

EXHIBIT NO. ___(EMM-10)
DOCKET NO. _____
2005 POWER COST ONLY RATE CASE
WITNESS: ERIC M. MARKELL

BEFORE THE
WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

**WASHINGTON UTILITIES AND
TRANSPORTATION COMMISSION,**

Complainant,

v.

PUGET SOUND ENERGY, INC.,

Respondent.

Docket No. UE-_____

**NINTH EXHIBIT TO THE PREFILED DIRECT TESTIMONY OF
ERIC M. MARKELL (NONCONFIDENTIAL)
ON BEHALF OF PUGET SOUND ENERGY, INC.**

JUNE 7, 2005

REQUEST FOR PROPOSALS
WIND POWER RESOURCES

November 13, 2003

Puget Sound Energy
10885 NE 4th Street
Bellevue, WA 98004-5731

1. Introduction

This document constitutes a Request for Proposals (RFP) from qualified third parties (respondents) to supply electricity to Puget Sound Energy (PSE or Company) from wind-powered generation. PSE seeks approximately 150 MW of nameplate capacity from wind power resources, consistent with needs identified in its Least Cost Plan (LCP). This level will aid PSE in meeting its goal of meeting up to 10% of its resource needs through renewable resources. PSE reserves the right to acquire more than 150 MW if such acquisitions are deemed beneficial.

Proposals will be received from respondents for purchased power agreements and/or arrangements whereby PSE would acquire an ownership interest in the project (see Section 3) with energy delivered on an “as-produced” or “integrated” (shaped) basis. A proposal must offer a minimum of 25 MW of nameplate capacity to be eligible for evaluation by PSE.

Proposals submitted will be evaluated using a two-stage process. In the first stage, proposals will be screened to identify the most desirable wind resources on a stand-alone basis as measured against criteria such as cost, location and other thresholds. In the second stage, the most beneficial proposals identified in the first stage will be further evaluated as part of PSE’s overall portfolio to identify those which perform best (from a cost effectiveness, environmental, technical integration, risk and other bases) in relation to PSE’s existing and future resource mix. This two-stage evaluation process is further described in Section 7. Those proposals that best meet PSE’s needs may then, depending upon the outcome of the above evaluations, be carried forward for further discussion and eventually negotiations of potential agreements (Definitive Agreements). There is no commitment by PSE to enter into negotiations for or to ultimately acquire by contract or other means, any resource proposal received as part of this RFP process although the intent is for that to be the ultimate outcome. For any resource proposal that PSE does ultimately acquire, it is expected that the ultimate Definitive Agreements will embody terms and conditions substantially as described in the prototype power purchase agreement and term sheet (if applicable) that are attached to and made part of this RFP.

This RFP is part of a multi-part and multi-stage resource acquisition program to acquire a diverse mix of new resources as PSE’s electric resource need grows over time. As part of such strategy, PSE anticipates that it will release additional RFPs for other electric resources based upon the LCP as may be periodically revised and PSE’s electric resource needs over time.

2. PSE Least Cost Plan

This RFP is intended to be consistent with the guidance provided by PSE’s most recent Least Cost Plan. PSE filed a Least Cost Plan with the Washington Utilities and Transportation Commission (WUTC) on April 30, 2003. The Least Cost Plan examines PSE’s electric and gas resource needs over the next 20 years, and through robust analysis and consideration of such factors as price, supply and risk, analyzes the mix of conservation programs and supply resources that might best meet electric or gas resource needs. PSE’s LCP provides the strategic direction guiding the Company’s long-term resource acquisition process. The LCP identifies key factors

related to various resource decisions and provides a method for evaluating a resource acquisition in terms of cost, risk, and other factors at the time a decision needs to be made. It does not commit to or preclude the acquisition of a specific resource type, project or facility. PSE has filed an update to the April LCP on August 31, 2003 to incorporate a comprehensive analysis of conservation programs and update other planning assumptions. Complete versions of the April 2003 LCP and the August 2003 update may be found on the PSE web site at <http://www.pse.com/account/rates/rates.html>.

The overall strategy for least cost resource planning at PSE is to develop a diversified, balanced electric resource portfolio that meets customer needs, results in reasonable energy supply costs and protects against market risks, such as those recently experienced in the region. PSE has a need for an estimated 400+ aMW of new electric resources in 2004 growing to over 1,700 aMW in 2013 due to growing load in its service territory, the loss of existing resources, reduced hydro and combustion turbine generation, and the expiration of power purchase and non utility generation contracts. The planning standards that PSE believes are appropriate call for adequate energy resources to serve each month's electric load under average hydro conditions, and having sufficient capacity resources to meet customer peak loads at 16 degrees Fahrenheit. Both energy and capacity resources will be shaped through various means to fill winter deficiencies, while minimizing summer surpluses.

Following its strategic direction of building a diversified portfolio, PSE has established a goal of serving five percent of its customers' energy needs through renewable resources. Given possible lower-cost alternatives to using simple cycle combustion turbines to back up wind power and the possibility of including other renewable resources in its portfolio, PSE has established a higher target of serving 10 percent of its customers' energy needs through renewable resources.

PSE has also committed to continue the on-going process of evaluating all new resource options through the integrated resource portfolio modeling approach used to develop its LCP.

3. Products Requested

This RFP seeks wind electrical generation proposals under two different contracting scenarios: (1) Power Purchase Agreements or (2) PSE ownership arrangements. PSE will also entertain arrangements that are combinations of the two scenarios. Two different energy delivery scenarios are also sought: (1) as produced or (2) integrated (shaped).

The "Power Purchase Agreement" scenario anticipates a proposal pursuant to which the respondent would acquire, construct and retain ownership of the wind resource assets along with operating responsibilities with PSE purchasing all of the output (energy and capacity) and environmental attributes at an agreed upon delivery point. A prototype power purchase agreement that would be used in this scenario (and a combination of the two scenarios) is included as Exhibit 1 to this RFP.

The PSE ownership arrangement scenario anticipates a proposal pursuant to which PSE would ultimately own the resource. This may be accomplished at various stages of development and using a variety of approaches such as joint development by the respondent and PSE, development by the respondent and then transfer to PSE, initial purchase of power by PSE with transfer of ownership later, or other approaches which may be mutually beneficial. Although PSE is willing to consider a wide range of arrangements, the term sheet included as Exhibit 2 to

this RFP presumes that PSE would acquire its ownership interest in the project prior to the commencement of construction and would fund its ownership share on a pro rata basis.

The first energy delivery scenario assumes that energy is delivered to PSE at the time that it is produced by the project. Under the second scenario, two options are envisioned, although PSE would welcome additional creative proposals from respondents. Under the first option, energy is provided in the general shape in which it was produced but is firm and delivered after an agreed upon time period; e.g., one day or one week later. In this way the energy can be prescheduled as firm energy. Under the second option, seasonal shaping would be offered such that energy deliveries from the generation project would more closely match PSE's seasonal resource requirements.

4. Eligible Respondents

This RFP will accept proposals from all third party project developers that meet the project requirements and comply with the process guidelines described herein

Affiliated generating companies of PSE are not eligible to respond to this RFP. However, PSE will consider proposals from other utilities or utility subsidiaries. PSE believes that consideration of proposals from other utilities and/or their affiliates may increase the number of qualified respondents and thus increase the overall creativity and competitiveness of responses to this RFP.

5. Proposal Requirements

Proposals shall include the following information:

5.1 Project Summary

Describe the product(s) being offered in response to the RFP. Proposals must clearly specify the contract type (Power Purchase Agreement and/or PSE ownership) and energy delivery type (as produced or integrated) being offered. Proposals may contain multiple options for contract type and/or energy delivery type within the same response package. Any proposal that contemplates a Power Purchase Agreement shall indicate the commencement and length of the agreement term. For PSE ownership the proposed date of transfer shall be indicated.

Include a brief description of the proposed delivery schedule, its relationship to the actual production of the project, and, if an integrated (shaped) resource, the means by which the resource would be shaped. Briefly summarize the project, including key elements such as the location, total nameplate capacity (in megawatts), expected annual output (in megawatt-hours), expected monthly output, type of turbines to be used, source and duration of wind data, interconnection plan, transmission arrangements (if applicable) environmental issues, zoning and land use issues, permitting status along with known or probable challenges to permits, planned financing, financing commitments, proposed construction schedule, other participants in the project (such as owners of the project for tax purposes, other output buyers for project expansions, if any), and current status and schedule for completion of development and construction.

5.2 Project Description:

The proposal should include a detailed description of the project including the project's features and the development work completed to date. Include the following information and indicate if requested information is not known:

- Project location. Identify the site where the project will be located. Provide a map showing the location of key facilities. Provide a list of leases, easements, and/or other ownership documents that demonstrate that the respondent has control of the intended project properties and the legal rights to construct, interconnect and operate the project as described.
- Project layout, showing anticipated placement of turbines and other project facilities.
- Project size, in acreage and megawatts. If the project can be expanded, please describe the potential scope and conditions.
- Distribution of expected annual and monthly output (in megawatt-hours) of the project. A graph showing the monthly and annual output is suggested as well as tabular values and an Excel spreadsheet
- Typical hourly energy production from the project for a one-year period in electronic format. This will be used to evaluate the hourly variability of the resource.
- A description of the site including flora and fauna, proximity to inhabited structures, proximity to areas that may be sensitive from an environmental, cultural, commercial, security or other perspective.
- The description, size, number and manufacturer of wind turbines that will be used. Provide a summary of the commercial operating experience of the turbine chosen. If a final wind turbine selection has not been made, list the candidates under consideration and the status and schedule of the selection process and any commitments by the manufacturer. For each turbine under consideration, provide the following information:
 - Technical specifications
 - Tower type and proposed hub height
 - Design life
 - Level of certification achieved
 - IEC design wind class (I or II)
 - Power Curve at sea level and average project site air density in 1.0 m/s increments (Excel spreadsheet and in written proposal)
 - Summary of performance guarantees and warranty provided
- The land area controlled relative to the locations of the turbines and the potential for additional wind energy development.

5.3 Energy Projections

5.3.1 Wind Data:

Include in the proposal any wind resource assessment report, summarized data and underlying source data that have been used to project the energy production of the project. These should include:

- The source and basis of the wind speed data and the wind speed data used in the development of the energy projections for the project.
- The purpose and location of the wind speed data collection, period of record, number of on-site and off-site meteorological stations used, data quality assurance procedures, levels

of measurements and seasonal data recovery, and the organization responsible for the data collection and analysis.

- The name, address and contact information for all meteorological consultants.
- The methodology used to develop the estimated long-term annual and monthly wind speed, hub-height, average annual wind speed and wind speed frequency distribution for the project site.
- Monthly and annual representative hub-height wind frequency distributions at intervals of 1.0 m/s. Provide these tables in the written proposal and separately as an Excel file.
- The duration of on-site measurements (multi-year is strongly preferred).

5.3.2 Energy Calculation

Provide the analysis used to estimate the annual, monthly, and diurnal energy output of the project. This analysis should include as a minimum:

- Determination of wind speed for individual turbines in the project.
- Calculation of gross energy production using wind speed frequency distribution and turbine power curve.
- Calculation of energy losses with a list and quantification of all sources of losses considered and the basis for the quantification.
- All assumptions related to the availability of wind turbine generators and the availability guarantee proposed, including the specific formula and applicable terms.
- Calculation of net energy output.
- If the proposal is for an integrated (shaped to PSE needs) product, the method and type(s) of resource to be used to shape the energy production, a description of any contractual arrangements necessary to effect such integration or shaping, and the status of such arrangements.
- If the proposal is for an as-produced product, any forecasting technology or systems that might assist PSE in receiving a real-time forecast of the project's output.
- Provide the as produced and, if applicable, integrated delivery schedule (see Exhibit 7)

5.4 Experience and Qualifications of the Project Team

The proposal should contain the following minimum information indicating the qualifications of the proposed project team to implement and execute a proposal in response to this RFP:

- The organizations and key personnel responsible for implementing the project including identification of the project manager, his/her tenure, and scope of responsibility.
- A legal entity organization chart.
- A managerial organization chart
- Existing projects owned, developed and/or operated by the respondent
- The personnel or organizations responsible for the following areas:
 - Project wind resource assessment and energy projections
 - Project financing
 - Project design, engineering, procurement and construction specifications
 - Interconnection and substation design
 - Project environmental assessments
 - Project land use and zoning approval
 - Permits and related approvals

- Regulatory compliance
- Project construction and commissioning
- Risk management and insurance
- Project operations
- Project maintenance
- A brief description of relevant experience of the key personnel and organizations for their responsibility area listed above.
- Contacts and references (name, title, address, telephone, e-mail and fax numbers) knowledgeable about the previous wind project experience of the key participants in the project.

5.5 Legal & Financial

The proposal should contain the following information as a minimum:

- A description of the structure and status of the project financing, the significant conditions on which the financing depends and the milestones that need to be achieved to secure both construction and term financing (as required) to support the project schedule.
- Identification and contact information for all legal advisors, financial advisors¹ and capital providers (debt and equity) for the project to the extent now known or anticipated
- Most recent financial statements for the legal entities described in Section 5.4 above and for any other individuals or entities that may provide credit support, credit enhancement, surety bonds, guarantees, and security plus the most recent audited financial statements, if available.
- A description of the project structure and capitalization during the development, construction and commercial operation phases. Describe all anticipated credit support arrangements and appropriate parental, subsidiary and venture relationships pertinent to proposal.
- Commitment letters or letters of undertaking from corporations, investment bankers and/or commercial bankers indicating that the project has or is able to obtain the construction and permanent financing it will require. Describe any caveats and conditions to financing commitments such parties may have described.
- The qualifications of such parties to provide, arrange or assist in obtaining necessary financing and credit support arrangements.
- Audited financial statements, if available, or other financial statements for the most recent 12-month period for all entities, including affiliates involved in the proposed transaction. This information is intended to provide an indication of the ability and willingness of the respondent to negotiate in good faith (and to cause its lenders and equity partners to do the same). The types of financial and control requirements PSE may require are listed in Section 10.2.5.
- Clear identification of the respondent's Investment Advisor. If a proposal is selected by PSE for further discussion and possible negotiation towards a Letter of Intent and potentially a Definitive Agreement, PSE will require that the Investment Advisor be available to meet and discuss with PSE all aspects of project financing.
- A summary of the major project capital and operating expenses and documentation to support the reasonableness of the estimates including an itemized budget with a breakdown of projected capital costs, and operating and maintenance costs and a breakdown of all costs

¹ The use of the term "financial advisor" or "investment advisor" in this RFP refers to third-party advisors, such as investment bankers or others assisting the project developer in the placement of debt and/or equity financing.

associated with site acquisition and improvement, permitting, project construction, testing and commissioning, compliance with environmental and other applicable federal, state, or local regulations, security, and routine operation and maintenance activities in accordance with Exhibit 6.

- Pro forma financial projections showing the project cash flow, income statement, and balance sheet, sources and uses of funds, construction draw schedule, and including all financing assumptions. At a minimum the pro forma should include the following:
 - Annual energy production and assumed revenue
 - Annual operating expenses including turbine and balance-of-plant operations and maintenance costs, G&A expenses, asset management fees, land leases, property taxes, insurance and other expenses
 - Transmission and ancillary services costs (if any)
 - Debt service requirements
 - Debt coverage ratios (highest year, lowest year, average)
 - Depreciation (tax and book)
 - Income taxes and tax credits
 - Other taxes
 - Working capital requirements
 - Net income
 - Book rate of return to average equity
 - After tax unlevered internal rate of return to capital
 - After tax levered internal rate of return to capital

The pro forma should be provided in an Excel spreadsheet file as well as in the proposal.

5.6 Interconnection Point, Control Area, and Point of Delivery

PSE will accept delivery of project energy and capacity at the respondent proposed Interconnection Point or at PSE's system, although PSE has a preference for deliveries to PSE's system. PSE will, in its evaluation of proposals excluding delivery to PSE's system include a quantification of the delivery charges necessary to transport project energy to PSE on a firm basis.

Proposals should include a clear statement of the proposed Interconnection Point, whether or not the proposal contemplates delivery to PSE, and the proposed entity to manage control area responsibilities. For purposes of this RFP, the term "Interconnection Point" shall refer to the point at which the project is connected to the high voltage transmission system. Include all details of planned electrical interconnections and related transmission services, including:

- Planned interconnection point, including status of
 - Interconnection requests,
 - System impact studies ("SIS")
 - Facility studies
 - Interconnection agreement(s),
 - A Communication plan in support of control area responsibilities,
 - Potential alternatives to interconnection arrangements, if any, and
 - Contacts at the interconnecting utility that may be contacted by the review team.
- Planned transmission services to be included with proposal, including status of
 - Transmission services secured and/or requested by developer
 - System Impact Studies
 - Facility studies
 - Expected availability of the transmission,

- Detailed costs estimates of transmission services with supporting detail, and
- Contact information for representatives of the transmission provider that may be contacted by the review team concerning such transmission arrangements.

Include copies of any completed System Impact Studies performed by transmission providers, and all other information/correspondences obtained from transmission providers as a result of interconnection and transmission requests and discussions that have been made to date. In the absence of official studies, any information available concerning the transmission/interconnection costs and reliability should be provided with as much supporting documentation as possible

5.7 Project Development Status and Schedule

The proposal should provide the following information concerning the status of project development activity.

5.7.1 Schedule

Provide, in a format such as a Gantt chart, the best schedule estimates available on the various project activities covering the period from the initiation of wind resource measurements on site through the project's proposed commercial operation date. Include a schedule item for each significant project development, interconnection and construction activity. Provide any additional time lines applicable to the project that will demonstrate its status and plans.

Indicate what actions have been taken to ensure the schedule is met (such as placing orders for equipment with long lead times) and potential opportunities to better the schedule.

5.7.2 Site Control

Provide documentation of site control, including wind rights, access road, and transmission corridor easements needed to construct, interconnect and operate the facility. Examples of such documentation include copies of letters of intent, property title or purchase agreements, lease or lease option agreements with landowners and other documents that demonstrate the control over the intended project site and properties and the legal rights to execute the project as described.

5.7.3 Environmental Review

Discuss known environmental issues relative to the development and operation of the project, including visual impacts, avian issues and baseline noise levels.

Provide copies of all wildlife or other environmental studies and assessments that have been performed related to the site and the project. Describe methodologies for such studies and identify the person(s) or firm(s) who conducted and completed the work. If such studies are in progress, describe the scope and schedule for completion and identify the person(s) or firm(s) doing the studies and methodologies to be employed. Describe measures that will be taken to minimize the potential for avian mortality, noise, and visual impacts of the project.

Discuss plans to engage community and environmental stakeholders to support the proposed project.

All proposals must indicate what actions have been taken to develop support for the project from the public, local, state and federal government entities and Native American nations.

Any expressions of support from these or other entities, or concerns that have been expressed, should be identified in the proposals.

5.7.4 Permits

Identify all project permits with special emphasis on the key permits (such as a conditional use permit or site certificate) required to build and operate the project. Discuss the current status of applications and proceedings, the schedule for obtaining key permits and approvals, and the approach to be used.

Outline the process planned to involve local residents, and other affected parties in the planning/permit process.

If the project is located in an area that is ceded land or may have been historically used by a Native American tribe, describe any contacts that have been made with the tribe (include names and phone numbers) or plans to consult the tribe regarding the project.

5.7.5 Interconnection/Transmission Construction Requirements

Based on the identified interconnection point to the Northwest transmission system discuss all related construction plans status and schedule for:

- new pole lines,
- line upgrades,
- switchyards and substation work required to complete the interconnection, and
- metering and communications, both by the developer and the interconnecting utility.
- Easements, rights of way, or property controlled for any new transmission facility or otherwise to interconnect the wind project.

Include the status of control over required right of ways for any new transmission facility required. Include information on ownership and maintenance responsibility, and the availability of long-lead electrical equipment, such as transformers, that will be required to support the project. Metering information should include a detailed description of how the metering of actual output of the project shall be determined and how the metering configuration was included in the determination of project output.

5.7.6 Construction

Describe arrangements and commitments (contracts, letters of intent, memoranda of understanding) that have been made, if any, for the construction of the project.

5.7.7 Testing

Summarize the testing planned to be conducted prior to acceptance of the turbines from the manufacturer and completion of the project and the testing to be conducted prior to commercial operation of the project. Possible tests should include power performance for the turbines and the project, availability tests, SCADA acceptance, distribution system acceptance, and others that demonstrate performance of the project and associated facilities in accordance with applicable laws, regulations, permits and the power purchase agreement.

5.7.8 Operation & Maintenance

The proposal should clearly describe the operations and maintenance plan for the project including the identity of the entities or persons responsible for key activities, a listing of initial

spares and their value, the procedures to assure the availability of spares and other operations, maintenance and logistics issues.

6. Price Proposal(s)

PSE envisions several potential options for project pricing. For Power Purchase Agreements, these include:

- A fixed price per kWh for energy and Environmental Attributes produced.
- Fixed annual or monthly payments to the project to offset operations, maintenance and ownership costs.
- Fixed plus variable cost payments.
- A combination of the above or other suitable alternatives that may be proposed.

For PSE ownership arrangements, alternative purchase terms may include:

- Purchase by PSE of the development rights at the completion of the development stage with design, procurement and construction being the responsibility of PSE with the possibility of a limited continuing role for the respondent.
- Outright purchase and operation of the project by PSE at the date of commercial operation (respondent to provide training to PSE operating personnel)
- Joint development and ownership by PSE and the respondent
- Purchase of the project by PSE with respondent having principle responsibility for continued development and operation.
- Purchase of the project by PSE at commercial operation with operation by the respondent for a specified time period during which time respondent would provide training to PSE operating personnel.
- A combination of the above or other alternatives that may be proposed by the respondent.

Price proposals must specify fixed and variable payments, escalation rates to be applied if any, and all other pricing information necessary for PSE to fully evaluate the proposal. For Power Purchase Agreements, in addition to the project pricing, please provide a schedule of termination amounts, based on the year in which termination occurs for each contract year of such Power Purchase Agreement based on the assumption that upon a notice of termination provided by PSE, Seller shall immediately transfer to PSE (i) all of Seller's rights, title and interests in and to the Project (including the Turbines and the Balance of Plant), the Permits, all rights of Seller to real property included in or benefiting the Site and (ii) all of Seller's rights, title and interests in, to and under any agreements related to the Project to which Seller is a party. In all cases, respondents should contemplate in their price proposal that the prototype power purchase agreement and term-sheet for PSE's purchase of an interest in the project as applicable, attached to this RFP will be the basis for any potential Definitive Agreement with PSE.

