supporting document are privileged, confidential, proprietary, or otherwise protected from disclosure to the public. In the event such information is required in a legal or regulatory proceeding, Buyer shall advise Seller of the requirement to disclose such information prior to disclosing it and at Seller's request shall ask for confidentiality of any such information.

Section 15 14: Cost Determination Changes

The cost methodologies utilized for pricing purposes in this Agreement and the pricing formulae specified herein shall remain in effect through the term of this Agreement and neither Party shall petition the FERC pursuant to the provisions of Section 205 or 206 of the Federal Power Act to amend such methodologies or formulae absent the agreement in writing of the other Party or support such a petition filed by any third party.

Section 16 15: Remedies

~~16.1~~ 15.1 Rights and Remedies Cumulative. Upon the breach by either Party of its ~~Obligations~~ obligations hereunder, the other Party shall have all of the rights and remedies available hereunder, under any other agreement between the Parties and under all applicable laws, all of which rights and remedies shall be cumulative and nonexclusive to the extent permitted by law; provided, however, that:

- (i) neither Party shall be entitled to recover consequential or special damages;
- (ii) neither Party shall be entitled to seek to terminate this Agreement;
- (iii) Buyer's sole remedy and right to damages for Seller's failure to deliver

Power as required by this Agreement shall be the remedies and rights set forth in Subsection ~~16.2.~~ 15.2.

~~16.2~~ 15.2 Failure to Deliver Power. From time to time, but not more frequently than once each month, Buyer may invoice Seller for its damages arising from any failure of Seller to deliver Power in accordance with this Agreement, except as such failure may be excused by an Uncontrollable Force. Because of the size and complexity of Buyer's system, the Parties recognize the difficulty of precisely computing Buyer's replacement power costs for any hour. The Parties expect that if Power is not available from Seller, Buyer may be required to acquire replacement power from less efficient or more costly sources. The Parties have agreed that as a reasonable forecast of Buyer's actual replacement power costs, Buyer's damages hereunder shall be deemed to equal 125 percent of the Market Purchase Index applicable to the hour or hours during which replacement power is acquired. Seller shall pay

each Buyer invoice, in full, within 30 days of its receipt. Each payment not made within said 30-day period shall bear interest at a rate equal to 150 percent of the time-weighted average prime rate as established by The Morgan Guaranty Trust Company of New York until paid, and said interest shall be payable upon demand.

Section 17 16: Governing Law

This Agreement shall be subject to and be construed under the laws of the State of ~~Utah~~
Washington.

Section 18 17: Notices

All written notices hereunder, shall be directed as follows, and shall be considered delivered when deposited in the U.S. Mail, or other certified mail, return receipt requested:

To Buyer:

To Seller:

The Parties may change the persons to whom notices are addressed, or their addresses, by providing notice thereof as specified in this Section.

Section 19 18: Uncontrollable Forces

Neither Party to this Agreement shall be considered to be in default in performance of any obligation hereunder if failure of performance is due to an Uncontrollable Force. The term "Uncontrollable Force" means any cause beyond the control of the Party affected, including, but not limited to, failure 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 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 an Uncontrollable Force 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.

Section 20 19: Waiver

Any waiver by a Party of its rights with respect to default hereunder, or with respect to any other matter arising in connection herewith, shall not be deemed to be a waiver with respect to any subsequent default or matter. Except as provided for in Section 14 13, no delay in asserting or enforcing any right hereunder shall be deemed a waiver of such right.

Section 21 20: Indemnification

Neither Party ("First Party") shall be liable, whether in warranty, tort, or strict liability, to the other Party ("Second Party") for any injury or death to any person, or for any loss or damage to any property, caused by or arising out of any electric disturbance of the First Party's electric system, whether or not such electric disturbance resulted from the First Party's negligent act or omission. Each Second Party releases the First Party from, and shall indemnify and hold harmless the First Party from, any such liability. As used in this Section,

(1) the term "Party" means, in addition to such Party itself, its agents, directors, officers, and employees; (2) the term "damage" means all damage, including consequential damage; and (3) the term "persons" means any person, including those not connected with either Party to this Agreement.

Section ~~22~~ 21: Entire Agreement

This Agreement constitutes the entire agreement of the Parties hereto with respect to the transaction addressed herein and supersedes all prior agreements, whether oral or written. This Agreement may be amended only by a written document signed by both Parties hereto.

Section ~~23~~ 22: Assignment

Neither Party shall assign this Agreement without the prior written consent of the other Party, except to any corporation into which or with which the Party making the assignment is merged or consolidated or to which the Party transfers substantially all of its assets.

Nothing contained in this Section shall be construed to prevent the Parties from making a collateral assignment of the revenues due under the terms of this Agreement. No assignment, merger or consolidation shall relieve any Party of any obligation under this Agreement. Subject to the foregoing restrictions in this Section, this Agreement shall be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and assigns.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names by their respective officers thereunder duly authorized.

Buyer

By _____

Title: _____

Seller

By _____

Title: _____

----- COMPARISON OF HEADERS -----

-HEADER 1-

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-HEADER 2-

Case No. UM 1001

PacifiCorp Exhibit 301