7. Environmental Attributes

All proposals must state that any and all Environmental Attributes associated with the project will accrue to the ownership and beneficial use of PSE.

8. Other Requirements

8.1 Signature and Certifications

The proposal must contain the signature of a duly authorized officer or agent of the respondent submitting the proposal.

The respondent's duly authorized officer or agent shall certify in writing that:

- The respondent's proposal is genuine; not made in the interest of, or on behalf of, any undisclosed person, firm, or corporation; and is not submitted in conformity with an agreement of rules of any group, association, organization, or corporation.
- The respondent has not directly or indirectly induced or solicited any other respondent to submit a false or sham proposal.
- The respondent has not solicited or induced any other person, firm, or corporation to refrain from proposing.
- The respondent has not sought by collusion to obtain for himself/herself any advantage over any other respondent.

8.2 PTC Risk not Borne by PSE

All proposals shall acknowledge and state that PSE disclaims and shall not assume any risk associated with the potential expiration of the Federal Production Tax Credit (PTC) on December 31, 2003, or the respondent or other project entity's ability to utilize the PTC.

8.3 No Reassignment

All proposals shall state that there will be no reassignment of proposals during the evaluation or negotiation stage and that in the event respondent and PSE negotiate and execute Definitive Agreements based on respondent's proposal, the Definitive Agreements and obligations thereunder shall not be sold, transferred or assigned or pledged as security or collateral for any obligation without the prior written permission of PSE, which permission shall not be unreasonably withheld. Any project lender who takes an assignment of the Definitive Agreements for security and exercises any rights under such agreements will be bound to perform such agreements to the same extent.

8.4 Conflict of Interest Disclosure

All respondents shall disclose in their proposal any and all relationships between themselves, the project and/or members of their project team and PSE or its employees.

8.5 Validity and Deadlines

All proposals shall specify the date through which the proposal is valid. Proposals must also state the dates by which Definitive Agreements must be completed and approved by the board of directors or other management body of PSE and respondent to support the proposed project schedule.

9. Credit Requirements

PSE reserves the right to require adequate credit assurances which may include, but not be limited to, a corporate parental guaranty and/or a letter of credit in a form, amount, and from a corporate parent or a financial institution acceptable to PSE. In the event PSE anticipates that

additional credit assurances may be required from a respondent, PSE reserves the right to request that the respondent reply in writing regarding its intent to provide such credit assurances prior to the beginning of negotiations on any Definitive Agreement. “Adequate credit assurances” shall include, but not be limited to, the value associated with market-based liquidated damages for failure to perform, delays in construction, failure to meet minimum availability levels and/or other forms of default or non-performance.

Please see Section 10.2.5 of this RFP regarding the Evaluation Process for matters that PSE will consider in evaluating the structural and financial risk associated with project proposals. The respondent should be aware that PSE may require negative control² in addition to any that may be included in the prototype power purchase agreement (Exhibit 1) or prototype term sheet (Exhibit 2) in any or all Definitive Agreements that respondent or PSE might execute in connection with respondent’s proposal.

10. Evaluation Process

Those eligible proposals which meet the initial threshold size requirement of 25 MW of nameplate capacity, will be subject to one or both stages of the following two stage evaluation process:

10.1 First Stage Evaluation

In stage one, eligible proposals will be examined and evaluated by PSE according to the following criteria:

- Resource price ranking as compared to PSE’s estimated avoided costs for generic wind power resources (see Exhibit 3 to this RFP). The particular set of avoided costs used will depend upon whether the proposal contemplates a power purchase agreement, PSE ownership, or some combination. All transaction costs such as taxes and risk transfer will be included in the evaluation.
- Project Size & Monthly Production: Individual proposals must offer at least 25 MW of nameplate capacity. PSE prefers resources of larger size and which provide monthly energy well matched to its load requirements as illustrated in Exhibit 4 to this RFP. An initial evaluation of the quality of the wind resource data submitted by respondent will be made during this stage.
- Whether the proposal is for a new or recently completed project: One of the objectives of this RFP is to aid in the development of new wind resources in the Northwest and thus to aid in a sustained and viable wind industry. To that end, and given other considerations, PSE will prefer new resources to resources already existing.
- Proximity and availability of transmission and the status and schedule for completion of the necessary transmission agreements. The respondent shall be responsible for arranging for the transmission interconnection with the WECC high voltage transmission system and for projects located outside of PSE’s control area, transmission to agreed to point(s) on PSE’s transmission system.

² Negative controls are covenants that would be included in the definitive agreements that prohibit the respondent from certain specified business practices that could jeopardize the respondent’s ability to perform its obligations under the agreements. Examples of negative controls are set forth in the prototype ownership term sheet (Exhibit 2) under the heading “Transaction Covenants”.

- Status and schedule for completion of development of the project including financial resources of the respondent and progress made in securing necessary permits, land, hardware and other factors necessary for a completely commercially operational project.
- Proposed date of commercial operation and full availability of the project. To help ensure maximum benefits to PSE's customers, PSE prefers proposals that provide substantial assurances that the project will be on-line by December 31, 2004.³ This is to capture the benefit of a bonus MACRS depreciation schedule that will result in lower cost to our customers. However, projects with later on-line dates will be evaluated.
- The type of proposal, e.g., power purchase agreement or PSE ownership, or combination. All other factors being equal, ownership is of significant interest to PSE and long-term power purchase agreements (up to 20 years or longer) are preferred over short-term
- Experience and successful history of development of similar wind projects.
- Project Location: Must be located in the Pacific Northwest Region (Washington, Oregon, Idaho, Montana), with preference given to sites within PSE's service area that contribute to economic development of the host community consistent with local community preferences.

Those proposals that best meet, in PSE's sole judgement, the above criteria and provide a sufficient amount of resource will then be subject to a second stage evaluation.

10.2 Second Stage Evaluation

In stage 2, PSE will evaluate proposals within PSE's portfolio of existing and anticipated future resources. The following criteria will be used in stage 2:

10.2.1 Portfolio Analysis

PSE's evaluation of wind power proposals submitted in response to this RFP will include an analysis of the net impacts of each proposal on cost and risk for the Company's overall electric resource portfolio. This analysis will go beyond evaluation of proposals on a stand-alone basis. The portfolio analysis for a given proposal will assess how the proposed resource (including proposal costs, transmission costs, integration costs, seasonal shape of generation, etc.) would interact with other existing and planned resources in PSE's overall portfolio and with PSE's retail electric loads. The analysis will also take into account imputed debt effects associated with power purchase agreements, end-effects for resources with different lives, and other factors. The results of the portfolio analysis will include impacts on 20-year net present value of costs for the overall portfolio and impacts on portfolio risk (measured as variability in portfolio costs).

PSE recently developed and used an integrated portfolio screening model for its Least Cost Plan. This model is also being used to evaluate specific resource acquisition opportunities. To ensure that it evaluates proposals on a basis that is consistent with its resource planning, PSE intends to use the portfolio screening model to perform the portfolio analysis described above.

An estimated integration cost will be included in the portfolio analysis which will quantify, to the extent known, the cost of integrating the wind resource into PSE's system on a real-time and other bases. Integration costs will be based upon PSE's best estimate at this time but it is recognized that the information to analyze integration cost are not currently well

³ PSE recognizes that the schedule set forth in Section 12 of this RFP that calls for a letter of intent by March 19, 2004 may not be consistent with a commercial operation date of December 31, 2004 and that a later commercial operation date may result.

known and will constitute PSE's best estimate only. PSE intends to continue with its acquisition of wind resources through this RFP process and will further evaluate and refine the integration costs as PSE gains experience with wind resources and the integration of wind resources into its electric resource portfolio and system.

10.2.2 Risk

An important component of the analysis of proposals will be consideration of risk to PSE and its customers. PSE will evaluate risk in two ways: 1) Cost uncertainty, price volatility, production uncertainty and other such factors which can be included into the Portfolio Analysis in Section 10.2.1 above; 2) Other uncertainties which will be evaluated but do not lend themselves to numerical analysis. These include such things as uncertainties or other risk associated with technology, performance, operations, transactional, vendor support, construction, project completion, schedule, capital cost, and others.

10.2.3 Ability of Project to Deliver as Proposed

The second evaluation criterion within stage 2 will be a more detailed assessment of the project's ability to deliver the level of energy expected over the proposed term of the project. This will be assessed using some or all of the following criteria:

- Probability of meeting the proposed commercial operation date
 - Financing commitments
 - Permit status and difficulty
 - Long lead time equipment commitments
 - Probability of financing – reasonableness of project budgets and pro forma
 - Project schedule
 - Availability and cost of transmission
 - Ability to document proposed transaction within schedule requirements
- Confidence in long-term energy projections
 - Quality and quantity of on-site data
 - Long-term reference data
 - Experience of the parties making the energy projections
 - History of proposed turbines
 - Written opinion and analysis of a nationally recognized meteorological consultant as to the reasonableness of the amount and shape of energy production.

10.2.4 Experience of the project team

This evaluation criterion will consider the factors listed in Section 5.4 of this RFP.

10.2.5 Guarantees, Security and Credit Worthiness

This evaluation criteria will include an assessment of the credit worthiness of respondent and any person that would provide any guarantees and security offered to PSE in the proposal.

Developments in the capital and business markets strongly suggest to PSE that it must consider means and methods to identify and reduce structural and financial risk inherent in the project or entity that may offer to provide PSE capacity and energy from a wind resource under either of the project types, power purchase agreement or PSE ownership or a combination thereof.

Considerations include:

Financial Structure

- Capital structure
- Budgets
- Limitations on distributions to equity
- Limitations on incurrence of debt
- Debt leverage
- Credit ratings of project level debt and any guarantors
- Events of default

Performance Security

- Sale or transfer, or pledge of assets, stock or partnership interests
- Merger and consolidation
- Bankruptcy, insolvency or reorganization
- Asset abandonment or assignment
- Line of business

Please note that all proposals are required to clearly identify the respondent's Investment Advisor. If a proposal is selected by PSE for further evaluation and possible negotiation and execution of a Letter of Intent and Definitive Agreements, PSE will require that the Investment Advisor be available to meet and discuss with PSE all aspects of project financing.

10.2.6 Environmental and Public Purpose

This criterion will include an assessment of the magnitude of potential environmental impacts, the thoroughness of the plan to identify and mitigate those impacts regardless of whether the proposal results in a new wind resource being added to the Northwest region, and level of support or opposition from external stakeholders.

10.3 Costs and Results of Stage 2 Evaluation

As part of the continuing evaluation of the proposal, PSE may require the respondent to fund the fees and cost of a third party selected by PSE to review and verify the wind resource and energy estimates. The maximum level of funding will be specified at the time of any such request and is not anticipated to exceed \$20,000 per short-listed respondent. At the completion of the stage 2 evaluation, PSE will select proposals for further discussion with the respondent(s) and potentially move forward with negotiations of the terms and conditions of Definitive Agreements.

11. Post-Proposal Negotiations and Awarding of Contracts

It is PSE's intent to negotiate both price and non-price factors during any post-proposal negotiations with a respondent whose proposal is selected for further discussions at the completion of the stage 2 evaluation. It is also PSE's intent to include any additional factors that may impact the total cost of a project and to continually update its economic and risk evaluation until such time as PSE and respondent might execute Definitive Agreements.

Definitive Agreements, if any, would be based on the outcome of these continuing evaluations and negotiations. PSE has no obligation to enter into a Definitive Agreement with any respondent to this RFP and may terminate or modify this RFP at any time without liability or obligation to any respondent. This RFP shall not be construed as preventing PSE from entering into any agreement that it deems prudent at any time before, during, or after this RFP process is complete. PSE reserves the right to negotiate only with those respondents and other parties who propose transactions that PSE believes, in its sole opinion, to have a reasonable likelihood of being executed substantially as proposed.

12. RFP Schedule

The RFP process will occur in accordance with the following schedule:

August 25	Issue Draft RFP
September 15	PSE Public Meeting on Draft RFP
October 24	End of 60-day comment period
November 12	WUTC Approval of RFP
November 17	Issue Final RFP
December 3	Hold Pre-Proposal Conference
January 9	Responses Due
February 2	Select Short-Listed Proposals, Notify Respondents
March 19	Execute Letter(s) of Intent

The above schedule is subject to adjustment based upon WUTC review.

13. Contact Information and Submission of Proposals

A sealed original of the proposal, along with all attachments and electronic files shall be submitted via U.S. mail, courier service, or hand delivery to PSE at the address listed below. ***All responses must be received by no later than 5:00 PM Pacific Time on January 9, 2004.***

Questions and requests for additional information should also be directed to the individual and address listed below.

All costs to participate in this RFP process, including preparation of proposals, negotiations, etc. are the responsibility of the respondent.

Contact for proposal submittals, questions and requests:

Wayman Robinett, Director of Resource Planning
425-462-3144
425-462-3465 Fax
wayman.robinett@pse.com

Address for U.S. Mail:
Puget Sound Energy
P.O. Box 97034, PSE-11
Bellevue, WA 98009-9734

Address for courier or hand delivery:
Puget Sound Energy
10608 NE 4th Street, Mail Room
Bellevue, WA 98004

14. Confidentiality/Disclosure

Except as required under law or for regulatory purposes, PSE will maintain confidentiality of the information contained in submitted proposals. Only PSE employees, legal counsel, financial advisors or other contractors who are directly involved in this RFP process, or who have need to know for business reasons, will be allowed to view submitted proposals.

Respondents shall clearly identify portions of their proposals that they do not want revealed to third parties by marking those portions of the proposal “Confidential” on every page. If PSE is requested to provide such information, respondent shall be responsible for defending the confidential status of the information. The respondent shall be responsible for legal and all other costs incurred to protect their confidential information.

As required by law, PSE will make available to the public a summary of all proposals received and the final ranking of all such proposals.

All information supplied to PSE, or generated internally by PSE, shall remain the property of PSE and shall not be available to any entity before, during, or after this RFP process unless required by law or regulatory order. Proposal and all related material will not be returned to respondents. PSE will retain all information pertinent to this RFP process for a period of at least 7 years or until PSE concludes its next general electric rate case, whichever is later.

Additionally, the models and data used by PSE in its evaluation process will not be provided to respondents or other third parties unless required by law, regulatory order, or business need.

A standard Confidentiality Agreement is included as Exhibit 5 to this RFP. Respondents must sign the Confidentiality Agreement and include two signed originals with their proposal. PSE will countersign the Confidentiality Agreement and return one fully executed agreement to the respondent.

15. Exhibits

1. Prototype Power Purchase Agreement
2. Prototype Ownership Term Sheet
3. Avoided Cost Schedule
4. PSE Monthly Resource Need
5. Mutual Confidentiality Agreement
6. Template for Financial Pro Forma (suggested)
7. Template for energy delivery schedule

THIS IS A WORKING DRAFT PURCHASE AGREEMENT FOR THE SALE AND PURCHASE OF THE OUTPUT OF A NEW WIND-POWERED GENERATING FACILITY. THIS WORKING DRAFT DOES NOT CONSTITUTE A BINDING OFFER, SHALL NOT FORM THE BASIS FOR AN AGREEMENT BY ESTOPPEL OR OTHERWISE. ANY ACTIONS TAKEN BY A PARTY IN RELIANCE ON THE TERMS SET FORTH IN THIS WORKING DRAFT OR ON STATEMENTS MADE DURING NEGOTIATIONS PURSUANT TO THIS WORKING DRAFT SHALL BE AT THAT PARTY'S OWN RISK. UNTIL THE POWER PURCHASE AGREEMENT IS SIGNED BY BOTH PARTIES, NEITHER PARTY SHALL HAVE ANY LEGAL OBLIGATIONS, EXPRESSED OR IMPLIED, OR ARISING IN ANY OTHER MANNER UNDER THIS WORKING DRAFT OR IN THE COURSE OF ANY NEGOTIATIONS. PURSUANT TO THE REQUEST FOR PROPOSAL TO WHICH THIS WORKING DRAFT IS ATTACHED, "PURCHASER" WILL CONSIDER PRICING STRUCTURES THAT ARE DIFFERENT FROM THE STRUCTURE CONTAINED IN THIS WORKING DRAFT, IF PROPOSED.

WIND POWER PURCHASE AGREEMENT

[INSERT NAME OF PROJECT] WIND PROJECT POWER PURCHASE AGREEMENT

MADE

BETWEEN

[SELLER'S NAME],

AS SELLER

AND

PUGET SOUND ENERGY, INC.

AS PURCHASER

DATED AS OF _____, _____

TABLE OF CONTENTS

ARTICLE 1 DEFINITIONS	1
ARTICLE 2 TERM AND TERMINATION.....	15
ARTICLE 3 PURCHASE AND SALE OF ENERGY AND ENVIRONMENTAL ATTRIBUTES; DELIVERY; CURTAILMENT	17
ARTICLE 4 CONSTRUCTION AND PURCHASER'S RIGHT TO MONITOR CONSTRUCTION	20
ARTICLE 5 BILLING AND PAYMENTS.....	23
ARTICLE 6 INTERCONNECTION, CONSTRUCTION, OPERATION AND PERFORMANCE GUARANTEES.....	25
ARTICLE 7 PROJECT GUARANTEES.....	28
ARTICLE 8 MEASUREMENT AND METERING; PROJECT DATA	31
ARTICLE 9 RECORDS; REPORTS AND AUDITS.....	33
ARTICLE 10 RELEASE AND INDEMNITY; INSURANCE	34
ARTICLE 11 NOTICES	37
ARTICLE 12 DEFAULTS AND REMEDIES	38
ARTICLE 13 LIMITATION OF LIABILITY	40
ARTICLE 14 CONSENT TO JURISDICTION	40
ARTICLE 15 ASSIGNMENT	41
ARTICLE 16 FINANCING LIENS.....	44
ARTICLE 17 REPRESENTATIONS, COVENANTS, AND WARRANTIES	45
ARTICLE 18 MISCELLANEOUS.....	47
EXHIBIT A-1 Project Description	
EXHIBIT A-2 Site Description	
EXHIBIT B Description of Turbines	
EXHIBIT C Location of Delivery Point, Project Anemometer and Project Substation	
EXHIBIT D Description of the Permits	
EXHIBIT E Contract Energy Rate and Renewal Energy Rate	
EXHIBIT F Example of Calculation of Excess Output Credit	
EXHIBIT G Form of Guaranty of Seller Guarantor	
EXHIBIT H Form of Turbine Final Completion Certificate	
EXHIBIT I Operating Procedures and Coordination	
EXHIBIT J Termination Amounts	

POWER PURCHASE AGREEMENT

This Power Purchase Agreement ("**Agreement**"), dated as of this ___ day of _____, _____, is between [SELLER's NAME] a Washington [corporation][limited liability company] ("**Seller**"), and Puget Sound Energy, Inc., a Washington corporation ("**Purchaser**"). Both of Seller and Purchaser are sometimes referred to in this Agreement together as the "**Parties**"; each of Seller and Purchaser is sometimes referred to in this Agreement as "**Party**."

RECITALS

WHEREAS, Seller intends to site, develop, finance, construct, own and operate a wind turbine electrical generation facility (as defined herein and more particularly described in **Exhibit A-1** to this Agreement, the "**Project**") on sites located in [_____] (as more particularly described in **Exhibit A-2** to this Agreement, the "**Site**"); and

WHEREAS, Seller desires to sell to Purchaser, and Purchaser desires to purchase from Seller, the entire output of Energy from the Project and all of the Environmental Attributes related to the generation of Energy from the Project.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1 DEFINITIONS

Unless otherwise required by the context in which any term appears, (a) capitalized terms used in this Agreement have the meanings specified in this Article 1; (b) the singular shall include the plural and vice-versa; (c) references to "Articles," "Sections," "Schedules," "Annexes," "Appendices," or "Exhibits" (if any) shall be to articles, sections, schedules, annexes, appendices, or exhibits hereof; (d) all references to a particular entity shall include a reference to such entity's successors and permitted assigns; (e) the words "herein," "hereof," and "hereunder" shall refer to this Agreement as a whole and not to any particular article or section hereof; (f) the word "including" shall mean "including, without limitation," and the word "include" shall mean "include, without limitation," (g) all accounting terms not specifically defined herein shall be construed in accordance with GAAP; and (h) references to this Agreement shall be a reference to this Agreement and all appendices, annexes, schedules, and exhibits hereto, as the same may be amended, modified, supplemented or replaced from time to time.

"**Actual Operational Hours**" means, for each Turbine during any Contract Year, the period (expressed in hours or portions of an hour) in such Contract Year in which such

Turbine actually produces power as measured by the internal turbine controller, less the sum of:

- (a) any period (expressed in hours or portions of an hour) during such Contract Year in which, by reason of a System Emergency, Purchaser is unable to accept delivery of any Energy that such Turbine is otherwise capable of generating; and
- (b) any period (expressed in hours or portions of an hour) during such Contract Year in which such Turbine is not operational as a result of a Force Majeure Event;

it being understood and agreed that for any given Contract Year for which Actual Operational Hours are calculated, the deductions from Actual Operational Hours for such period pursuant to (a) and (b) above shall be the same as the deductions from Base Hours for such period pursuant to clauses (a) and (c) of the definition of "Base Hours."

"Additional Security" means:

- (a) a Letter of Credit in the required amount; or
- (b) cash (immediately available funds) in the required amount, which cash must be delivered to a Custodian to be held thereby as security for the Party entitled to the benefits thereof pursuant to an escrow agreement satisfactory in form and substance to the Party for whose benefit such cash is being provided, which escrow agreement shall include the provisions of Section 7.4.3; or
- (c) with respect to Seller, a guaranty in the required amount, for the required term, and from a Qualified Guarantor, of:
 - (i) Seller's obligations under this Agreement; or
 - (ii) Seller Guarantor's obligations under the guaranty agreement executed and delivered by Seller Guarantor hereunder;

in either case on substantially the same terms and conditions set forth in the form of Seller Guaranty Agreement attached hereto as **Exhibit G**.

"Affiliate" means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition, "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

"Applicable Law" means, with respect to any Person, all laws, statutes, codes, acts, treaties, ordinances, orders, judgments, writs, decrees, injunctions, rules, regulations, governmental approvals, licenses and permits, directives, and requirements of all regulatory and other governmental authorities, in each case applicable to or binding upon such Person and, in the case of Seller, the Project.

"Average Annual Output" means the average Energy output of the Project per year as measured for any Contract Year.

"Balance of Plant" means all equipment and materials and other items incorporated (or to be incorporated) in the Project, except for the Turbines. Balance of Plant includes, but is not limited to, the civil, electrical and mechanical construction works (principally site preparation, foundations for transformers and Turbines and cable and pipe ducting, the control works) and the Interconnection Facilities, the Seller's Meters and associated foundation, including the pad-mount transformers and the pad-mount switchgear, the communications system and the communication system cables, the CMS, and the electrical works (principally cables, equipment and meteorological stations).

"Base Hours" means, for each Turbine during any Contract Year, the period (expressed in hours or portions of an hour) in such Contract Year, less the sum of:

(a) any period (expressed in hours or portions of an hour) during such Contract Year in which, by reason of a System Emergency, Purchaser is unable to accept delivery of any Energy that such Turbine is otherwise capable of generating;

(b) any period (expressed in hours or portions of an hour) during such Contract Year in which such Turbine is not operational as a result of Scheduled Maintenance; provided, that the number of hours (or portions of an hour) that may be subtracted pursuant to this clause (b) for all Turbines for a given one-year period shall not exceed a cumulative maximum equal to the product of twenty-four (24) multiplied by the number of Turbines; and

(c) any hours during such Contract Year in which such Turbine is not operational as a result of a Force Majeure Event.

"Business Day" means each Day that is not a weekend Day or a federal holiday Day.

"CAMD" means the Clean Air Markets Division of the Environmental Protection Agency or any successor agency that is given jurisdiction over a program involving transferability of Environmental Attributes.

"CMS" means the computer monitoring system for the Project.

"Commercial Operation Date" means the date on which Turbines in the Project representing at least ninety-five percent (95%) of the Required Installed Capacity, and all other portions of the Project necessary to put the Project into operation with the

Interconnection Facilities and the Transmission System, have been tested and commissioned and are both authorized under Applicable Law and able to operate and deliver Energy to the Transmission System in accordance with Prudent Utility Practices and all Permits therefor have been obtained.

"**Commercial Operation Date Delay Payment**" has the meaning set forth in Section 6.3.2(a).

"**Consolidated Net Tangible Assets**" means, as of the date of any determination thereof, the total amount of all assets of a Person determined on a consolidated basis in accordance with GAAP as of such date, less the sum of:

- (a) the consolidated current liabilities of such Person determined in accordance with GAAP; and
- (b) assets properly classified as intangible assets in accordance with GAAP.

For all purposes of this Agreement, the Consolidated Net Tangible Assets of a Person shall be as shown on such Person's most recent regularly prepared quarterly financial statements (if determination thereof is made during the second, third or fourth quarters of such Person's fiscal year) or audited annual financial statements (if determination thereof is made during the first quarter of such Person's fiscal year).

"**Construction Permits**" means all those Permits that are required to be obtained by Seller as a condition to Seller's right to construct the Project, as described in **Exhibit D**.

"**Contract Energy Rate**" means the rate, expressed in dollars per MWh, payable by Purchaser for Energy (other than Test Power and Excess Output) and Environmental Attributes generated by the Project during the Initial Term hereof. The Contract Energy Rate for the Stub Period and each Contract Year during the Initial Term is set forth in **Exhibit E** hereto under the column designated "Contract Energy Rate (\$ per MWh)."

"**Contract Year**" means the Days from January 1 through December 31, inclusive, of any given year. The first Contract Year shall commence on the first January 1 occurring after the Commercial Operation Date.

"**Cost to Cover**" means, with respect to any Energy from the Project that Seller was obligated to deliver, but did not deliver, under this Agreement, an amount equal to all costs and losses incurred by Purchaser (or that would be incurred by Purchaser) to replace undelivered Energy (including costs of energy and associated capacity), as a result of such non-delivery, reduced by the amount of payments that Purchaser would have made to Seller if such Energy had been delivered; provided, that the Cost to Cover with respect to any period shall not be less than zero dollars.

"**Credit Requirements**" means, with respect to any Person, that:

(a) such Person's Consolidated Net Tangible Assets are not less than \$300,000,000; or

(b) such Person's long-term senior unsecured debt is rated either:

(i) "Baa2" or higher by Moody's; or

(ii) "BBB" or higher by S&P.

"Custodian" means a commercial bank or trust Seller organized under the laws of the United States of America or a political subdivision thereof, whose long-term senior unsecured debt is rated at least "A" by S&P or "A2" by Moody's.

"Day" means a period of 24 consecutive hours beginning at 00:00 hours Pacific time on any calendar day and ending at 24:00 hours Pacific time on the same calendar day.

"Default Notice Parties" means, in the case of an Event of Default by Seller, Seller, Seller Guarantor and Seller Lender (if any), and in the case of an Event of Default by Purchaser, Purchaser only.

"Defaulting Party" has the meaning set forth in Section 12.1.1.

"Delivery Point" means the location on Purchaser's electric system shown in **Exhibit C** at which all Energy (including Test Power) is to be delivered by Seller to Purchaser hereunder.

"Downgrade Event" means, with respect to any Person, any event that results in such Person failing to meet the Credit Requirements.

"Due Date" has the meaning set forth in Section 5.1.1.

"Due Diligence Report" means one or more reports from consultants or other independent experts chosen by Purchaser, and reasonably acceptable to Seller, that conclude, following an analysis of the Project, plans for the Project and meteorological and wind resource data related to the Project, that:

(a) the Project has been or will be designed and constructed consistent with Prudent Utility Practices and Applicable Law;

(b) plans for Project maintenance have been established and such plans are consistent with Prudent Utility Practices;

(c) the operation of the Project after the Commercial Operation Date will comply with all Applicable Law;

(d) the Project is financially feasible and can reasonably be expected to afford Seller an adequate rate of return;

(e) the Project can reasonably be expected to be available so as to comply with Seller's obligations hereunder; and

(f) the Commercial Operation Date can reasonably be expected to occur on or before ____ Days following the execution of this Agreement.

"Earnings-to-Interest Ratio" means the ratio equal to Seller Guarantor's earnings before interest and taxes over Seller's interest expenses.

"Effective Date" has the meaning set forth in Section 2.1.

"Energy" means any and all electrical energy generated by the Project, minus station load and transmission losses up to the Delivery Point, as measured in MWh at the Delivery Point.

"Environmental Attributes" means (a) credits, benefits, reductions, offsets and allowances, howsoever named or referred to, with respect to any and all fuel, emissions, air quality, or other environmental characteristics, resulting from the use of wind generation or the avoidance of the emission of any gas, chemical or other substance into the air, soil or water attributable to the sale of Energy generated by the Project during the Term and in which Seller has property rights or will have property rights upon such attributes coming into existence (with Seller taking only such action as required by the last sentence of Section 3.2.1), and include any of the same arising out of legislation or regulation (i) concerned with (A) oxides of nitrogen, sulfur, or carbon, (B) particulate matter, soot, or mercury, or (C) implementing the United Nations Framework Convention on Climate Change (the "UNFCCC") or the Kyoto Protocol to the UNFCCC or crediting "early action" with a view thereto, or (ii) involving or administered by the Clean Air Markets Division of the Environmental Protection Agency or its successor (collectively with any state or federal entity given jurisdiction over a program involving transferability of Environmental Attributes, the "CAMD"), and (b) all Environmental Attribute Reporting Rights, but specifically excluding from "Environmental Attributes" only the PTCs.

"Environmental Attribute Reporting Rights" means all rights to report ownership of the Environmental Attributes to any person or entity, under Section 1605(b) of the Energy Policy Act of 1992 or otherwise.

"Event of Default" has the meaning set forth in Section 12.1.1.

"Excess Output" has the meaning set forth in Section 3.3.3.

"Excess Output Credit Rate" means, for each Contract Year, [____]% of the Contract Energy Rate or Renewal Energy Rate, as applicable, for such Contract Year.

"Excess Output Credit" has the meaning set forth in Section 5.1.2.

"Federal Power Act" means the Federal Power Act, as heretofore or hereafter amended, 16 U.S.C. § 791a, *et seq.*

"FERC" means the Federal Energy Regulatory Commission or its successor.

"Force Majeure Event" means any act or event that delays or prevents a Party from timely performing obligations under this Agreement or from complying with conditions required under this Agreement, to the extent such act or event is reasonably unforeseeable and beyond the reasonable control of such Party or its Affiliates and cannot have been avoided or overcome by such Party or its Affiliates through the exercise of reasonable diligence (such act or event may include any act of God or the elements, explosion, fire, epidemic, landslide, mudslide, sabotage, lightning, earthquake, flood or similar cataclysmic event, transmission curtailment or outage, an act of public enemy, terrorism, war, blockade, civil insurrection, riot, civil disturbance or strike or labor disruption); provided, that for purposes of Energy deliveries, Environmental Attributes and operation of the Turbines, wind conditions at or below the maximum wind speed the Turbines were designed to withstand (as provided in the manufacturer's specifications) shall not be deemed to be a Force Majeure Event; and provided, further, that neither of the following shall be a Force Majeure Event: (a) Seller's failure to obtain any of the Permits; or (b) the inability of such Party or any third party to obtain needed funds.

"GAAP" means generally accepted accounting principles in the United States of America, consistently applied.

"Guaranteed Commercial Operation Date" has the meaning set forth in Section 6.3.1.

"Guaranteed Major Milestone Deadline" means, for each of the Major Milestones, the date as set forth below:

- (a) delivery of all Wind Turbines to the Site – **[Date]**;
- (b) delivery and installation of all transformers at the Site – **[Date]**;
- (c) execution of the Generation Interconnection Agreement – **[Date]**;
- (d) physical and electrical interconnection the Project's Interconnection Facilities with the applicable Transmission Provider's Transmission System – **[Date]**;
- (e) acquisition of Transmission Services by Seller pursuant to Section 3.1 – **[Date]**; and
- (f) issuance of all Permits – **[Date]**.

"Guaranteed Summer Output" means [anticipated summer capacity * 0.90 * Installed Capacity * hours during Summer as adjusted for any System Emergency and/or Operational Constrained Energy Period].

"Guaranteed Winter Output" means [anticipated winter capacity * 0.90 * Installed Capacity * hours during Winter as adjusted for any System Emergency and/or Operational Constrained Energy Period].

"Indemnitees" means, with respect to either Party, such Party, its successors and assigns, and the respective directors, officers, shareholders, employees, agents and representatives of such Party and its successors and assigns.

"Initial Term" has the meaning set forth in Section 2.1.

"Installed Capacity" means the product of (a) the nominal or "nameplate" capacity (expressed in MW) of each Turbine multiplied by (b) the number of Turbines installed at the Project.

"Generation Interconnection Agreement" or **"GIA"** means the interconnection agreement, in a form and substance reasonably acceptable to Purchaser, between the applicable Transmission Provider and Seller pursuant to which the Interconnection Facilities will be constructed, operated, and maintained during the Term.

"Interconnection Costs" means all costs and expenses related to the Interconnection Facilities.

"Interconnection Facilities" means the facilities and control and equipment between the Project and the Delivery, including control and protective devices and metering facilities, necessary to physically and electrically interconnect, and maintain the interconnection of, the Project with the applicable Transmission Provider's Transmission System in order to effectuate the purposes of this Agreement, including the Project Substation and the line connecting the Project Substation to the Transmission System.

"Letter of Credit" means an irrevocable, transferable standby letter of credit that:

(a) is issued by a U.S. commercial bank or a foreign bank with a U.S. branch, having a credit rating of:

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

(b) names the Party (and any of its permitted transferees) in whose favor such letter of credit is issued (a **"Beneficiary Party"**) as the Person entitled to demand payment and present draw requests thereunder;

(c) is in the amount required pursuant to this Agreement;

(d) entitles the Beneficiary Party to make drawings in the aggregate up to the stated face amount thereof for the purpose of paying any and all amounts owing by the other Party;

(e) additionally entitles the Beneficiary Party to draw the entire amount then available for drawings thereunder if such letter of credit is not renewed or replaced at least thirty (30) Business Days prior to its stated expiration date; and

(f) is otherwise in form and substance acceptable to the Beneficiary Party.

"Long-Term Debt Rating" means, with respect to any Person, the rating of such Person's long-term senior unsecured debt, as rated by S&P and Moody's.

"Major Milestones" means all of the following (each of which may be referred to in the singular as a "Major Milestone"):

(a) delivery of all Wind Turbines to the Site;

(b) delivery and installation of all transformers at the Site;

(c) execution of the Generation Interconnection Agreement;

(d) physical and electrical interconnection the Project's Interconnection Facilities with the applicable Transmission Provider's Transmission System;

(e) acquisition of Transmission Services by Seller pursuant to Section 3.1;
and

(f) issuance of all Permits.

"Major Milestone Deadline" means, for each of the Major Milestones, the date as set forth below:

(a) delivery of all Wind Turbines to the Site – **[Date]**;

(b) delivery and installation of all transformers at the Site – **[Date]**;

(c) execution of the Generation Interconnection Agreement – **[Date]**;

(d) physical and electrical interconnection the Project's Interconnection Facilities with the applicable Transmission Provider's Transmission System – **[Date]**;

(e) acquisition of Transmission Services by Seller pursuant to Section 3.1 – **[Date]**; and

(f) issuance of all Permits – [Date].

"Market Price" means for any hour an amount, stated in dollars per MWh, equal to the "Firm On-Peak," "Firm Off-Peak" or "Sunday and NERC Holidays" Dow Jones Mid-Columbia Electricity Index for the period in which such hour occurs. If any such index becomes unavailable during the Term, it shall be replaced for purposes of the preceding sentence by a replacement index that replicates as near may be the information provided by the above-described Dow Jones Mid-Columbia Electricity Indices.

"Mean Project Output" means _____ MWh per Contract Year [Calculated by multiplying a mutually agreed upon capacity factor for the Project * the Installed Capacity * 8760].

"Megawatt-hour" or "MWh" means a unit of Energy equal to one thousand kilowatt-hours.

"Meter" means an instrument or instruments meeting applicable Technical Requirements and electric industry standards used to measure and record the volume and other required delivery characteristics of the Energy delivered hereunder at the Delivery Point, as further defined in Section 8.1.

"Moody's" means Moody's Investor Services, Inc. and any successor thereto.

"MW" means a unit of power equal to one megawatt.

"National Broker" means any nationally recognized firm engaged in the business of brokering Environmental Attributes. As of the date of this Agreement, such nationally recognized firms include Cantor Fitzgerald, New York, New York, NatSource, _____, _____ and Evolution Markets, _____, _____.

"Non-Completion Termination Date" has the meaning set forth in Section 6.3.2(b).

"Operation Permits" means all of those Permits that are required to be obtained by Seller as a condition to Seller's right to operate the Project and sell Energy therefrom, as described in Exhibit D.

"Operational Constrained Energy Period" means any period in which Purchaser requires Seller to limit generation output or has determined that Energy may not be accepted by Purchaser due to (a) operational concerns with excess energy supply or other constraints, (b) insufficient load and energy sales or (c) effects from such acceptance that may result in operations inconsistent with Prudent Utility Practice.

"Operational Hours" means, for each Turbine during any Contract Year, the period (expressed in hours or portions of an hour) in such Contract Year in which such Turbine is physically and legally capable of producing power as measured by the internal turbine controller, less the sum of:

(a) any period (expressed in hours or portions of an hour) during such Contract Year in which, by reason of a System Emergency, Purchaser is unable to accept delivery of any Energy that such Turbine is otherwise capable of generating; and

(b) any period (expressed in hours or portions of an hour) during such Contract Year in which such Turbine is not operational as a result of a Force Majeure Event;

it being understood and agreed that for any given Contract Year for which Operational Hours are calculated, the deductions from Operational Hours for such period pursuant to (a) and (b) above shall be the same as the deductions from Base Hours for such period pursuant to clauses (a) and (c) of the definition of "Base Hours."

"Permits" means all zoning approvals, permits, licenses, and other governmental approvals in final non-appealable form necessary to construct and operate the Project and sell Energy therefrom, all as contemplated by this Agreement, including the zoning approvals, permits, licenses, and other governmental approvals described in **Exhibit D**; provided, that any Permit from the Bureau of Land Management need be in final non-appealable form only to the extent that, under Applicable Law, it is possible to obtain such Permit in such form.

"Permitted Investments" means: (a) direct obligations of the United States of America, or of any agency thereof, or obligations guaranteed as to principal and interest by the United States of America, or of any agency thereof, in either case maturing not more than ninety (90) Days from the date of acquisition thereof; and (b) certificates of deposit issued by any bank or trust Seller organized under the laws of the United States of America (or any state thereof) and having capital, surplus and undivided profits of at least \$500,000,000, maturing not more than ninety (90) Days from the date of acquisition thereof.

"Person" means an individual, partnership, corporation, business trust, joint stock Seller, trust, unincorporated association, joint venture, governmental authority, limited liability Seller, or any other entity of whatever nature.

"Power Purchase Option" has the meaning set forth in Section 15.4.2.

"Power Purchase Option Notice" has the meaning set forth in Section 15.4.2.

"Prime Rate" means the rate published in *The Wall Street Journal* as the "Prime Rate" from time to time (or, if more than one rate is published, the arithmetic mean of such rates), in either case determined as of the date the obligation to pay interest arises, but in no event more than the maximum rate permitted by Applicable Law.

"Project" has the meaning set forth in the Recitals, as more particularly described in **Exhibit A-1** hereto and otherwise meeting the requirements of this Agreement, including having the Required Installed Capacity.

"Project Anemometer" means the anemometer to be installed at the approximate location shown on **Exhibit C** hereto.

"Project Mechanical Availability Percentage" means, for any Contract Year and for all Turbines agreed hereunder to be installed on the Site by Seller, a percentage calculated in accordance with the following formula:

$$\text{Project Mechanical Availability Percentage} = 100 \times \frac{\text{a fraction, the numerator of which equals the total actual output capability during such Contract Year for such Turbines, and the denominator of which equals the Required Installed Capacity during such Contract Year for such Turbines (adjusted for Scheduled Maintenance and any Force Majeure Event during such Contract Year)}}{\text{a fraction, the numerator of which equals the total actual output capability during such Contract Year for such Turbines, and the denominator of which equals the Required Installed Capacity during such Contract Year for such Turbines (adjusted for Scheduled Maintenance and any Force Majeure Event during such Contract Year)}}$$

"Project Substation" means the substation, if any, to be constructed as part of the Project as more specifically described in **Exhibit C** hereto.

"Prudent Utility Practices" means:

(a) those practices, methods and acts that, when engaged in, are commonly used in the United States of America in prudent electrical engineering and operations to operate wind generation electrical equipment and related electrical equipment lawfully and with safety, reliability, efficiency, economy and expedition; or

(b) in the absence of the practices, methods and acts described in the immediately preceding clause (a), those practices, methods and acts that, when engaged in, are, in the exercise of reasonable judgment considering the facts known when engaged in, could then be expected to achieve the desired result consistent with Applicable Law, safety, reliability, efficiency, economy and expedition.

Prudent Utility Practices are not limited to optimum practices, methods or acts, but rather are a range of acceptable practices, methods or acts.

"PTCs" means production tax credits under section 45 of the Internal Revenue Code as in effect on the date of this Agreement or any successor or other provision providing for a federal tax credit determined by reference to renewable electric energy produced from wind resources.

"Purchaser" has the meaning set forth in the first paragraph of this Agreement.

"Qualified Guarantor" means a Person having a Long-Term Debt rating, during the term of the applicable guaranty, of at least BBB+ by S&P and at least Baa1 by Moody's.

"Renewal Energy Rate" means the rate, expressed in dollars per MWh, payable by Purchaser for Energy (other than Excess Output) and Environmental Attributes generated by the Project during the Renewal Term hereof. The Renewal Energy Rate for each Contract

Year during the Renewal Term is set forth in **Exhibit E** hereto under the column designated "Renewal Energy Rate (\$ per MWh)."

"**Renewal Notice**" has the meaning set forth in Section 2.2.

"**Renewal Term**" has the meaning set forth in Section 2.2.

"**Required Installed Capacity**" means: [INSERT AMOUNT HERE] MW.

"**Scheduled Maintenance**" has the meaning set forth in Section 1.3 of **Exhibit I** hereto.

"**Security Documents**" means the Assignment and Security Agreement between Purchaser and Seller, and related documents executed as of the date hereof, whereby Purchaser is assigned and granted as security for Seller's obligations hereunder certain security interests in and to, and rights with respect to, the Project and contracts and other assets related thereto, including the rights contemplated by Section 17.1 hereof, subordinate only to [specified senior debt incurred or to be incurred to develop and construct the Project].

"**Seller**" has the meaning set forth in the first paragraph of this Agreement.

"**Seller Guarantor**" has the meaning set forth in Section 7.4.1.

"**Seller Lender**" means any Persons (or successors in interest thereof) lending money or extending credit (including any financing lease) to Seller for (a) construction, term or permanent financing or refinancing of the Project, (b) working capital or other ordinary business requirements of the Project (including maintenance, repair, replacement, or improvement of the Project), (c) any development financing, bridge financing, credit support, credit enhancement, or interest rate protection in connection with the Project or (d) the purchase of more than a 50% interest (in aggregate) in the Project and the related rights from Seller.

"**Site**" has the meaning set forth in the Recitals, as more particularly described in **Exhibit A-2**.

"**S&P**" means Standard & Poor's Rating Group (a division of McGraw-Hill, Inc.) and any successor thereto.

"**Stub Period**" means the period commencing on the Commercial Operation Date and ending on the immediately succeeding December 31; provided, however, that if the Commercial Operation Date occurs on December 31 or January 1, there shall be no Stub Period.

"**Support**" means the personnel and labor relating to, and supervision of, any of the following in connection with the procurement, construction, installation, start up and testing

of the Project: subcontractors, materials, supplies, consumables, equipment, tools, construction equipment, transportation, data, drawings, plans, specifications and other goods, items, facilities and services (including technical and professional services).

"**Summer**" means any period during any Contract Year or Stub Period occurring in the months of April through August.

"**System Emergency**" means a condition on the Transmission System (as determined by the applicable Transmission Provider), at the Project, or on transmission facilities used to deliver the Energy to or from the Delivery Point that is likely to result in imminent significant disruption of service to customers or is imminently likely to endanger life or property.

"**Taxes**" means all *ad valorem*, property, income, occupation, utility, gross receipts, sales, use, excise, and other taxes, and all governmental charges, surcharges, licenses, permits, and assessments of every type and description.

"**Technical Requirements**" means those codes, standards, and specifications for the Meters mutually agreed upon by the Parties in writing as [_____], including bi-directional measurement capabilities.

"**Term**" means the Initial Term and the Renewal Term (but only if Purchaser exercises its option with respect to the Renewal Term pursuant to Section 2.2 hereof).

"**Termination Amount**" means, with respect to any Contract Year in which Purchaser exercises its right to terminate this Agreement pursuant to Section 2.5, the amount set forth in Exhibit J hereto for such Contract Year.

"**Test Power**" means the Energy produced by the Project during the testing thereof prior to the Commercial Operation Date.

"**Test Power Rate**" means the rate, expressed in dollars per MWh, payable by Purchaser for each MWh of Test Power delivered to Purchaser pursuant to this Agreement. The Test Power Rate is set forth in Section 3.3.1.

"**Transfer Option**" has the meaning set forth in Section 15.4.1.

"**Transfer Option Notice**" has the meaning set forth in Section 15.4.1.

"**Transmission Provider**" means (a) with respect to the Transmission System facilities from the Project to the Delivery Point, _____ or any replacement regional transmission organization or other Person that operates such Transmission System facilities and (b) with respect to the Transmission System facilities from the Delivery Point to Purchaser's electric system, _____ or any replacement regional transmission organization or other Person that operates such Transmission System facilities.

"**Transmission Services**" means transmission services (which shall be, at Purchaser's election, open access network integration transmission service or open access long-term firm point-to-point transmission service), ancillary services and control area services.

"**Transmission System**" means the transmission facilities now or hereafter operated by the applicable Transmission Provider.

"**Turbine**" means each of the single wind turbine generating systems (including its tower, pad transformer, and controller system) as described on **Exhibit B**.

"**Turbine Completion**" means, with respect to any Turbine, the completion of the construction, installation, commissioning and testing of such Turbine and all other equipment and facilities necessary to connect such Turbine with the Interconnection Facilities and the Transmission System and otherwise put such Turbine into commercial operation for the generation and delivery of Energy in accordance with Prudent Utility Practices and for the delivery to Purchaser of a Turbine Final Completion Certificate related thereto.

"**Turbine Final Completion**" means the achievement of Turbine Completion for all Turbines.

"**Turbine Final Completion Certificate**" means a duly completed and executed certificate, substantially in the form of **Exhibit H** hereto.

"**Turbine Final Completion Date**" means the date of Turbine Final Completion.

"**Turbine Manufacturer**" means the manufacturer of the Turbines.

"**Winter**" means any period during any Contract Year or Stub Period occurring in the months of September through March.

"**WUTC**" means the Washington Utilities and Transportation Commission or its successor.

ARTICLE 2 TERM AND TERMINATION

2.1 Term. This Agreement shall become effective on the date of signature by both Parties (the "**Effective Date**"). The term of this Agreement shall commence on the Effective Date and, unless earlier terminated pursuant to Section 2.4, 2.5, 2.6 or 6.3.2(b), shall continue for [_____] years from the first Day of the first Contract Year and expire at 00:00 hours on the [_____] anniversary of the first Day of the first Contract Year (the "**Initial Term**"), but subject to Purchaser's right to extend such expiration date by exercising one or more of its renewal options as provided in Section 2.2.

2.2 Renewal Terms. Seller hereby grants to Purchaser the sole option to extend the Term of this Agreement beyond the Initial Term for one ____-year period (the "**Renewal**

Term"). The Renewal Term shall commence immediately following the expiration of the Initial Term and shall expire on the ____ anniversary of the first Day of the first Contract Year.

In order to exercise its option to extend the Term of this Agreement through the Renewal Term, Purchaser, not less than one hundred eighty (180) Days prior to the expiration date of the Initial Term, shall notify Seller in writing of its exercise of such option ("**Renewal Notice**"). Upon the giving of the Renewal Notice, the Term of this Agreement shall thereupon be extended through the Renewal Term.

2.3 Submission of Agreement to FERC. If required under Applicable Law, not later than sixty (60) Days prior to the date on which Seller will commence deliveries of Energy hereunder to Purchaser, Seller shall submit this Agreement to FERC for acceptance pursuant to the Federal Power Act.

2.4 Purchaser to Endeavor to Obtain Transmission Services. Purchaser shall use commercially reasonable efforts to secure, on or before [____], Transmission Services from the applicable Transmission Provider necessary to schedule the Energy and the Test Power from the Delivery Point to Purchaser's electric system. Purchaser shall not be required to secure such Transmission Services (a) absent a generation integration or transmission availability reports from the applicable Transmission Provider satisfactory to Purchaser or (b) if Seller has not entered into a large Generation Interconnection Agreement with the applicable Transmission Provider. If on or before [____], Purchaser, notwithstanding its commercially reasonable efforts, does not secure Transmission Services from the applicable Transmission Provider, then Purchaser may terminate this Agreement by giving written notice of such termination to Seller, which notice, to be effective, must be given by Purchaser to Seller and received by Seller on or before [____]. Upon the giving of any such notice of termination, this Agreement shall automatically terminate and neither Party shall have any liability to the other.

2.5 Change in Circumstances. Upon the occurrence of any material change, as determined by Purchaser, in (a) Purchaser's resource portfolio requirements to serve its retail load or (b) the Project such that the Project no longer meets Purchaser's resource portfolio requirements to serve its retail load, Purchaser may terminate this Agreement by giving not less than thirty (30) days' prior written notice of such termination to Seller. Upon any such termination, neither Party shall have any liability to the other, except that Purchaser shall be obligated to pay to Seller the applicable Termination Amount set forth in the attached Exhibit J and Seller shall, at Purchaser's election (and subject to such payment), immediately transfer to Purchaser (i) all of Seller's rights, title and interests in and to the Project (including the Turbines and the Balance of Plant), the Permits, all rights of Seller to real property included in or benefiting the Site and (ii) all of Seller's rights, title and interests in, to and under any agreements related to the Project to which Seller is a party.

2.6 Failure to Receive Due Diligence Report. If the Due Diligence Report has not been delivered to Purchaser within ninety (90) Days following the execution of this

Agreement, notwithstanding the Parties' best reasonable efforts to obtain such report, then this Agreement shall automatically terminate as of such date; provided, however, if the Due Diligence Report is not delivered within such 90-Day period, Seller may provide written notice to Purchaser that it wishes to attempt to cure any deficiency in the Project that prevented the Due Diligence Report from issuing, in which event, the termination of this Agreement shall be delayed for an additional 120 Days pending remedial actions by Seller and the final review and issuance of the Due Diligence Report.

ARTICLE 3 PURCHASE AND SALE OF ENERGY AND ENVIRONMENTAL ATTRIBUTES; DELIVERY; CURTAILMENT

3.1 Purchase and Sale of Energy. In accordance with and subject to the terms and conditions hereof, commencing on the Commercial Operation Date and continuing throughout the Term, Seller shall sell and deliver to Purchaser at the Delivery Point, and Purchaser shall purchase and accept from Seller at the Delivery Point, all rights, title and interests in and to the Energy. Prior to the Commercial Operation Date, Seller shall sell and deliver to Purchaser at the Delivery Point, and Purchaser shall purchase and accept from Seller at the Delivery Point, all Test Power. Seller shall deliver Energy (including Test Power) to the Delivery Point at a power factor and quality consistent with the requirements of the Interconnection Agreement. Seller shall deliver the Energy (including Test Power) to Purchaser as generated at the Project. Seller shall obtain and maintain throughout the Term, at Seller's expense, all Transmission Services and related interconnection services and other services necessary to schedule the Energy (including Test Power) to the Delivery Point.

3.2 Environmental Attributes.

3.2.1 Seller's Covenants, Representations and Warranties Concerning Environmental Attributes. Seller warrants and represents to Purchaser on a continuing basis that:

- (a) it owns or will own the Environmental Attributes as they come into existence;
- (b) it has not sold, pledged, assigned, transferred or otherwise disposed of, and will not sell, pledge, assign, transfer or otherwise dispose of, the Environmental Attributes to any Person other than Purchaser; and
- (c) all electricity generated by the Project meets one of the following standards for renewable resource generation: **[set forth mutually agreed-upon standard, e.g.,** (i) the standards promulgated under the Green-e Program developed by the Center for Resource Solutions and in effect on the date of this Agreement (http://www.greene.org/ipp/certified_products.html); or (ii) the standards promulgated under the Renew 2000 Project developed by the Northwest

Environmental Advocates and in effect on the date of this Agreement (<http://www.cleanenergyguide.org/Certification/certification.htm>).

Notwithstanding any provision of this Agreement to the contrary, Seller shall not use all or any portion of the Environmental Attributes and shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of the Environmental Attributes to any Person other than Purchaser. Seller further agrees that Seller will make such filings and take such other actions as Purchaser may from time to time reasonably request in order to preserve and maintain the Environmental Attributes in accordance with the standards described in (c) above and to otherwise enable Purchaser to use, sell and transfer such Environmental Attributes in accordance with market standards.

3.2.2 Purchase and Sale of Environmental Attributes. For and in consideration of Purchaser's agreement herein to purchase from Seller the Energy on the terms and conditions set forth herein, Seller shall sell to Purchaser, and Purchaser shall purchase from Seller, all rights, title, and interests in and to all Environmental Attributes related to the Energy, if any, whether now existing or acquired by Seller or that hereafter come into existence or are acquired by Seller during the Term hereof. Seller shall, to the fullest extent permitted by Applicable Law, make the Environmental Attributes available to Purchaser immediately upon Seller's obtaining the Environmental Attributes.

3.2.3 Reporting of Ownership of Environmental Attributes. During the Term, Seller shall not report to any Person that the Environmental Attributes belong to any Person other than Purchaser, and Purchaser may report under any such program that the Environmental Attributes purchased hereunder belong to Purchaser.

3.2.4 Further Assurances. At Purchaser's request and expense, the Parties shall execute all such documents and instruments necessary or desirable to evidence the Environmental Attributes of to effect or evidence transfer of the Environmental Attributes to Purchaser or its designees. In the event of the promulgation of a scheme involving Environmental Attributes administered by CAMD, upon notification by CAMD that any transfers contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfer can be recorded. Each Party will promptly give to the other Party copies of all documents it submits to the CAMD to effectuate or record any transfers.

3.3 Purchase Price. The purchase price for Energy and Environmental Attributes and the total compensation to Seller under this Agreement shall be as follows:

3.3.1 Test Power Rate. The purchase price for Test Power and all Environmental Attributes related thereto shall be \$ ____ per MWh of Test Power.

3.3.2 After Commercial Operation Date. During the period from and including the Commercial Operation Date through the remainder of the Initial Term, the

purchase price for all Energy and Environmental Attributes related thereto shall be the Contract Energy Rate for each MWh of such Energy.

3.3.3 Credit for Excess Output. During the period from and including the first Contract Year through the remainder of the Term, Purchaser will be entitled to a credit against (reduction of) the Contract Energy Rate or the Renewal Energy Rate, as applicable, paid for all Energy and related Environmental Attributes delivered or deemed delivered hereunder during each Contract Year for each MWh of such Energy that is in excess of 110% of the Mean Project Output ("**Excess Output**"). The amount of such credit for each Contract Year shall be equal to the Excess Output Credit calculated in accordance with Section 5.1.2 and **Exhibit F** hereto. Excess Output Credits from Seller to Purchaser shall be made available pursuant to Section 5.1.2 at the end of each Contract Year.

3.3.4 Prior Notice of Test Power Deliveries and Commercial Operation Dates. Seller shall give Purchaser prior written notice of the date on which deliveries of Test Power are expected to commence, which notice shall be given at the earliest practicable time but in no event less than ten (10) Days before such date.

Seller shall give Purchaser notice of the date upon which Commercial Operation Date is expected to occur, which notice shall be given at the earliest practicable time but in no event less than ninety (90) Days before such date. Seller shall also give Purchaser notice of the date upon which Commercial Operation Date is expected to occur not less than sixty (60) Days before such date and thirty (30) Days before such date.

3.3.5 Purchase Price During Renewal Term. In the event Purchaser exercises its option to extend the term of this Agreement for the Renewal Term, then during the Renewal Term the purchase price for all Energy and all associated Environmental Attributes related thereto shall be the Renewal Energy Rate for each MWh of such Energy.

3.3.6 Standard of Review. Absent the agreement of both of the Parties to any proposed change, the standard of review for changes to this Section 3.3 proposed by any Party, a non-Party or FERC acting *sua sponte* shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (*Mobile-Sierra doctrine*).

3.4 Allocation of Taxes. Seller shall pay or cause to be paid all Taxes on or with respect to the Project and on or with respect to the delivery and sale of Energy and /or Environmental Attributes to Purchaser that are imposed before or upon the delivery of Energy at the Delivery Point. Purchaser shall pay or cause to be paid all Taxes (other than any Taxes for which Seller is liable under this Section 3.4) on or with respect to the delivery and sale of Energy and/or Environmental Attributes to Purchaser that are imposed after the delivery of the Energy to Purchaser after the Delivery Point. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such responsible Party shall reimburse the other for such Taxes upon request therefor. Both Parties shall use reasonable

efforts to administer this Agreement and implement its provisions so as to minimize Taxes. In the event any of the sales of Energy or Environmental Attributes hereunder are to be exempted from or not subject to any particular Tax(es), Purchaser shall, promptly upon Seller's request therefor, provide Seller with all necessary documentation to evidence such exemption.

3.5 Curtailment.

3.5.1 Curtailment Due to Transmission System Emergency. Seller and Purchaser each acknowledge that System Emergencies may only be declared by the applicable Transmission Provider, and not by Seller or the merchant function of Purchaser. Purchaser shall curtail or acquiesce in the curtailment of deliveries of Energy if notified by the applicable Transmission Provider that a System Emergency exists, but such curtailment shall only continue for the duration of such System Emergency and then only to the extent required by such Transmission Provider. Seller shall take such actions as may be required by remedial action schemes (if any) specified in the Generation Interconnection Agreement to cause such curtailment and resume deliveries of Energy as soon after curtailment as is reasonably possible, safe, and in accordance with Prudent Utility Practices.

3.5.2 Curtailment Due to Operational Concerns. Seller shall reduce the generation of the project when Purchaser has declared an Operational Constrained Energy Period. Purchaser shall notify Seller of the maximum amount of Energy generation, if any, during the Operational Constrained Energy Period and Seller shall ensure that the generation does not exceed such amount. Purchaser may provide such notices to Seller via telephone. Purchaser may not declare Operational Constrained Energy Periods during more than [_____] hours in any calendar year.

ARTICLE 4 CONSTRUCTION AND PURCHASER'S RIGHT TO MONITOR CONSTRUCTION

4.1 Design, Permitting, Construction, Financing, Operation and Maintenance of the Project. Seller shall site, develop, finance, permit and construct the Project. Seller agrees to provide to Purchaser monthly reports as to the status of the siting, development, financing, permitting and construction of the Project and other matters reasonably related to Purchaser's interest in the Project and this Agreement.

Seller represents, warrants and covenants throughout the Term that:

(a) the Project will be designed, engineered, constructed, installed, operated and maintained in such a manner as to have a reasonably expected useful life of not less than twenty-five (25) years;

(b) each Turbine and the Balance of Plant (except for the communications and wind monitoring equipment) will be designed, engineered, constructed and

installed to have the capability to withstand wind speeds (whether from wind gusts or steady wind) of up to 130 miles per hour without incurring any material damage (other than from flying objects that are not part of the facilities and equipment comprising the Project) **[PSE is willing to address concerns, if any, regarding Turbine operation at the stated wind speed in discussions regarding the design of the Turbines for particular wind speeds.];** and

(c) the Project will be designed, engineered, constructed and installed, and Energy will be sold by Seller to Purchaser, in compliance with all Permits and Applicable Law and in accordance with Prudent Electrical Practices.

It is understood and agreed by the Parties that the warranty and covenant set forth in (a) above is not a warranty and covenant that the Project will, in fact, have a useful life of not less than twenty-five (25) years, but only a warranty and covenant that Project will be designed, engineered, operated and maintained in accordance with Prudent Utility Practice to have an expected useful life of not less than twenty-five (25) years if maintained in accordance with the manufacturer's specifications.

4.2 Right to Monitor. During the design, procurement, construction, installation, start-up, testing, operation and maintenance of the Project, Seller shall permit Purchaser and its advisors and consultants to:

(a) monitor the construction of the Project, including the design and engineering, the procurement and installation of the Turbines, start-up and testing, operation and maintenance of the Project, and Support necessary or desirable for the accomplishment of these tasks;

(b) monitor the design, engineering, construction and installation of the Project to determine whether it meets the following specifications:

(i) a reasonably expected useful life of not less than twenty-five (25) years; and

(ii) each Turbine and the Balance of Plant (with the exception of the communications and wind monitoring equipment) have the capability to withstand wind speeds (whether from wind gusts or steady wind) of up to 130 miles per hour without incurring any material damage (other than from flying objects that are not part of the facilities and equipment comprising the Project);

(c) prior to the Commercial Operation Date and as a condition precedent to the achievement of the Commercial Operation Date:

(i) review and monitor the contractors' performance and achievement of all initial performance tests and all other tests required under

the Project construction contracts that must be performed in order to achieve completion, with respect to which the construction contracts shall provide that at least ten (10) Days before such tests begin the contractors shall deliver to Purchaser a schedule for the performance of such tests;

(ii) be present to witness the such initial performance tests and review the results thereof;

(d) perform such detailed examinations, inspections, quality surveillance and tests as, in the judgment of Purchaser, are appropriate and advisable to determine that:

(i) the Turbines have been designed, engineered and installed in accordance with this Agreement;

(ii) the Balance of Plant has been designed, engineered, constructed and installed in accordance with this Agreement; and

(iii) that all performance guarantees pursuant to this Agreement have been met;

(e) verify that the following are paid when due:

(i) all real property Taxes imposed before the Commercial Operation Date on real property included in or benefiting the Site;

(ii) Taxes imposed with respect to any Turbine before its transfer to Seller;

(iii) Taxes based on or measured by Seller's net or gross income; and

(iv) any retail sales, use or similar Tax on the transfer, sale or use of the Project or any part thereof to or by Seller or any contractor of Seller ;

(f) review and discuss periodic status reports on the progress of the design, construction and installation of the Project, which reports shall be provided by Seller to Purchaser not less frequently than once a month; and

(g) be provided with a list of recommended operating spare parts lists for all equipment supplied.

4.3 No Warranty, Representation or Endorsement. No monitoring, review, consent, verification, advice, recommendation, authorization, notice, witness, inspection, test or any other act by Purchaser (and no delay or failure by Purchaser to monitor, review, approve, consent, verify, advise, recommend, authorize, notify, witness, inspect, test or

otherwise act) regarding the procurement, construction, installation, start-up, testing, operation or maintenance of the Project shall constitute or be interpreted or construed as, or be relied upon or held out by Seller or any other Person as, any waiver, warranty, representation, covenant or endorsement by Seller.

ARTICLE 5 BILLING AND PAYMENTS

5.1 Billing and Payment. Billing and payment for the Energy (including Test Power) and all associated Environmental Attributes sold and purchased under this Agreement and any other amounts due and payable hereunder shall be as set forth in this Section 5.1.

5.1.1 Calculation of Energy Delivered or Deemed Delivered; Invoices and Payment. For each calendar month during the Term, commencing with the first calendar month in which Energy is delivered by Seller to Purchaser in accordance with the terms of this Agreement, Seller shall calculate:

(a) the amount of Energy delivered to Purchaser during such calendar month as determined from recordings produced by Meters at or near 2400 hours on the last Day of the calendar month in question; and

(b) any credits owed to Purchaser as a result of hourly forecasts errors pursuant to Section 7.2. **[With respect to hourly forecasts, PSE is interested in receiving a near real-time forecast of the Project's output. PSE would be willing to discuss what kind of guarantee, close to an hourly guarantee, would be available at a reasonable price.]**

Not later than the tenth Day of each calendar month (commencing with the calendar month next following the calendar month in which Energy is first delivered by Seller to Purchaser in accordance with the terms of this Agreement), Seller shall deliver to Purchaser an invoice showing the amount of such Energy delivered to Purchaser by Seller and PTC's related thereto during the immediately preceding calendar month and Seller's computation of the amount due Seller in respect thereof.

Not later than the later to occur of the following (herein called the "**Due Date**"):

(i) the twentieth (20th) Day of the calendar month immediately following the calendar month to which Seller's invoice relates (or the next succeeding Business Day, if such twentieth Day is not a Business Day); or

(ii) the tenth (10th) Day after receipt by Purchaser of Seller's monthly invoice (or the next succeeding Business Day, if such tenth Day is not a Business Day);

Purchaser shall pay to Seller, by wire transfer of immediately available funds to an account specified in writing by Seller for such purpose or by any other means agreed to by the Parties in writing from time to time, the amount set forth in such monthly invoice that is due and owing to Seller.

5.1.2 Excess Output. At the end of each Contract Year, Seller shall calculate the amount of Excess Output, if any, delivered or deemed delivered to Purchaser hereunder during such Contract Year, which determination shall be made from recordings produced by the Meters through 2400 hours on the last Day of each Contract Year.

Not later than 10 Days after the end of such Contract Year, Seller shall deliver to Purchaser an invoice showing the amount, if any, of Excess Output delivered to Purchaser by Seller pursuant hereto during such Contract Year and Seller's computation of the Excess Output Credit, which Excess Output Credit shall be calculated in accordance with the formula set forth in **Exhibit F** hereto ("**Excess Output Credit**").

If an Excess Output Credit is owing, Purchaser shall have the right under Section 5.1.4 to set off such credit from one or more subsequent invoices payable to Seller.

5.1.3 Disputed Invoices. Within one hundred twenty (120) Days after receipt of any invoice, Purchaser may provide written notice to Seller of any alleged error therein. If Seller notifies Purchaser in writing within thirty (30) Days of receipt of such notice that Seller disagrees with the allegation of error in the invoice, the Parties shall meet, by telephone conference call or otherwise, within five (5) Business Days following Seller's response, for the purpose of attempting to resolve the dispute. If the Parties do not resolve the dispute within thirty (30) Days after such initial meeting, either Party may proceed to seek whatever remedy may be available to such Party at law or in equity. If Seller is found to be in error, Seller will refund to Purchaser the amount that Purchaser paid in excess of the amount that Purchaser actually owed plus interest on such excess payment from the date the same was paid by Purchaser to (but not including) the date of refund thereof is actually received by Purchaser from Seller, such interest to be at an annual rate equal to the Prime Rate in effect as of the date such payment was made by Purchaser plus two percent (2%), but in no event shall such interest exceed the maximum interest rate permitted by Applicable Law.

The rights of the Parties set forth in this Section 5.1.3 are in addition to, and not in lieu of, the rights set forth in Section 7.4.

5.1.4 Setoffs and Deductions. Purchaser shall have the right to set off any amount due Seller under this Agreement against any amount due Purchaser from Seller hereunder.

5.1.5 Interest on Past Due Amounts. Any payment not made within the time limits specified in this Section 5.1 shall bear interest from the Due Date of such payment through (but not including) the date such payment is actually received by Seller or

Purchaser, as the case may be. Such interest shall accrue at an annual rate equal to the Prime Rate then in effect plus two percent (2%), but in no event shall such interest exceed the maximum interest rate permitted by Applicable Law.

5.1.6 Form and Transmittal of Invoices. Statements or invoices shall be sent to Purchaser by mail or facsimile to the address or facsimile number designated in Section 11.1. All invoices must be accompanied with certified telemetry or other metering information as required in Section 8.1.1. Purchaser may change the address or facsimile number by providing written notice thereof to Seller. Each invoice shall be in a form and substance reasonably acceptable to both Seller and Purchaser.

ARTICLE 6 INTERCONNECTION, CONSTRUCTION, OPERATION AND PERFORMANCE GUARANTEES

6.1 Interconnection.

6.1.1 Generation Interconnection Agreement and Interconnection Facilities. Seller shall enter into and shall maintain throughout the Term a Generation Interconnection Agreement (GIA) with the applicable Transmission Provider. Pursuant to the GIA, such Transmission Provider and Seller shall design, finance, install, maintain, and operate the Interconnection Facilities as required under the Interconnection Agreement.

6.1.2 Purchaser's Right of Review of the Generation Interconnection Agreement; Date for Required Completion of Interconnection Facilities; Payment of Interconnection Costs. Before Seller enters into the Generation Interconnection Agreement, Seller agrees to provide to Purchaser with the final draft of such Agreement as and when such draft is made available to Seller. Purchaser shall have the right to comment on such draft within ten (10) Business Days after the same is provided to Purchaser by or on behalf of Seller and Seller shall use reasonable efforts to cause Purchaser's comments to be incorporated into the GIA as executed and delivered by the parties thereto. Notwithstanding anything expressed or implied herein to the contrary:

(a) the Generation Interconnection Agreement shall provide for the completion of all Interconnection Facilities no later than _____;
and

(b) As between Seller and Purchaser, Purchaser shall have no liability for the payment of any Interconnection Costs.

6.2 Operation and Maintenance.

6.2.1 General. Seller shall submit a written annual maintenance plan for the coming year no later than 60 Days prior to the start of each Contract Year. Such plan shall be subject to Purchaser's acceptance. **[PSE expects that Seller's plans for**

maintenance of the Project would be set forth in an annual plan. PSE is willing to discuss the particular annual plan that Seller would prefer to submit.] Any and all changes to such plan shall be immediately communicated to Purchaser in writing and shall be subject to Purchaser's acceptance. Seller agrees to operate and maintain the Project, the Interconnection Facilities, its Meters (if any), and all other equipment and systems interconnecting with the Interconnection Facilities or the interconnected Transmission System in accordance with the applicable manufacturer's specifications and in a manner that is reasonably likely to:

(a) maximize the output of Energy and Environmental Attributes from the Project consistent with Prudent Utility Practices; and

(b) result in an expected useful life for such facilities of not less than twenty-five (25) years;

all in compliance with all Permits and applicable laws, ordinances, rules, regulations, orders and other requirements, now or hereafter in effect, of any governmental authority, and in accordance with Prudent Utility Practice.

6.2.2 Operation and Maintenance Plan. Seller shall inspect, maintain and repair the Project and the components thereof in accordance with Prudent Utility Practices, and shall keep records with respect to inspections, maintenance, and repairs thereto. Upon request by Purchaser, Seller shall make available to Purchaser during Seller's regular business hours all plans and records of such inspections, maintenance, and repairs.

6.2.3 Coordination of Project Operation. Seller shall operate the Project on a continuous, reliable and sustained basis until the end of the Term, subject to curtailments pursuant to Section 3.5 and outages in accordance with **Exhibit I**. The Parties shall coordinate operation of the Project with Purchaser's electric system in accordance with the attached **Exhibit I**. **[PSE is willing to consider jointly developed operating procedures; however, such procedures are expected to be consistent with those reflected in Exhibit I.]** In addition, Seller shall strive to cooperate in good faith with Purchaser's reasonable maintenance scheduling requests consistent with Prudent Utility Practices so as to maximize Purchaser's return on its third-party sales of the Energy and Environmental Attributes.

6.3 Commercial Operation Date Guarantee; Per Turbine Delay Payments.

6.3.1 Guaranteed Commercial Operation Date. Seller shall cause the Commercial Operation Date to occur, including causing each Turbine to achieve Turbine Completion by, [_____] (the "**Guaranteed Commercial Operation Date**").

6.3.2 Delay Payments.

(a) For each Day after the Guaranteed Commercial Operation Date that the Commercial Operation Date has failed to occur, Seller agrees to pay Purchaser *per diem* delay liquidated damages on a per Turbine basis in an amount calculated as provided below (the "**Commercial Operation Date Delay Payment**"). Except as provided below in this Section 6.3.2, Delay Payments on a per Turbine basis shall be paid by Seller to Purchaser for each Day that each Turbine is late in achieving Turbine Completion, commencing with the Day after the Guaranteed Commercial Operation Date through (but not including) the Commercial Operation Date.

The Commercial Operation Date Delay Payment for each Turbine that has failed to achieve Turbine Completion by the Commercial Operation Date shall be an amount equal to the product of (a) _____ dollars (\$_____) multiplied by (b) the number of Days from (and including) the Day after the Commercial Operation Date to (but not including) the date upon which such Turbine achieves Turbine Completion.

Purchaser shall not be entitled to any Delay Payment hereunder with respect to any Turbine to the extent Seller's delay in achieving Turbine Completion with respect to such Turbine was caused by:

- (i) Purchaser;
- (ii) a delay due to a Force Majeure Event; or
- (iii) the failure of Purchaser to secure Transmission Services from the applicable Transmission Provider.

In the event Seller's delay in achieving Turbine Completion with respect to a Turbine is caused by any of the events described in (i), (ii) or (iii) above, then with respect to the affected Turbine(s) the Guaranteed Commercial Operation Date shall be extended by a number of Days equal to the period of such delay. Except as otherwise provided herein, Purchaser and Seller agree that the remedies provided for in this Section 6.3.2 shall be the exclusive remedies of Purchaser for Seller's breach of its obligation under Section 6.3.1.

The maximum liquidated damages payable by Seller in connection with delays in achieving the Commercial Operation Date by the Guaranteed Commercial Operation Date shall be _____ dollars (\$_____). Seller shall pay such amount (i.e., _____ (\$_____)) to Purchaser as liquidated damages upon any termination of the Project or this Agreement pursuant to Section 6.3.2(b).

(b) If for reasons other than the termination of this Agreement pursuant to Section 2.4 or 2.5, Seller fails to complete a Major Milestone by the Guaranteed Major Milestone Deadline therefor or fails to achieve the Commercial Operation Date as of a date that is [_____] Days after the Guaranteed Commercial Operation Date (the "**Non-Completion Termination Date**"), Purchaser may at any time prior to the Commercial Operation Date terminate this Agreement; provided, that if the delay in achieving the

Commercial Operation Date is caused by any of the events (i), (ii), and (iii) in Section 6.3.2(a), then the Non-Completion Termination Date shall be extended by a number of Days equal to the period of such delay, but in no case to a date later than [_____]. Following such termination, Seller shall owe Purchaser the Delay Payments as set out in Section 6.3.2(a) **[THE INITIAL NONCOMPLETION TERMINATION DATE SHOULD BE THE DATE AS OF WHEN THE MAXIMUM DELAY PAYMENTS PERMITTED UNDER THE AGREEMENT WILL HAVE BEEN INCURRED, PURSUANT TO SECTION 6.3.2(a).]**

6.3.3 Security for Major Milestone Delay Payments and Commercial Operation Date Delay Payments. Concurrent with execution of this Agreement, Seller has provided to Purchaser a Letter of Credit, available for drawings solely for a default in Seller's obligation to pay Major Milestone Delay Payments or Commercial Operation Date Delay Payments as set forth in this Section 6.3. Such Letter of Credit is in the amount of **[the maximum amount of delay damages as set forth in Section 6.3.2(a)].** Seller shall cause such Letter of Credit to remain in place in such amount until each of the following has occurred: (a) the Commercial Operation Date has occurred and (b) Purchaser has certified to the issuer of the Letter of Credit that the Commercial Operation Date Delay Payment due from Seller has been paid.

ARTICLE 7 PROJECT GUARANTEES

7.1 Seasonal Output Guarantee. Seller warrants and covenants that the Energy output for each Summer and Winter period, as calculated immediately following the end of such Summer or Winter period, shall have been no less than the Guaranteed Summer Output or the Guaranteed Winter Output, respectively. **[PSE is willing to consider, as an alternative to seasonal guarantees, an annual output guaranty, which may provide that if Seller fails to perform within a specified bandwidth, Purchaser would receive an agreed-upon liquidated damages payment (or Purchaser's payment obligations would otherwise be reduced). Such a guaranty would also include a termination right in Purchaser for egregious failures by Seller to perform within the annual bandwidth.]** For each MWh that the actual Energy output during Summer or Winter is less than the Guaranteed Summer Output or Guaranteed Winter Output, respectively, Seller shall pay Purchaser liquidated damages in the amount of the Cost to Cover for such MWh of Energy. Notwithstanding the foregoing, Purchaser shall not be entitled to any liquidated damages under this Section 7.1 to the extent Seller's failure to meet the Guaranteed Summer Output or Guaranteed Winter Output was caused by a Transmission Provider, Purchaser or a Force Majeure Event.

7.2 Hourly Guarantee. Not later than forty-five (45) minutes prior to the start of each hour during the Contract Term, Seller shall provide to Purchaser a forecast of the Project output for the next schedule hour to be delivered to the Delivery Point. **[PSE is interested in receiving a near real-time forecast of the Project's output. PSE would be willing to discuss what kind of guarantee, close to an hourly guarantee, would be**

available at a reasonable price.] If the Project output actually delivered to the Delivery Point in such hour is less than the forecast amount supplied by Seller by more than twenty percent (20%), Purchaser shall be entitled to a credit, against amounts otherwise due and owing by Purchaser to Seller, in an amount equal to the product of (a) the amount of Energy greater than twenty percent (20%) of the forecast amount not delivered to the Delivery Point multiplied by (b) the difference between the Market Price for such amount of Energy in such hour and the purchase price for such amount of Energy pursuant to Section 3.3.

7.3 Project Availability Guarantee.

7.3.1 Guaranteed Project Availability. Seller warrants and covenants that for each Contract Year during the Initial Term, as calculated at the beginning of the next succeeding Contract Year, the Project Mechanical Availability Percentage shall not be less than ninety-eight percent (98%) of the Required Installed Capacity for such Contract Year. **[PSE is willing to discuss alternative arrangements and appropriate incentives for Seller to maintain the mechanical availability of the Turbines.]**

7.3.2 Payment of Amounts Owing for Failure of Project Mechanical Availability Percentage to Meet Project Availability Guarantee. For each percentage point (rounded to the nearest 1/100 of one percent) by which the Project Mean Project Output for any Contract Year is less than ninety-eight percent (98%) of the Required Installed Capacity for such Contract Year, Seller shall pay Purchaser liquidated damages in an amount equal to the product of (a) the amount of such percentage points (as so rounded) multiplied by (b) the Required Installed Capacity multiplied by (c) the Contract Energy Rate multiplied by (d) 8760.

7.3.3 Payment of Amounts Owing for Failure to Meet Project Availability Guarantee. For the second Contract Year and for each Contract Year thereafter, no later than the thirtieth (30th) Day of such Contract Year, Seller shall deliver to Purchaser an invoice showing Seller's computation of the actual Energy output during Summer or Winter and the Project Mechanical Availability Percentage for the immediately preceding Contract Year and the amount of liquidated damages due Purchaser in respect thereof, if any. Seller shall pay to Purchaser, by wire transfer of immediately available funds to the account specified in writing by Purchaser for such purpose or by any other means agreed to by the Parties in writing from time to time, the amount set forth as due in each such invoice. Any disputed invoices shall be treated as set forth in Section 5.1.3.

7.4 Seller Guaranty; Additional Security; Financial Statements.

7.4.1 Delivery of Guaranty for Output Obligations. With respect to the obligations of Seller set forth in Sections 6.3, 7.1, 7.2 and 7.3, Seller shall cause one or more of its respective Affiliates (each a "Seller Guarantor") having an Earnings-to-Interest Ratio of at least 2.00, to execute and deliver to Purchaser prior to the Commercial Operation Date a guaranty in favor of Purchaser, in the form attached as Exhibit G, under the terms of which Seller Guarantor unconditionally guarantees the full and prompt payment of Seller's payment

obligations of this Agreement, in a maximum aggregate amount not to exceed _____ dollars (_____). Such Guaranty shall remain in effect for the Term and thereafter until Purchaser has certified to the Guarantor that no damages are owed by Seller.

7.4.2 Additional Security. In lieu of the obligation to provide a guaranty as set forth in Section 7.4.1, or in the event that such a guaranty has been provided and at any time subsequent thereto Seller Guarantor shall no longer have an Earnings-to-Interest Ratio of at least 2.00 as determined at the end of any calendar quarter during the Term based on the Seller Guarantor's interest coverage at the end of the twelve (12)-month ending with such calendar quarter, then Seller shall provide to Purchaser Additional Security in the amount of _____ dollars (\$ _____) and for the term of the guaranty described in Section 7.4.1. In the event Seller fails to provide such Additional Security within five (5) Business Days, then an Event of Default shall be deemed to have occurred pursuant to Section 12.1.1(e) hereof, and Purchaser shall be entitled to exercise any of the remedies set forth in Article 12 hereof.

7.4.3 Cash As Additional Security. If such Additional Security consists of cash, the escrow agreement with the applicable Custodian (to which Seller, Seller Guarantor and Purchaser shall be parties) shall provide, without limitation, that:

- (a) such cash shall be invested by the Custodian at the direction of Seller in such Permitted Investments as Seller shall select; and
- (b) Seller shall be entitled, on a current basis, to all investment earnings derived from all investments of such cash.

The fees and expenses of such Custodian shall be paid by Seller.

7.5 Financial Statements.

Seller shall provide to Purchaser the following:

- (a) within forty-five (45) Days after the close of each calendar quarter (commencing with the calendar quarter ending _____), the unaudited financial statements of Seller Guarantor for the calendar quarter just ended; and
- (b) within one hundred and twenty (120) Days after the close of each fiscal year (commencing with the fiscal year ending _____), the unaudited financial statements of Seller Guarantor for the fiscal year just ended; provided, that if Seller Guarantor otherwise has audited financial statements prepared for the fiscal year in question, then such audited financial statements of Seller Guarantor shall be provided in lieu of the aforementioned unaudited financial statements.

ARTICLE 8
MEASUREMENT AND METERING; PROJECT DATA

8.1 Metering Equipment.

8.1.1 Project Anemometer and Meters. Seller shall provide and cause to be installed the Project Anemometer together with such computer and data processing equipment as will enable Purchaser to obtain real time data on the wind conditions at the Project. Seller shall also provide and cause to be installed, all metering (including meters at any Project substation identified as the Delivery Point) and data processing equipment needed for the registration, recording, and transmission of information regarding the Energy generated from the Turbines and delivered to the Delivery Point, real and reactive power output, voltage output, current output, and other related parameters that are required for computing the payments due to Seller from Purchaser ("**Meters**"). Upon installation, the Meters shall become the property of Purchaser. Purchaser shall operate and maintain all such equipment in accordance with Prudent Utility Practices. All Meters and data processing equipment shall meet or exceed the Technical Requirements.

8.1.2 Purchaser's Anemometer. Purchaser may, at its own expense, install, maintain and operate on or near the Site its own anemometer (including related facilities) for the purpose of comparison with the Project Anemometer and the collection of additional wind data; provided, however, that Purchaser's anemometer will only be installed if (a) such anemometer is to be located on the Site, or Seller has land rights that permit such anemometer to be installed near the Site; and (b) such anemometer shall not materially interfere with the installation, maintenance and operation of the Project Anemometer, Meters, the Interconnection Facilities or the Project. If such anemometer is to be installed on the Site, Seller shall arrange for a suitable location on the Site, accessible to Seller and Purchaser, for such anemometer to be installed. If such anemometer is not to be installed on the Site but Seller has land rights that permit such anemometer to be installed near the Site, Seller shall make available to Purchaser land rights necessary for such anemometer to be so installed.

8.2 Measurements. Readings of the Meters shall be conclusive as to the amount of Energy delivered under this Agreement; provided, that if the Meters are discovered to be inaccurate pursuant to Section 8.3 below and the Parties do not agree on the actual energy delivered during the period when the Meters were registering inaccurately, the period to be used for purposes of calculating measurements pursuant to this Section 8.2 shall be one-half of the period from the date of the last previous test of the Meter through the date of the test that found the Meters to be inaccurate, but in no event more than one hundred eighty (180) Days from the date of the last previous test of such the Meters.

8.3 Testing and Correction.

8.3.1 Required Testing by Seller; Purchaser's Right to Conduct Tests; Testing of Purchaser's Meters. The accuracy of Meters shall be tested and verified not less

than annually and at Seller's expense. Such annual testing and verification shall be performed within thirty (30) Days following the beginning of each Contract Year by a third party selected by Purchaser and approved in writing by Seller. In addition, at Seller's option, the accuracy of the Meters may be tested and verified at Seller's expense at more frequent intervals. Seller shall provide to Purchaser at least twenty (20) Days' prior written notice of the date upon which any such test is to occur. Purchaser and its consultants and representatives shall have the right to be present at and observe each such test. Seller shall prepare a written report setting forth the results of each such test, and shall provide Purchaser with copies of such written report not later than thirty (30) Days after completion of such test.

8.3.2 Standard of Meter Accuracy; Resolution of Disputes as to Accuracy. The following steps shall be taken to resolve any disputes regarding the accuracy of any Meter:

(a) If Seller disputes a Meter's accuracy or condition, it shall so advise the Purchaser in writing.

(b) Purchaser shall, within fifteen (15) Days after receiving such notice, advise Seller in writing as to its position concerning the Meter's accuracy and reasons for taking such position.

(c) If the Parties are unable to resolve the dispute through reasonable negotiations, then either Party may cause an unaffiliated third-party engineering Seller mutually acceptable to the Parties to test the Meter that is the subject of dispute.

(d) If such Meter is found to be inaccurate by more than two percent (2%) or if such Meter is for any reason out of service or fails to register, then the Parties shall use their best efforts to estimate the correct amounts of energy delivered during the periods affected by such inaccuracy, service outage or failure to register by the best available means. In the event that, as a result of such estimate: (i) the amount of Energy credited to Purchaser is decreased, Seller shall reimburse Purchaser for any overpayment made by Purchaser, such reimbursement to be in the form of (A) a deduction from the next succeeding payment or payments by Purchaser for electrical energy due Seller pursuant to Section 3.3 or (B) cash, if no such succeeding payments in an amount exceeding the amount of such overpayment are or shall be due; or (ii) the amount of Energy credited to Purchaser is increased, Purchaser shall pay Seller for such increased credit for Energy, if any, at the purchase price set forth in Section 3.3 which is effective for the periods during which such Energy is estimated to have been delivered. Notwithstanding the foregoing, if, upon test, Purchaser's meters for determining amounts of energy delivered under this Agreement are found to be inaccurate by not more than two percent (2%), then any previous recordings of such meters shall be deemed accurate. Purchaser shall promptly cause meters found to be inaccurate to be adjusted to correct to the extent practicable such inaccuracy.

8.4 Real Time Data; Other Project Data.

8.4.1 Real Time Data. Seller shall make available to Purchaser on a real-time, Turbine-by-Turbine basis, (a) the data referred to in Section 8.1.1, and (b) any other data from the Project that Seller receives on a real time basis (including meteorological data, wind speed data, wind direction data and output data). Seller shall provide such real time data to Purchaser on the same basis as the basis on which Seller receives the data (e.g., if Seller receives the data in four second intervals, Purchaser shall also receive the data in four second intervals). Seller shall present the real-time data in an electronic form that interacts seamlessly with real-time electronic data received by Purchaser from any other wind project operated by Seller or an Affiliate of Seller. For the purpose of receiving the real-time data contemplated in this Section 8.4.1, Seller shall provide to Purchaser either a terminal or a direct interface with Seller's equipment at the Site.

8.4.2 Other Project Data. Within thirty (30) Days after the end of each calendar month, Seller shall provide to Purchaser a monthly report in electronic format acceptable to Purchaser, which report shall include information on the Actual Operational Hours of the Turbines, summaries of production of the Turbines, any other significant events related to the operation of the Turbines and any supporting information that Purchaser may reasonably request. In addition, Seller shall maintain an electronic fault log of operations of the Project (including all information reasonably required to confirm Project and Turbine availability) during each hour of the Term beginning as of the Commercial Operation Date and shall provide such log to Purchaser on a monthly basis. In addition, Seller shall provide Purchaser with (a) historical wind data for the Project and (b) wind and output data for the Project in intervals not to exceed one hour or such shorter period as becomes reasonably practicable with improvements in technology. Without limiting the foregoing, Seller shall promptly furnish Purchaser with copies of such plans, specifications, records and other information and data relating to the Project, any construction and installation activities, the arrangements between Seller and the applicable Transmission Provider, the ownership, operation, use or maintenance of the Project, or Seller Guarantor's Earnings-to-Interest Ratio, as may be reasonably requested by Purchaser from time to time. Purchaser shall maintain the confidentiality of Seller's confidential and proprietary information provided pursuant to this section in accordance with the terms and provisions of a confidentiality agreement mutually agreed to by the Parties.

ARTICLE 9 RECORDS; REPORTS AND AUDITS

9.1 Maintenance of Records; Quarterly Reports.

9.1.1 Maintenance of Records. Each Party shall keep complete and accurate records, and shall maintain such data as may be necessary for the purpose of ascertaining the accuracy of each statements of charges submitted hereunder for a period of two (2) years from the date the applicable statement was delivered.

9.1.2 Quarterly Reports. Within thirty (30) Days after the end of each calendar quarter, Seller shall provide to Purchaser a written quarterly report, which shall include:

- (a) information on the Average Annual Output;
 - (b) summaries of production of the Turbines;
 - (c) any other significant events related to the operation of the Turbines;
- and
- (d) any supporting information that Purchaser may reasonably request.

9.2 Right To Audit.

9.2.1 Review Rights. Purchaser shall have the right, upon reasonable notice to Seller and during Seller's regular business hours and without materially interfering with the conduct of Seller's business, to access and review all of Seller's records, reports, data, calculations and statements, maintained by Seller pursuant to Section 9.1.1, necessary to ascertain the accuracy of any invoices provided by Seller pursuant to Section 5.1. Purchaser shall bear Purchaser's costs of performing such review, provided that Seller cooperates with such review. Purchaser shall not be obligated to pay or reimburse Seller for any costs (including the cost of photocopies) that Seller may incur as a result of such review.

9.2.2 Refunds of Overpayments and Underpayments. Should any review performed pursuant to Section 9.2.1 reveal a billing error or errors that resulted in an overpayment by Purchaser, Seller shall refund to Purchaser the amount of the overpayment plus interest thereon from the date such overpayment was made by Purchaser to (but not including) the date Purchaser actually receives the refund thereof from Seller, such interest to be calculated at an annual rate equal to the Prime Rate in effect on the date such overpayment was made by Purchaser plus two percent (2%), but not in excess of the highest interest rate permitted under Applicable Law. Should any review performed pursuant to Section 9.2.1 reveal a billing error or errors that resulted in an underpayment by Purchaser, Purchaser shall refund to Seller the amount of the underpayment plus interest thereon from the Due Date of the applicable payment to (but not including) the date Seller actually receives the refund thereof from Purchaser, such interest to be at an annual rate equal to the Prime Rate in effect on the date such overpayment was made by Purchaser plus two percent (2%), but not in excess of the highest interest rate permitted under Applicable Law.

ARTICLE 10 RELEASE AND INDEMNITY; INSURANCE

10.1 Release and Indemnity Each Party releases and shall defend, indemnify and hold harmless each of the Indemnitees of the other Party from and against all claims, losses, harm, suits, liabilities, obligations, damages, penalties, costs and expenses (including, but not

limited to, reasonable attorneys' fees and any incremental taxes payable by the Indemnitees on the amount of any indemnities paid by the indemnifying Party to the Indemnitees pursuant to this Section 10.1) of whatsoever kind and nature (including, without limitation, relating to the injury to or death of any person, including employees of the indemnifying Party) which may at any time or from time to time be imposed on, incurred by or asserted against the Indemnitees, arising out of or in connection with the construction, installation, start up and testing of the Project, the Interconnection Facilities and the Meters, the delivery of energy from the Project to the Delivery Point, the ownership, operation, use or maintenance of the Project, or, in the case of Seller as indemnifying Party, the failure of Seller to have observed or performed any of Seller's obligations or liabilities under this Agreement. To the fullest extent permitted by applicable law, the foregoing shall apply regardless of any fault, negligence, strict liability or product liability of the Indemnitees and shall apply to any claim, action, suit or proceeding brought by any employee of the indemnifying Party. However, the indemnifying Party shall not be required to so defend, indemnify or hold harmless such any Indemnitee from any claim, loss, harm, liability, damage, cost or expense to the extent the same is caused by or results from the negligence of such Indemnitee.

10.2 Insurance.

10.2.1 Insurance During Construction. During the construction of the Project, Seller shall, at Seller's expense, maintain or cause to be maintained property damage insurance covering all properties at the Site on an "all-risk" basis (including earthquake, tornado and flood), for the full replacement value of such properties.

10.2.2 Insurance During Commercial Operation. From and after the Commercial Operation Date, Seller shall, at Seller's expense, maintain or cause to be maintained property and casualty loss insurance for the full replacement value of the Project and other appropriate insurance for the Project in accordance with Prudent Utility Practices, including the following:

(a) Commercial general liability insurance including all the usual coverages known as Premises/Operations Liability, Products/Completed Operations, Personal/Advertising Injury, Contractual Liability, Independent Contractors Liability, Stop Gap/Employers Liability, Explosion, Collapse, or Underground (XCU), Broad Form Property Damage and Fire Damage Legal. Such insurance coverages must provide the following minimum limits:

(i) Bodily Injury, Property Damage, Personal Injury & Advertising Injury:

- (A) \$1,000,000 General Aggregate;
- (B) \$1,000,000 Products & Completed Operations Aggregate;

- (C) \$1,000,000 Personal & Advertising Injury;
- (D) \$5,000,000 Each Occurrence;
- (E) \$500,000 Fire Damage Legal;
- (ii) Stop Gap Employers Liability:
 - (A) \$1,000,000 Each Accident;
 - (B) \$1,000,000 Disease - Policy Limit;
 - (C) \$1,000,000 Disease - Each Employee;

(b) All-risk property insurance including earthquake, tornado, hurricane and other high wind weather conditions, and flood, subject to appropriate sublimits, covering physical loss or damage to all real and personal property located at the Site;

(c) Such insurance as provided under item (a) above shall be endorsed to include Puget Sound Energy, Inc., its officers, directors, employees and agents as additional insureds and shall not be reduced or canceled without sixty (60) days' prior written notice to Purchaser. In addition, Seller's insurance shall be primary as respects Purchaser, and any other insurance maintained by Purchaser shall be excess of and not contributing insurance with Seller's insurance.

All insurance policies required to be obtained hereunder shall provide insurance for occurrences throughout the Term. All insurance coverage pursuant hereto shall be issued by an insurer with a Best's Rating of not less than "A-" or such other insurer as is reasonably acceptable to Purchaser. Upon Purchaser's request, Seller shall provide to Purchaser (1) a copy of the insurance policy's declaration pages, showing the insuring Seller, policy effective dates, limits of liability and the schedule of forms and endorsements, (2) a copy of the endorsement naming Puget Sound Energy, Inc., its officers, directors, employees and agents as additional insureds, showing the policy number, and signed by an authorized representative of the insurance Seller, (3) a copy of the "endorsements form list" to the insurance policy showing endorsements issued on the policy, and including any Seller-specific or manuscript endorsements and (4) a copy of an endorsement stating that the coverages provided by the policy to Purchaser or any other additional insured shall not be terminated, reduced or otherwise materially changed without providing at least sixty (60) days' prior written notice to Purchaser, a copy of a "separation of insureds" or "severability of interests" clause, indicating essentially that - except with respect to the limits of insurance, and any rights or duties specifically assigned to the first named insured - the insurance applies as if each insured were the only named insured, and separately to each insured against whom claim is made or suit is brought (Commercial General Liability Insurance).

**ARTICLE 11
NOTICES**

Any notice or other communication required, permitted or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth below or at such other address as a Party may designate for itself from time to time by notice hereunder:

To Purchaser:

Puget Sound Energy, Inc.

Phone: 425-

Fax: 425-

To Seller:

Phone: _____

Fax: _____

Each notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows:

(a) if received by first class, registered, or certified United States mail or overnight delivery service, return receipt requested, postage prepaid;

(b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or paid through an arrangement with such carrier, the next Business Day after the same is delivered by the sending Party to such carrier;

(c) if sent by fax and if concurrently with the transmittal of such fax the sending Party contacts the receiving Party at the phone number set forth above to indicate such fax has been sent (which indication by phone made be done by leaving a voicemail for the receiving Party at such phone number), at the time such fax is transmitted by the sending Party as shown by the fax transmittal confirmation of the sending Party; or

(d) if delivered in person, upon receipt by the receiving Party.

Either Party may from time to time change the recipient or its address by giving the other Party notice of the change in accordance with this section.

ARTICLE 12
DEFAULTS AND REMEDIES

12.1 Events of Defaults and Rights Upon Event of Default.

12.1.1 Events of Default. If either Party (a "Defaulting Party"), or Seller Guarantor pursuant to clauses (c) and (d) below:

(a) fails to pay any amount due hereunder, when, after notice by the non-defaulting Party to the Default Notice Parties is delivered in accordance with Article 11, and such failure is not cured, by payment of the amount due plus interest at an annual rate equal to the Prime Rate then in effect plus 2% from the date due until paid (but in no event more than the maximum rate permitted by Applicable Law), within ten (10) Business Days after the date that such notice is received by the Defaulting Party;

(b) otherwise defaults (other than pursuant to Section 12.1.1(c), (d), (e) or (f) in the performance of its obligations under this Agreement if such default has not been cured by the Defaulting Party within sixty (60) Days after the date of receipt by the Default Notice Parties of written notice from the non-defaulting Party setting forth, in reasonable detail, the nature of such default; provided, that in the case of a default that is not reasonably capable of being cured within the sixty (60)-Day cure period, the Defaulting Party shall have additional time to cure the default if it commences to cure the default within such sixty (60)-Day cure period, it diligently pursues such cure, and such default is capable of being cured by the Defaulting Party and is in fact cured within no more than one hundred eighty (180) Days after receiving such notice; provided, further, that the Defaulting Party shall not be relieved of its duty to pay amounts due under this Agreement during the cure period, whether the amount due arises from the Event of Default or otherwise;

(c) is subject to any involuntary bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar proceeding (whether under any present or future statute, law, or regulation), including the involuntary appointment of any trustee, receiver, custodian, or the like of such Defaulting Party or all or any substantial part of its assets, and such proceeding has not been terminated or dismissed with thirty (30) Days after the commencement thereof; commences any voluntary bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar proceeding (whether under any present or future statute, law, or regulation), including the appointment, with the consent or acquiescence of the Defaulting Party, of any trustee, receiver, custodian, or the like of such Defaulting Party or all or any substantial part of its assets; or Seller Guarantor commences or is subject to any bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar proceeding (whether under any present or future statute, law, or regulation) with respect to Seller Guarantor (in which event Seller

shall be deemed to be the Defaulting Party), the provider of any Letter of Credit given pursuant to Section 6.3.3 (in which event Seller shall be deemed to be the Defaulting Party), unless the guaranty or Letter of Credit provided by such Person is replaced in form and substance and by an entity satisfactory to the non-defaulting Party within five (5) Business Days after the commencement of such proceeding;

(d) Seller Guarantor defaults under the guaranty issued by Seller Guarantor hereunder, in which event Seller shall be deemed to be the Defaulting Party;

(e) breaches Section 6.3.3; or

(f) breaches Article 7,

such failure, default or breach by the Defaulting Party described above shall be deemed to be an "**Event of Default**" under this Agreement.

Notwithstanding anything expressed or implied herein to the contrary:

(i) upon the occurrence of an Event of Default by Seller, Purchaser shall give any notice of such Event of Default to each of the Default Notice Parties; provided, that Purchaser shall only be required to give such notice to Seller Lender if, prior to the occurrence of such default, Seller or Seller Lender has provided to Purchaser written notice of the address, phone number and fax number to which notices to Seller Lender are to be sent;

(ii) upon the occurrence of an Event of Default by Purchaser, Seller shall give any notice of such Event of Default to each of the Default Notice Parties.

12.1.2 Rights Upon Event of Default. Upon the occurrence of an Event of Default by a Defaulting Party and after any cure period applicable to such Event of Default as provided in Section 12.1.1, the non-defaulting Party shall have the following rights, which rights the non-defaulting party may exercise individually or in any combination (except as otherwise provided in Section 6.3.2):

(a) to terminate this Agreement by written notice to the Defaulting Party and to recover in connection with such termination its Cost to Cover and based on the remainder of the Term;

(b) to suspend performance of its obligations and duties hereunder upon written notice to the Defaulting Party; and

(c) if the non-defaulting Party is Purchaser, to exercise all rights as a secured party under the Security Documents, including: (i) the right to foreclose on the security interests granted therein, or any portion thereof, and apply the net

proceeds resulting therefrom against Purchaser's Cost to Cover and (ii) enter into possession of the Project and operate and maintain the Project for the account, and at the expense, of Seller, including producing and delivering Energy to Purchaser in accordance with the terms of this Agreement; and

(d) to pursue any other right or remedy under this Agreement or now or hereafter existing at law, in equity or otherwise.

12.2 Specific Performance and Injunctive Relief. Each Party shall be entitled to seek a decree compelling specific performance with respect to, and shall be entitled, without the necessity of filing any bond, to enjoin any actual or threatened breach of any material obligation of the other Party under this Agreement. The Parties agree that specific performance is proper in the event of any actual or threatened breach of any material obligation of the other Party under this Agreement. The Parties in any action for specific performance agree that all expenses incurred by the prevailing Party in such proceeding, including reasonable attorneys' fees at trial and upon appeal, shall be awarded to the prevailing Party in such proceeding.

ARTICLE 13 LIMITATION OF LIABILITY

EXCEPT TO THE EXTENT INCLUDED IN THE COST TO COVER OR OTHER AMOUNTS SPECIFICALLY PROVIDED HEREIN TO BE PAID, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, EXEMPLARY, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF A PARTY'S PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT, WHETHER BASED ON OR CLAIMED UNDER CONTRACT, TORT (INCLUDING SUCH PARTY'S OWN NEGLIGENCE), STRICT LIABILITY OR ANY OTHER THEORY AT LAW OR IN EQUITY. IT IS EXPRESSLY UNDERSTOOD AND AGREED BY THE PARTIES THAT ANY AMOUNTS OWING BY SELLER TO PURCHASER PURSUANT TO SECTIONS 6.3 AND 7.3 HEREOF ARE NOT INTENDED, NOR SHALL THEY BE INTERPRETED OR CONSTRUED, TO CONSTITUTE SPECIAL, INCIDENTAL, EXEMPLARY, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES FOR PURPOSES OF THIS ARTICLE 13.

ARTICLE 14 CONSENT TO JURISDICTION

Any disputes arising out of, in connection with, or with respect to this Agreement, the subject matter hereof, or the performance or nonperformance of any obligation hereunder shall be adjudicated in a state or federal court of competent civil jurisdiction sitting in the State of Washington and nowhere else. Each of the Parties irrevocably consents and agrees that any legal action or proceedings with respect to this Agreement may be brought in any of the state or federal courts located in King County, State of Washington, and that, by execution and delivery of this Agreement, each Party:

(a) accepts the exclusive jurisdiction of the aforesaid courts;

(b) irrevocably agrees to be bound by any final judgment (after any and all appeals) of any such court with respect to such documents;

(c) irrevocably waives, to the fullest extent permitted by law, any objection which it may now or hereafter have to the laying of venue of any suit, action, or proceedings with respect to this Agreement brought in any such court, and further irrevocably waives, to the fullest extent permitted by law, any claim that any such suit, action, or proceeding brought in any such court has been brought in any inconvenient forum;

(d) agrees that service of process in any such action may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Party at its notice address set forth herein, or at such other address of which the other Parties hereto shall have been notified, and

(e) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by Applicable Law.

ARTICLE 15 ASSIGNMENT

15.1 Restriction on Assignments. Except as otherwise provided below, neither Party may assign or transfer this Agreement, or any of its rights, title or interests herein, hereto or hereunder, and Seller shall not assign or transfer any of its rights, title or interests in or to the Project or any part thereof, without the other Party's prior written consent, which consent shall not be unreasonably withheld. The non-assigning Party may withhold its consent (without limitation) if the other Party proposes to assign or transfer its rights or delegate its duties under this Agreement to any party that has a credit rating by S&P of "BBB+" or less or has a credit rating by Moody's of "Baa1" or less. Purchaser may, without the consent of Seller, sell, transfer, assign, convey, encumber or otherwise dispose of all or any portion of the Environmental Attributes. Any assignment in violation of this provision shall be void.

15.2 Assumption by Assignee; No Release from Liabilities. Seller shall cause any permitted assignee or transferee of Seller's interests in, to or under this Agreement to assume all existing and future obligations of Seller to be performed under this Agreement. Upon any permitted assignment or transfer of this Agreement, the assigning or transferring Party shall nevertheless continue to be and shall remain liable for the performance of its obligations hereunder in accordance with the terms hereof.

15.3 Binding Effect. Subject to the other provisions of this Article 15, this Agreement shall bind and inure to the benefit of the Parties and their permitted successors and assigns.

15.4 Purchaser's Options

15.4.1 Purchaser shall have an option (the "**Transfer Option**") to purchase all of the interests that are the subject of any proposed assignment or transfer permitted under this Article 15 on terms not less advantageous to Seller or Purchaser than those that Seller is willing to accept from the proposed transferee. The Transfer Option shall be exercisable at any time within sixty (60) days after Purchaser receives written notice of the Transfer Option (the "**Transfer Option Notice**") from Seller. The Transfer Option Notice shall contain (a) a clear and concise statement that it is an offer to sell to Purchaser the interests in the Project that are the subject of the proposed assignment or transfer, (b) a description of the proposed assignment or transfer, (c) the name and address of the prospective transferee, (d) all of the terms of the proposed assignment or transfer (including, but not limited to, the purchase price and terms of payment), and (e) a representation, warranty and covenant that no other assignment or transfer is being considered by Seller as of the date of the Transfer Option Notice and that no other assignment or transfer will be considered or effected by Seller until the six-month period referred to below in this Section 15.4.1 has elapsed. Seller shall give the Transfer Option Notice at least sixty (60) days in advance of the proposed date of the proposed assignment or transfer. Purchaser shall have the right to exercise the Transfer Option by giving Seller written notice of such exercise within the applicable sixty (60) day period. If the Transfer Option is not exercised in accordance with this Section 15.4.1, Seller may assign or transfer the specified interests to the prospective transferee named in the Transfer Option Notice, provided that such assignment or transfer is made in strict accordance with the terms of the proposed assignment or transfer set forth in the Transfer Option Notice and is completed within six (6) months after the expiration of the right to exercise the Transfer Option. After such six-month period has elapsed, any assignment or transfer by Seller shall again be subject to the restrictions on assignment set forth in this article and to the Transfer Option.

15.4.2 Purchaser shall have an option (the "**Power Purchase Option**") for a period of five (5) years after the end of the Term to purchase all of the net electrical output from the Project that is the subject of any proposed sale of such output on the same terms as those which Seller is willing to accept from the proposed purchaser of such output. The Power Purchase Option shall be exercisable at any time within sixty (60) days after Purchaser receives written notice of the Power Purchase Option (the "**Power Purchase Option Notice**") from Seller. The Power Purchase Option Notice shall contain (i) a clear and concise statement that it is an offer to sell to Purchaser all of the net electrical output from the Project that is the subject of any proposed sale of such output, (ii) a description of the proposed purchase and sale, (iii) the name and address of the prospective purchaser, (iv) all of the terms of the proposed purchase and sale of such output (including, but not limited to, the purchase price and terms of payment), and (v) a representation, warranty and covenant that no other purchase and sale of such output is being considered by Seller as of the date of the Power Purchase Option Notice and that no other purchase and sale of such output will be considered or effected by Seller until the six-month period referred to below in this Section 15.4.2 has elapsed. Seller shall give the Power Purchase Option Notice at least sixty (60) days in advance of the proposed date of the proposed purchase and sale transaction. Purchaser shall have the right to exercise the Power Purchase Option by giving Seller written

notice of such exercise within the applicable sixty (60) day period. If the Power Purchase Option is not exercised in accordance with this Section 15.4.2, Seller may sell such output to the prospective purchaser named in the Power Purchase Option Notice, provided that such purchase and sale is made in strict accordance with the terms set forth in the Power Purchase Option Notice and is completed within six (6) months after the expiration of the right to exercise the Power Purchase Option. After such six-month period has elapsed, any purchase and sale of such output by Seller shall again be subject to the Power Purchase Option.

15.5 Purchase Pursuant to Options

15.5.1 If the Transfer Option is exercised in accordance with Section 15.4.1, Purchaser shall purchase from Seller, and Seller shall sell and transfer to Purchaser, the interests in the Project specified in the Transfer Option Notice in accordance with the terms of the proposed assignment or transfer set forth in the Transfer Option Notice. If the terms of the proposed assignment or transfer include consideration other than money, Purchaser shall have the right to substitute for such consideration the monetary equivalent thereof. If the Parties cannot agree upon such monetary equivalent, then the monetary equivalent shall be determined by appraisal. In such event, the Parties shall select an appraiser who shall, within sixty (60) days after his appointment, determine the monetary equivalent of the nonmonetary consideration. If the Parties cannot agree upon an appraiser within sixty (60) days after the exercise of the Transfer Option, then the Parties shall, within ten (10) days thereafter, each select an appraiser and the two appraisers so selected shall, within thirty (30) days after their selection, select a third appraiser. If the two appraisers cannot agree upon a third appraiser, then either Party may petition the American Arbitration Association to appoint a third appraiser. Within sixty (60) days after the appointment of the last of the appraisers to be appointed, the three appraisers shall determine by majority vote the monetary equivalent of the nonmonetary consideration.

15.5.2 If the Power Purchase Option is exercised in accordance with Section 15.4.2, Purchaser shall purchase from Seller, and Seller shall sell to Purchaser, all of the net electrical output from the Project specified in the Power Purchase Option Notice in accordance with the terms set forth in the Power Purchase Option Notice.

15.6 Closing. Unless otherwise agreed by the Parties, the closing of any sale pursuant to the exercise of a Transfer Option or Power Purchase Option shall take place at the principal office of Purchaser on the first regular business day following a period of sixty (60) days after the determination of the terms of such transfer or sale in accordance with Sections 15.4 and 15.5.

15.7 Survival. Sections 15.4, 15.5 and 15.6 (and the Transfer Option and the Power Purchase Option) shall survive the expiration of the Term.

ARTICLE 16
FINANCING LIENS

Seller, without the consent of Purchaser, may grant a security interest in its interests in, to and under this Agreement to Seller Lender as security for any loan made for the purpose of financing or refinancing the construction and/or operation of the Project and the Interconnection Facilities. Notwithstanding the foregoing or anything else expressed or implied herein to the contrary, Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of the Environmental Attributes to Seller Lender. Promptly after granting such security interest, Seller shall notify Purchaser in writing of the name, address, and telephone and facsimile numbers of each Seller Lender to which Seller's interest under this Agreement has been encumbered. Such notice shall include the names of the account managers or other representatives of Seller Lender to whom all written and telephonic communications are to be addressed. After giving Purchaser such initial notice, Seller shall promptly give Purchaser notice of any change in the information provided in the initial notice or any revised notice.

If Seller encumbers its interest under this Agreement as permitted by this Article 16, the following provisions shall apply:

(a) Seller Lender shall have the right, but not the obligation, to perform any act required to be performed by Seller under this Agreement to prevent or cure an Event of Default by Seller, and such act performed by Seller Lender shall be as effective to prevent or cure an Event of Default as if done by Seller.

(b) Purchaser shall give Seller Lenders notice of, and the opportunity to cure as provided in clause (a) above, any breach or default of this Agreement by Seller.

(c) if the Seller Lender forecloses or takes a deed in lieu of foreclosure, (i) Purchaser shall, at Lender's request, continue to perform all of its obligations hereunder, and Seller Lender or its nominee may perform in the place of Seller; provided, that to the extent that Seller Lender or its nominee exercises any right under this Agreement, the terms and conditions of this Agreement shall apply to and be binding upon Seller Lender to the same extent as Seller, (ii) Purchaser shall accept performance in accordance with this Agreement by Seller Lender or its nominee and (iii) Purchaser shall make representations to Seller Lender as set forth in Section 17.2.

(d) Upon the receipt of a written request from Seller or any Seller Lender, Purchaser shall execute or arrange for the delivery of such certificates, consents, opinions, and other documents as may be reasonably required by Seller Lender for Seller to consummate any financing or refinancing of the Project or any part thereof; provided, however, that any such agreement shall not constitute a modification hereof unless Purchaser, in its sole discretion, otherwise so agrees in writing.

ARTICLE 17
REPRESENTATIONS, COVENANTS, AND WARRANTIES

17.1 Seller's Representations and Warranties. Seller represents and warrants throughout the Term as follows:

(a) Seller is a [corporation][limited liability Seller], duly organized and validly existing under the laws of the state of Washington.

(b) Seller has the power and authority to enter into and perform this Agreement and the Security Documents and is not prohibited from entering into this Agreement or the Security Documents or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement or the Security Documents, except where such failure does not have a material adverse effect on Seller's performance under this Agreement or the Security Documents.

(c) Seller has obtained, or will obtain prior to commencement of deliveries of Test Power hereunder, all regulatory approvals required by any governmental authority, whether federal, state or local, in order to perform its obligations hereunder and under the Security Documents.

(d) The execution and delivery of this Agreement and the Security Documents, consummation of the transactions contemplated herein and in the Security Documents, and fulfillment of and compliance by Seller with the provisions of this Agreement and the Security Documents will not conflict with or constitute a breach of or a default under or require any consent, license, or approval that has not been obtained pursuant to any of the terms, conditions, or provisions of any law, rule, or regulation; any order, judgment, writ, injunction, decree, determination, award, or other instrument or legal requirement of any court or other agency of government; the documents of formation of Seller or any contractual limitation, restriction, or outstanding trust indenture, deed of trust, mortgage, loan agreement, lease, other evidence of indebtedness, or any other agreement or instrument to which Seller is a party or by which it or any of its property is bound and will not result in a breach of or a default under any of the foregoing.

(e) Seller has no reason to believe that the Construction Permits and Operational Permits will not be obtained in the ordinary course of business.

(f) Seller has taken all such action necessary to authorize the execution and delivery of, and the performance by Seller of its obligations under, this Agreement and the Security Documents.

(g) **[This Section 17.1(g) is applicable only to qualifying facilities]** the Project is a "qualifying small power production facility" within the meaning of subsection 3(17)(C) of the Federal Power Act, as amended by Section 201 of the

Public Utility Regulatory Policies Act of 1978 (PURPA), and pursuant to notice filed with FERC under 18 C.F.R. Section 292.207(a), Seller has certified that the Project is a "qualifying facility" within the meaning of 18 C.F.R. Section 292.101(b)(1); the representations and statements set forth in such certification are true, accurate and complete as the date of the certification and the date of this Agreement; and such certification has not been revoked, terminated or cancelled and is in full force and effect on the date of this Agreement.

(h) Seller owns, will own or has all rights necessary to produce and sell to Purchaser the Energy using the Turbines and the Balance of Plant as contemplated by this Agreement free from any claim of infringement, misappropriation or violation of the rights of others;

(i) This Agreement and the Security Documents are legal, valid, and binding obligations of Seller enforceable in accordance with their respective terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

Seller shall furnish Purchaser with such documentation and information as Purchaser may request to verify Seller's representations and warranties set forth in (g) above (including, but not limited to, copies of the application and certification referred to in (g) above, together with copies of any correspondence or other communication to or from FERC).

17.2 Purchaser's Representations and Warranties. Purchaser represents and warrants throughout the Term as follows:

(a) Purchaser is a corporation duly organized, validly existing, and is currently active under the laws of the State of Washington, authorized to conduct business in each jurisdiction where necessary for the conduct of its business, except where such failure does not have a material adverse effect on Purchaser's performance under this Agreement.

(b) Purchaser has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(c) The execution and delivery of this Agreement, the consummation of the transactions contemplated herein, and the fulfillment of and compliance by Purchaser with the provisions of this Agreement will not conflict with or constitute a breach of or a default under or require any consent, license, or approval that has not been obtained pursuant to any of the terms, conditions or provisions of any law, rule, or regulation; any order, judgment, writ, injunction, decree, determination, award, or other instrument or legal requirement of any court or other agency of government; the

documents of formation of Purchaser or any contractual limitation, restriction, or outstanding trust indenture, deed of trust, mortgage, loan agreement, lease, other evidence of indebtedness, or any other Agreement or instrument to which Purchaser is a party or by which it or any of its property is bound and will not result in a breach of or a default under any of the foregoing.

(d) Purchaser has taken all such action necessary or advisable to authorize the execution and delivery of, and the performance by Purchaser of its obligations under, this Agreement.

(e) This Agreement is a legal, valid, and binding obligation of Purchaser enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

ARTICLE 18 MISCELLANEOUS

18.1 Liquidated Damages. With respect to any provisions herein providing for the payment of liquidated damages by Seller to Purchaser, the Parties acknowledge and agree that it is extremely impractical and difficult to assess actual damages in the event that Seller fails to perform under such provisions, and Seller therefore agrees that each method of calculating liquidated damages (including the Cost to Cover) as provided in such provisions is a fair and reasonable calculation of actual damages to Purchaser in the event that Seller fails to perform under such Sections 6.3, 7.1, 7.2 and 7.3

18.2 Severability. The invalidity, in whole or in part, of any of the articles or section of this Agreement will not affect the validity of the remainder of such articles or sections.

18.3 Amendment. No modification, amendment, or other change to this Agreement will be effective unless agreed to in writing by each of the Parties.

18.4 No Waiver. Failure or forbearance by any Party to exercise any of its rights or remedies under this Agreement shall not constitute a waiver of such rights or remedies. No Party shall be deemed to have waived any right or remedy resulting from such failure to perform unless it has made such waiver specifically in writing.

18.5 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be deemed to constitute one and the same instrument.

18.6 No Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement, and this Agreement is not intended to impart any rights enforceable by any Person that is not a Party. No review, approval, consent, advice, recommendation,

authorization, notice, inspection, test, or other act by a Party regarding the construction, ownership, operation, use, or maintenance of the Project or the delivery of Energy under this Agreement shall constitute or be interpreted as or be relied upon by any other Person not a Party as a warranty, representation, or endorsement by such Party.

18.7 Time. Unless otherwise specified in this Agreement, all references to specific times under this Agreement shall be references to Pacific standard or Pacific daylight savings time, whichever is then prevailing.

18.8 Headings, Captions; Construction; Conflict Between Agreement and Exhibits. All indexes, titles, subject headings, section titles, and similar items are provided for the purpose of reference and convenience and are not intended to affect the meaning, content or scope of this Agreement. The Parties collectively have prepared this Agreement, and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof. Because both Parties have participated in the drafting of this Agreement, the usual rule of contract construction that resolves ambiguities against the drafter shall not apply.

18.9 Forward Contract. The Parties acknowledge and agree that this Agreement and the transactions consummated under this Agreement constitute a "forward contract" within the meaning of the United States Bankruptcy Code and that Seller is a "forward contract merchant" within the meaning of the United States Bankruptcy Code.

18.10 Governing Law. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Washington, without regard to such state's choice of law principles.

18.11 No Agency. This Agreement is not intended, and shall not be construed, to create any association, joint venture, agency relationship, franchise or partnership between the Parties or to impose any such obligation or liability upon either Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, act as or be an agent or representative of, or otherwise to bind the other Party.

18.12 Waiver of Jury Trial. Each of the Parties knowingly, voluntarily, and intentionally waives the right it may have to a trial by jury in respect of any litigation based hereon, or arising out of, under, or in connection with this Agreement and any agreement contemplated hereunder, or any course of conduct, course of dealing, statements (whether verbal or written), or actions of the Parties. Furthermore, each of the Parties waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived. This provision is a material inducement for the Parties to enter into this Agreement.

18.13 Effect of Force Majeure Event. Notwithstanding any other provision of this Agreement, each Party's obligations under this Agreement shall be suspended by a Force Majeure Event but only to the extent that the Force Majeure Event prevents the affected

Party from performing its obligations under this Agreement. The affected Party's time for performance shall be extended by a period of time reasonably necessary to compensate for the delay caused by the Force Majeure Event; provided, that the affected Party shall use diligent efforts to remedy or overcome the Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments required to be made hereunder.

18.14 Rights and Remedies Cumulative. Except as otherwise expressly provided in this Agreement, all rights and remedies of either Party under this Agreement and at law and in equity shall be cumulative and not mutually exclusive and the exercise of one right or remedy shall not be deemed a waiver of any other right or remedy. Nothing contained in any provision of this Agreement shall be construed to limit or exclude any right or remedy of either Party (arising on account of the breach or default by the other Party or otherwise) now or hereafter existing under any other provision of this Agreement, at law or in equity.

18.15 Governmental Authority. This Agreement is subject to the rules, regulations, orders and other requirements, now or hereafter in effect, of all governmental authorities (including the WUTC and FERC) having jurisdiction over the Project, this Agreement, the Parties or either of them. Upon execution of this Agreement, Purchaser shall submit this Agreement to the WUTC for review and shall subsequently notify Seller as to whether, within thirty (30) days following such submission, the WUTC has raised any issues with respect to this Agreement. If (a) the WUTC raises any issues with respect to this Agreement, and (b) Purchaser does not, within one hundred twenty (120) Days following the submission of this Agreement to the WUTC for review, otherwise notify Seller in writing that this Agreement is effective, then either Party shall have the right to terminate this Agreement by giving the other Party written notice of such termination, whereupon this Agreement shall be void *ab initio* and of no force or effect. In no event shall either Party incur any liability (whether for lost revenue or lost profits or otherwise) as a result of such termination. All laws, ordinances, rules, regulations, orders and other requirements, now or hereafter in effect, of governmental authorities that are required to be incorporated in agreements of this character are by this reference incorporated in this Agreement.

18.16 Entire Agreement. This Agreement (including the attached Exhibits, which are incorporated by this reference) and all amendments to this Agreement contain the complete Agreement between Seller and Purchaser with respect to the matters contained in this Agreement and supersede all other agreements and understandings, whether written or oral, with respect to the matters contained in this Agreement.

In Witness Whereof, the Parties have caused this Agreement to be executed and delivered as of the date first set forth above.

PUGET SOUND ENERGY, INC.
a Washington corporation

By: _____
Name: _____
Title: _____
Date: _____

[Insert Name of Seller]
a [_____]

By: _____
Name: _____
Title: _____
Date: _____

EXHIBITS

EXHIBIT A-1	Project Description
EXHIBIT A-2	Site Description
EXHIBIT B	Description of Turbines
EXHIBIT C	Location of Delivery Point, Project Substation and Project Anemometer
EXHIBIT D	Description of the Permits
EXHIBIT E	Contract Energy Rate and Renewal Energy Rate
EXHIBIT F	Example of Calculation of Excess Output Payment under Section 5.1.2
EXHIBIT G	Form of Guaranty of Seller Guarantor
EXHIBIT H	Form of Turbine Final Completion Certificate
EXHIBIT I	Operating Procedures and Coordination
EXHIBIT J	Termination Amounts

EXHIBIT A-1
PROJECT DESCRIPTION

EXHIBIT A-2
SITE DESCRIPTION

EXHIBIT B
DESCRIPTION OF TURBINES

EXHIBIT C

**LOCATION OF DELIVERY POINT, PROJECT ANEMOMETER AND
PROJECT SUBSTATION**

This Exhibit C is to be completed following the execution and delivery of this agreement as provided in Section 2.1 hereof.

EXHIBIT D
DESCRIPTION OF THE PERMITS

EXHIBIT E

**Contract Energy
Rate
(\$ per MWh)**

**Renewal Energy
Rate
(\$ per MWh)**

EXHIBIT F

EXAMPLE OF CALCULATION OF EXCESS OUTPUT CREDIT

UNDER SECTION 5.1.2

The sample calculation set forth below is based on the following assumed facts:

(1) Contract Year in which the total Energy delivered or deemed delivered to Purchaser Under this Agreement was [150] MWhs.

(2) The annual Mean Project Output equals [100] MWh. 110% of the Mean Project Output for the Contract Year in reference equals [110] MWh (100 MWh times 1.10).

(3) The Excess Output for the Contract Year in question equals [40] MWh (150 MWh of Energy delivered or deemed delivered during the Contract Year in reference , minus 110 MWh [being 110% of the Mean Project Output for the Excess Output Calculation Period in question]).

(4) The Excess Output Credit Rate for the Contract Year in reference shall be as set forth in the definition thereof.

Given the above assumed facts, the Excess Output Payment for the Contract Year in reference would be calculated as follows:

$$\text{Excess Output} = 150 - [100 * 110\%] = 40 \text{ MWhs}$$

$$\text{Excess Output Credit} = [40] * [\text{Contract Energy Rate or Renewal Energy Rate, as applicable}] * 15\%$$

EXHIBIT G

FORM OF GUARANTY OF SELLER GUARANTOR

[Form to be provided.]

EXHIBIT H

FORM OF TURBINE FINAL COMPLETION CERTIFICATE

TURBINE FINAL COMPLETION CERTIFICATE

DATE OF ISSUANCE _____

OWNER: _____

CONTRACTOR: _____

Project: _____

OWNER's Contract No. _____ CONTRACTOR's Project No. _____

Capitalized terms used herein shall have the meaning set forth in the _____ Wind Project Power Purchase Agreement dated _____, 2003, between _____, as Seller, and Puget Sound Energy, Inc., as Purchaser.

_____, as Contractor under that certain *[insert description of Contract]* hereby certifies that Turbine Completion for all _____ Turbines has been achieved.

Executed by Contractor on _____

Date

_____, as Contractor

By: _____
(Authorized Signature)

_____, as Seller and owner of the Project, hereby concurs in Contractor's certification as set forth above and accepts this Turbine Final Completion Certificate.

_____, as
Seller and owner of the Project

By: _____
(Authorized Signature)

Date: _____

EXHIBIT I

OPERATING PROCEDURES AND COORDINATION

The Parties hereby agree as follows:

1. Definitions

All capitalized terms not specifically defined below shall have the meaning as set forth in this Agreement, unless the specific application clearly indicates a different meaning.

1.1 "Dispatchers(s)" means Purchaser's representative or representatives responsible for monitoring and operating Purchaser's electric resources.

1.2 "Immediate Outage" means the occurrence of an immediate reduction or suspension of the electrical output from any Turbine in response to an abnormal operating condition. An Immediate Outage is distinguished from an Unplanned Required Outage in that the abnormal condition causing an Immediate Outage requires prompt shutdown or curtailment of one or more Turbines.

1.3 "Scheduled Maintenance" means the occurrence of reduced or suspended Project or Turbine operation for the purpose of performing routine or regular maintenance to the Project in accordance with Prudent Utility Practices. Scheduled Maintenance is distinguished from Immediate Outages and Unplanned Required Outages in that the duration and timing of Scheduled Maintenance can be reasonably forecast.

1.4 "Scheduler(s)" means Purchaser's representative or representatives responsible for day-to-day resource planning and scheduling.

1.5 "Unplanned Required Outage" means the occurrence of reduced or suspended Project or Turbine operation caused by abnormal operating conditions that require corrective action. An Unplanned Required Outage is distinguished from an Immediate Outage in that the required repair or maintenance for an Unplanned Required Outage can be delayed or scheduled.

2. Designation of Operating Representatives

2.1 Purchaser shall notify Seller of designated Dispatchers and Schedulers. Seller shall notify Purchaser of designated Operators. The Dispatchers, Schedulers, and Operators so designated shall be authorized to administer the terms of this Exhibit I. Each Party shall notify the other of any changes to operating representatives.

2.2 Each Party shall maintain a 24-hour telephone number that can be used to contact operating representatives designated under this Exhibit I. Each Party shall notify the other of any changes to the telephone number.

3. Notification

Notification under this Exhibit I shall be by telephone or facsimile unless explicitly stated otherwise for a particular application. Prior notification of an event or situation to be made by Seller to Dispatcher or Scheduler pursuant to this Exhibit I shall be given to Dispatcher or Scheduler, respectively, a reasonable amount of time in advance of such event or situation.

4. Outages

4.1 Scheduled Maintenance

(a) **Submittal of Proposed Scheduled Maintenance.** At least sixty (60) days prior to the commencement of each Year, Seller shall submit to Purchaser in writing a proposed forecast of Scheduled Maintenance for such Year and the six months immediately following such Year. In such proposed forecast, Seller shall endeavor to confine Scheduled Maintenance to the months of May and June. Such proposed forecast shall set forth the reason, timing, expected duration, and impact upon project output, and the scheduling flexibility of each Scheduled Maintenance.

(b) **Review of Proposed Scheduled Maintenance.** Purchaser shall have thirty (30) days to review the proposed forecast of Scheduled Maintenance. Following this review, Purchaser may submit in writing to Seller comments and suggested starting dates for Scheduled Maintenance.

(c) **Final Forecast of Scheduled Maintenance.** Following good faith consideration of Purchaser's suggested timing of Scheduled Maintenance, Seller will establish the final forecast of Scheduled Maintenance and send such written forecast to Purchaser prior to the commencement of the Year. Such final forecast shall confine Scheduled Maintenance to the months of May and June, unless Purchaser reasonably requests otherwise pursuant to (b) above and Seller agrees to such request, such agreement not to be unreasonably withheld.

(d) **Updates to Forecast.** Seller shall notify Purchaser of any change to the Scheduled Maintenance forecast as soon as practicable.

(e) **Notification to Purchaser.** Not less than seven (7) days prior to a Scheduled Maintenance, Seller shall notify the Scheduler of the timing, expected duration and the impact upon the Project output. Prior to reducing the Project output for a Scheduled Maintenance, Seller shall notify the Dispatcher of the latest information regarding the timing, the rate at which the Project will be removed, or ramped down, from service, expected duration and the impact upon Project output. During the Scheduled Maintenance, Seller shall notify the Dispatcher of any changes to the expected duration of the Scheduled Maintenance outage as soon as practicable.

(f) **Start-up.** Seller shall notify the Dispatcher prior to returning the Project to service following a Scheduled Maintenance outage. Such notification shall include the timing of the start-up and the rate at which the Project will be returned, or ramped up, to service.

4.2 **Unplanned Required Outage**

(a) **Notification to Purchaser.** Upon the occurrence of an event necessitating an Unplanned Required Outage, Seller shall notify the Scheduler of the reason, timing, expected duration, the impact upon Project output, and the scheduling flexibility of each Unplanned Required Outage. The Scheduler and Seller shall agree upon a schedule for the Unplanned Required Outage, which schedule shall minimize the impact upon Purchaser's electric system and Project operations. If the Scheduler and Seller cannot agree, Seller shall schedule the Unplanned Required Outage and give the Scheduler and Dispatcher prior notice of such schedule. Unless otherwise agreed to by Seller and Scheduler, Seller shall use reasonable efforts to confine all Unplanned Required Outages to weekends, holidays, and, to the extent necessary, non-holiday weekdays other than between the hours of 7 a.m. to 10 a.m. and 4 p.m. to 7 p.m. local time.

(b) **Updates.** During the Unplanned Required Outage, Seller shall notify the Dispatcher of any changes to the expected duration of the outage as they become known.

(c) **Start-up.** Seller shall not return the Project to service following a full or partial shutdown without prior notice to Dispatcher. Such notification shall include the timing of the start-up and the ramp up rate of that portion of the Project returning to service.

4.3 **Immediate Outage**

(a) **Notification to Purchaser.** As soon as practicable after the occurrence of an Immediate Outage, Seller shall notify the Dispatcher, to the extent information is available, of the reason, timing, expected duration and the impact upon Project output of each Immediate Outage.

(b) **Updates.** During an extended Immediate Outage, Seller shall notify the Dispatcher of any changes to the expected duration of the outage as they become known.

(c) **Start-up.** Seller shall notify the Dispatcher prior to returning the Project to service following an Immediate Outage. Such notification shall include the timing of the start-up and the ramp up rate of that portion of the Project returning to service. In the event Seller is able to initiate an immediate restart following an

Immediate Outage, Seller shall notify Dispatcher of the above information as soon as practicable.

4.4 Outage Reports

Purchaser may from time-to-time request, and Seller shall provide, a report of the cause of any Project outage and the actions taken by Seller to correct the situation.

EXHIBIT J

TERMINATION AMOUNTS

Contract Year

Termination Amount

Exhibit 2

PROTOTYPE OWNERSHIP TERM SHEET

Introduction

The RFP describes two basic contract scenarios pursuant to which PSE would potentially acquire wind generation resources. The first, the "Power Purchase Agreement" scenario, contemplates proposals for the sale of energy and "Environmental Attributes" (as defined in the Prototype Power Purchase Agreement, attached as Exhibit 1 to the RFP) from the Project (as defined herein under "*Respondent and the Project*") by Respondent to PSE pursuant to terms and conditions substantially similar to those set forth in the Prototype Power Purchase Agreement. The second, the "PSE ownership arrangement" scenario, contemplates proposals for the sale by Respondent to PSE of all or a portion of the ownership interest in the Project. Additionally, the RFP invites Respondents to submit proposals which combine elements of each scenario.

This Prototype Ownership Term Sheet ("Term Sheet") sets forth certain terms and conditions which would be embodied in a purchase and sale agreement (the "PSA") pursuant to which PSE would acquire a 50% undivided interest as tenant in common in and to all assets, properties and rights of the Project owned by Respondent, with the other 50% interest in the Project being retained by Respondent.¹ This Term Sheet contemplates that the Project would be placed into service on or before December 31, 2004.² This Term Sheet also contemplates that, in addition to Respondent's sale to PSE of a 50% undivided interest in the Project, Respondent and PSE would execute a power purchase agreement (the "Power Purchase Agreement") pursuant to which PSE would purchase the entire energy output and Environmental Attributes produced by Respondent's 50% undivided interest in the Project for a specified term. In the PSE ownership arrangement scenario, therefore, PSE would be entitled to 50% of the output and Environmental Attributes from the Project as a partial owner thereof and 50% in its capacity as the purchaser of the output and Environmental Attributes attributable to Respondent's retained ownership interest, in the latter case for the term agreed upon.

¹ Such assets, properties and rights of the Project would include all of the associated real and personal property, tangible and intangible property, assets, equipment, components, facilities, interconnections, systems, spare and replacement parts, permits, intellectual property, and contractual, expansion and other rights currently held or acquired in the future that are necessary, useful, held for use or appropriate for the ownership, planning, development, permitting, design, engineering, construction, interconnection, transmission, use, operation, maintenance, repair and expansion of the Project.

² PSE's preference is that the Project would be placed in service on or before December 31, 2004, however, PSE will evaluate proposals that contemplate a later placed in service date.

A proposal for a PSE ownership arrangement scenario, in addition to containing the other submissions required by the RFP, shall set forth detailed proposals and supporting documents, information and data regarding the timing, price, terms and conditions of a proposed sale of a 50% undivided interest in the Project to PSE and a budget, schedule and other information regarding the funding of construction, operation and maintenance of the Project.

Background

Respondent acknowledges that the RFP, including this Term Sheet, has been prepared by PSE in connection with an ongoing process of integrated resource planning and that PSE is considering alternative arrangements for the procurement of generation resources, including wind generation resources. This Term Sheet is an integral part of, and subject to, the terms and conditions of the RFP. This Term Sheet shall not be interpreted as or deemed to be an offer, agreement or commitment by PSE to acquire any generation resource and shall not limit, restrict or obligate PSE in any way with regard to the conduct of such integrated resource planning process, the potential implementation of any plan or program of resource procurement or the actual procurement of any generation resources. PSE may, in its sole and absolute discretion, reject any and all proposals received in response to the RFP, request the submission of different proposals for other generation resources and/or seek to acquire generation resources from one or more parties other than any Respondent.

This Term Sheet sets forth the current requirements of PSE that should be addressed by or incorporated into a proposal providing for a PSE ownership arrangement, and is intended to identify certain elements of a potential transaction which would be embodied in Definitive Agreements (as defined herein). PSE reserves the right at any time and from time to time to modify, change, supplement or delete any and all provisions of this Term Sheet and to withdraw and cancel the RFP.

PSE has attempted to set forth herein provisions that would be applicable generally to all Respondents and relevant to any potential transaction arising out of a proposed PSE ownership arrangement involving the sale of an undivided interest in the Project to PSE. PSE recognizes, however, that the particular facts and circumstances of individual Respondents and the wind generation projects that are the subject of their proposals may vary substantially from and not strictly conform with the transaction structure described in this Term Sheet, with the result that certain proposals in response to the RFP may not incorporate all elements of a PSE ownership arrangement outlined in this Term Sheet.

PSE further recognizes that certain Respondents, for reasons including, among others, legal ownership structure, regulatory requirements or

limitations and financing requirements, may submit proposals regarding PSE ownership arrangements that propose that PSE purchase equity interests (such as limited liability company interests or limited partnership interests) in a project company that owns a wind generation project.

PSE would prefer the submission of proposals consistent with the PSE ownership arrangement described in this Term Sheet. PSE is willing to review and evaluate such alternative proposals on the basis set forth in the RFP, taking into consideration, however, the different or additional economic, legal, regulatory, tax, risk management, financing, credit support, contractual and other implications presented by such alternative proposals.

Respondent and the Project

This Term Sheet assumes that Respondent is the owner of a wind generation project currently under development and having a nameplate capacity of not less than 25 MW that would meet the requirements of a "qualified energy resource" and a "qualified facility," such that sales of electricity generated therefrom (the "Project") would be eligible for production tax credits under section 45 of the Internal Revenue Code of 1986, as amended (the "Code").

In its response to the RFP, in addition to the other submissions that should accompany a proposal that contemplates the sale of an undivided ownership interest in the Project to PSE, Respondent shall comprehensively demonstrate to PSE that the Project, as proposed to be owned, financed, permitted, constructed, operated and maintained, would at all times during the ten-year period after the date that it is "placed in service" constitute a "qualified energy resource" and a "qualified facility" and be capable of generating production tax credits for such period, subject to the general availability of such credits under the Code. Respondent must similarly demonstrate that the Project is capable of being "placed in service," in full compliance with all technical, performance and operating criteria and standards and the requirements of the RFP, the Power Purchase Agreement, applicable laws, regulations, permits and governmental authorities having jurisdiction over the parties or the Project, on or before December 31, 2004.

Certain Definitive Agreements

PSE currently contemplates that the Definitive Agreements associated with the potential transaction described in this Term Sheet would include, among other agreements (1) a PSA for the sale by Respondent to PSE of a 50% undivided interest in the Project, (2) an ownership or co-tenancy agreement between PSE and Respondent (the "Ownership Agreement"), (3) to the extent not addressed in the Ownership Agreement, a construction management agreement among PSE, Respondent and, typically, an affiliate of Respondent acceptable to PSE

pursuant to which such affiliate would perform or support the performance by PSE and Respondent of certain obligations of PSE and Respondent under the EPC Contract (as defined herein)(the "CM Agreement") (4) an operation and maintenance agreement among PSE, Respondent and, typically, an affiliate of Respondent acceptable to PSE (the "Operator") governing the day to day operation and maintenance of the Project (the "O&M Agreement") and (5) a guaranty by an affiliate of Respondent acceptable to PSE (the "Guarantor") of the obligations of Respondent and affiliates of Respondent under the Definitive Agreements (the "Respondent Guaranty"). The execution and delivery of the Definitive Agreements would be subject, among other things, to PSE's satisfactory completion of its due diligence as described herein and the approval of such agreements on behalf of each party by all necessary boards of directors or other appropriate management bodies.

Closing

The Closing would occur after receipt by the parties of all consents, authorizations and approvals and satisfaction or waiver of conditions precedent specified in the Definitive Agreements (the date of the Closing, the "Closing Date"). At the Closing, PSE would purchase from Respondent, a 50% undivided interest in the Project, free and clear of all liens, charges, encumbrances, and conflicting or competing claims. PSE would not assume any responsibility, liability or obligation for, and Respondent would indemnify, hold harmless and defend PSE for any claims, losses, liabilities or obligations relating to or associated with the Project or the actions and omissions of Respondent and its affiliates arising from or relating to events, occurrences, circumstances or conditions occurring or existing prior to the Closing Date.

Management Committee

The Ownership Agreement would set forth PSE's and Respondent's rights, benefits, remedies, obligations, duties and liabilities in respect of the ownership and administration of the Project, including the construction, operation, maintenance, repair, expansion or restoration of the Project and the assignment, sale, transfer or other conveyance of the interests of the parties in the Project. It would also provide for the formation of a management committee (the "Management Committee"), which would be responsible for overall management and administration of the Project. The Management Committee would include an equal number of representatives of each of PSE and Respondent, and PSE and Respondent would each have one (1) vote on matters before the Management Committee, with decisions of the Management Committee requiring unanimous approval. The Ownership Agreement would contain appropriate provisions for the timely resolution of deadlocks of the Management Committee. The rights of the Management Committee would include the right to delegate limited authority to the Operator for the day to day operation and maintenance of the Project and to PSE for its performance of the asset management function for the Project.

**Payment of
Operating Costs**

The Ownership Agreement would include covenants regarding the payment of the costs and expenses of operation and maintenance of the Project, permitted liens and the rights and remedies of a party upon a failure, breach, default or non-performance of the other party (or an affiliate of the other party), including the following:

(1) Revenues received by Respondent pursuant to the Power Purchase Agreement would be deposited into accounts established pursuant to the Ownership Agreement and/or the applicable agreements relating to the financing of Respondent's undivided interest in the Project before being available for unrestricted use by Respondent, to secure the payment or funding of: (a) the costs of operation and maintenance of the Project, (b) the fees and expenses of any lender, including any trustee, collateral agent or administrative agent, which has provided financing to Respondent of its undivided interest in the Project or its share of the costs of construction, operation and maintenance of the Project, (c) applicable interest, principal and costs, expenses or fees in respect of the financing of Respondent's undivided interest in the Project and (d) working capital, capital improvement, debt service and maintenance reserves.

(2) Respondent would not create, grant, suffer or permit to exist, in connection with the financing of Respondent's undivided interest in the Project, the funding of the Respondent's share of the cost of construction, operation and maintenance of the Project or otherwise, any mortgage, lien, security interest or other encumbrance in respect of PSE's undivided interest in the Project, and Respondent would not at any time seek to partition the Project.

(3) PSE (or its designee) would have certain rights to "step-in" and control the operation and maintenance of the Project, consistent with the reasonable terms of the agreements relating to Respondent's financing of its undivided interest in the Project, upon any breach, default or non-performance by Respondent, Guarantor, Operator or an affiliate of Respondent, as applicable, under any Definitive Agreement.

**Construction
Arrangements**

The allocation of the respective roles of PSE and Respondent in the administration, management and oversight of the development and construction of the Project would be set forth in the Ownership Agreement. The Ownership Agreement would allocate to Respondent principal responsibility for managing, supervising and overseeing the performance of the design, engineering, construction and other work necessary for the completion and initial commercial operation of the Project in accordance with an agreed budget and schedule established by PSE and Respondent and set forth in the Ownership Agreement. PSE and Respondent may enter into a CM Agreement to the extent that they agree to delegate to a third party, typically an affiliate of

Respondent, limited responsibility for the performance and administration of certain obligations of PSE and Respondent under the EPC Contract and/or the performance of Respondent's obligations under the Ownership Agreement relating to construction of the Project.

From and after the date of the Definitive Agreements, and until final completion of the Project, Respondent would maintain a construction manager to oversee and coordinate the construction of the Project. The Ownership Agreement would also provide that an independent engineer be retained to verify the Project's attainment of performance levels, compliance with other specified construction and operation criteria and the EPC contractor's timely achievement of project milestones and the requirements of substantial completion and final completion under the EPC Contract. The fees and expenses of such independent engineer would be shared equally by Respondent and PSE.

Respondent would be required at all times, in connection with its management and oversight of the construction of the Project, to assure that PSE and its designees have access to the Project, the site and the facilities of contractors, subcontractors and vendors for the purpose of enabling PSE to be continually apprised of and knowledgeable about the status, progress and developments in the construction of the Project. Respondent would be obligated to promptly inform PSE of any proposed changes to the Project or events potentially impacting the Project, including proposed changes to (1) the plans, specifications, technical requirements and permit requirements for the Project, (2) the cost of, or completion schedule for, the Project and (3) the performance guarantees, warranties or indemnities provided by the EPC contractor or equipment manufacturers. Respondent would be obligated to promptly notify PSE of any actual or threatened claims by any third person, loss, damage, destruction or threatened condemnation of any portion of the Project and any governmental inspections, investigation or requests for information relating to the Project.

The Ownership Agreement would set forth procedures for PSE to timely receive copies of certain correspondence, notices, documents, information or data sent to or received from the EPC contractor and other contractors or vendors furnishing services, supplies or equipment used in the construction of the Project. Such procedures would assure that PSE is permitted to timely review all proposed plans, drawings and specifications related to the design, construction, operation and maintenance of the Project and to provide comments to be addressed by Respondent with the EPC contractor. Respondent shall assure that PSE is permitted to observe and monitor performance of all work related to the construction of the Project and components thereof, at the Project

site and the premises of the EPC contractor and other contractors or vendors providing services, supplies or equipment for the Project.

EPC Contract

Respondent and PSE would enter into an agreement with an experienced contractor acceptable to PSE that has performed EPC services for wind generation projects similar to the Project (the "EPC Contract"). Respondent and PSE would be severally liable for the performance of obligations under the EPC Contract. The EPC Contract would be for a fixed price, and would contain terms, conditions, indemnities, remedies (including schedule and performance liquidated damages), and schedule, technical, insurance, warranty and guarantee requirements customary for the construction of a project financed wind generation project, including the general terms and conditions set forth in Exhibit A to this Term Sheet. The EPC contractor would provide a comprehensive "wrap" of the performance and other warranties relating to the design, workmanship, equipment and performance of the Project.

Payments would be made under the EPC Contract in predetermined incremental amounts upon accomplishment of specified milestones in the design, engineering and construction of the Project, through final completion of the Project. The parties would fund their respective portion of the of the EPC Contract price in accordance with procedures set forth in the Ownership Agreement, provided, however, that Respondent would be liable to fund the costs of construction of the Project in excess of the amounts budgeted therefor, unless such additional amounts result from the occurrence of a force majeure, change in applicable law or changes to the Project requested by PSE.

**Asset
Management/O&M**

The Ownership Agreement would establish the scope of PSE's responsibility for the asset management function for the Project, which would include, without limitation, the keeping of books, records and accounts, preparation of reports, and community and governmental relations for the Project. The scope of Respondent's and PSE's responsibilities relating to operation and maintenance of the Project, and the allocation of responsibilities to the Operator, would also be set forth in the Ownership Agreement.

Respondent and PSE would enter into an O&M Agreement providing the terms governing Operator's operation, maintenance and repair of the Project for a specified term. Operator would be under the direction of the Management Committee. Operator's responsibilities would include the preparation and submission of a proposed annual O&M budget (including capital and operating expenses) and an annual operating plan for approval by the Management Committee.

Power Purchase Agreement

Respondent and PSE would enter into a Power Purchase Agreement for the sale by Respondent to PSE of all of the output and Environmental Attributes produced by Respondent's undivided interest in the Project. The Power Purchase Agreement would contain terms and conditions substantially similar to those reflected in the Prototype Power Purchase Agreement.

Financing

PSE would, at Respondent's cost and expense, reasonably support the efforts of Respondent to obtain project financing or other financing for its share of the cost of the construction, operation, maintenance, repair, restoration and expansion of the Project, provided that Respondent shall be solely responsible for its own financing requirements. Respondent would not enter into any agreements, contracts, arrangements or commitments related to such financing which would be reasonably likely to (1) relieve Respondent, Guarantor or other affiliate of Respondent of any of their respective obligations under the Definitive Agreements, (2) decrease the economic benefits, or increase the costs, of the potential transaction to PSE, (3) create any additional or increased economic, legal or other risk to PSE in connection with the potential transaction or under the Definitive Agreements, (4) permit or allow any liens, charges or other encumbrances relating to any such financing to encumber or otherwise affect PSE's undivided interest in the Project or (5) permit partition of the Project.

In the event that PSE subsequently desires to effect a financing or refinancing relating to its undivided interest in the Project, Respondent would provide reasonable support to PSE in that regard.

Certain Tax Considerations

Respondent and PSE would agree to cooperate to maximize the production tax credits available for energy produced by the Project and minimize each party's respective transaction taxes resulting from or arising with respect to a potential transaction. Respondent would be responsible for the payment of all sales, conveyance, transfer, real estate excise, business and occupation or similar transaction taxes assessed or incurred by either party relating to PSE's purchase of an 50% undivided interest in the Project or otherwise in connection with a potential transaction.

Respondent would not secure financing relating to the Project by (1) governmental grants, (2) tax-exempt bonds, (3) direct or indirect subsidized financing through government programs or (4) any other arrangement which would be reasonably likely to result in the disallowance of or reduction in production tax credits for energy produced by the Project.

Regulatory Approvals

PSE currently anticipates that the following regulatory approvals, among others, might be required prior to Closing to implement a proposed transaction:

- (1) Receipt of FERC approval under Section 203 of the Federal Power Act required for the transfer of a (direct or indirect) interest in FERC-jurisdictional facilities included as part of the Project; and
- (2) Receipt by PSE from the Washington Utilities and Transportation Commission (the "WUTC") of approvals and orders, as applicable, pertaining to PSE's acquisition of the undivided interest in the Project and the other aspects of the potential transaction, and confirming (a) the inclusion of the full amount of the purchase price of such undivided interest and other amounts allocable to the construction, start-up, testing and commissioning of the Project in PSE's rate base and (b) full rate recovery of the amounts paid pursuant to the Power Purchase Agreement, each of such approvals and/or orders to be in form and substance satisfactory to PSE in its sole discretion.

Transaction Representations & Warranties

The Definitive Agreements would contain customary representations and warranties by Respondent and PSE for transactions similar to the transaction and would include the following:

- (1) Appropriate representations regarding receipt of regulatory and other approvals necessary to consummate the potential transaction;
- (2) Appropriate representations by Respondent as to the financial condition of each of Respondent, Guarantor and any affiliate that is a party to a Definitive Agreement, and appropriate representations by PSE as to the financial condition of PSE;
- (3) Appropriate representations by Respondent as to the nature and extent of its rights, title and interests in and to the Project and the condition (including with respect to environmental matters) of the Project;
- (4) Appropriate representations by Respondent as to the sufficiency of the assets, properties, equipment and rights constituting the Project, including permits and governmental authorizations, for the construction, operation, maintenance and repair of the Project and for the full operation, utilization and maintenance of the Project in accordance with the requirements of the RFP and the Power Purchase Agreement;
- (5) Appropriate representations by Respondent with regard to the Project's qualification as a "qualified energy resource" and a "qualified facility" under the Code and compliance with the requirements of

applicable law for purposes of the eligibility of the sales of electricity produced by the Project for production tax credits;

(6) Appropriate representations by Respondent regarding labor and employment matters; and

(7) Other appropriate representations and warranties as may reasonably be required by PSE or Respondent.

**Transaction
Covenants**

The Definitive Agreements would contain covenants of Respondent and PSE customary for similar transactions, taking into account, among other things, PSE's interest that Respondent or an affiliate of Respondent acceptable to PSE manage and oversee the development, construction, interconnection, start-up, testing and commissioning of the Project (as well as, if applicable, operation, maintenance and repair of the Project) in accordance with budgets, schedules, technical requirements, plans and other criteria during the period between execution of the Definitive Agreements and the Closing.

The Definitive Agreements may, depending upon certain factors including the financial condition and experience of the Respondent and Guarantor, the status of development and completion of the Project, the nature of existing contractual arrangements, the capacity, equipment and other technical characteristics of the Project, and the details of Respondent's proposal and potential alternatives to the PSE ownership arrangement described in this Term Sheet, set forth covenants and commitments of Respondent to refrain from the following:

(1) making any loans, advances or contributions to any person or guarantying the obligations of any person;

(2) amending, modifying, supplementing or changing its organizational and governing documents or reorganizing into any other legal form, entering into any joint venture or partnership, or consolidating, converting or merging with or acquiring any other entity;

(3) engaging in any business other than the ownership, management, administration, operation and maintenance of the Project and its undivided interest in the Project;

(4) incurring any indebtedness, other than project financing for the construction, operation and maintenance of its undivided interest in the Project, including any:

(a) indebtedness (other than trade liabilities incurred in the ordinary course of business) for money borrowed or for the deferred

purchase price of money or services in excess of an aggregate of [\$ _____] outstanding at any one time;

(b) reimbursement obligation under any letter of credit or banker's acceptance;

(c) obligation under any capital lease; and

(d) obligation with respect to interest rate or currency swap or similar hedging agreement, in excess of an aggregate of [\$ _____] outstanding at any one time.

(5) Liquidating, dissolving, or reorganizing, or seeking the appointment of a receiver, trustee or administrator.

**Respondent
Guaranty
Requirements**

Respondent would be required to cause Guarantor to provide the Respondent Guaranty to PSE, pursuant to which Guarantor would guarantee the performance by Respondent (and its affiliates) of its obligations to or for the benefit of PSE under the Definitive Agreements and the payment of any damages, losses, liabilities, costs and expenses incurred by PSE and payable by Respondent (and its affiliates) under the Definitive Agreements. The parties would address in the Definitive Agreements the circumstances, if any, in which PSE and Respondent might require adequate assurance by the other (or Guarantor) of such other party's performance of its obligations under the Definitive Agreements, and the nature of such assurance.

**Conditions
Precedent**

The Definitive Agreements shall contain customary conditions precedent for transactions of this type including, but not limited to, those set forth in this Term Sheet and the following:

(1) Delivery of all instruments, consents, assignments, certificates and opinions required by the Definitive Agreements, including, but not limited to, customary opinions regarding (a) the satisfaction of requisite regulatory approvals and requirements, (b) the status of the Project as a "qualified energy resource" and "qualified facility" under the Code and the eligibility of the sale of energy produced by the Project for production tax credits, which would be provided by counsel for Respondent and (c) if applicable, the absence of any conflict with any legal, regulatory, contractual or other limitation applicable to any of the parties resulting from granting of a security interest in respect of the undivided interest of a party in the Project to any designated third party lender;

(2) No material adverse change in the financial condition or business and operations of Respondent, Guarantor, any affiliate of Respondent that is a party to a Definitive Agreement or PSE;

(3) No material adverse change in the budget, schedule, permit and legal requirements, technical requirements and plans relating to construction, operation, maintenance and repair of the Project, or in the performance levels, operability, output and condition of the Project;

(4) Receipt by PSE of the WUTC regulatory approvals or orders discussed above under "*Regulatory Approvals*"; and

(5) Such other customary conditions precedent as the parties in good faith determine are reasonably necessary taking into account the obligations of the parties in connection with a potential transaction, including appropriate provisions to address the consequences of material adverse changes in the physical condition and performance of the Project prior to the Closing.

Limitations on Liability

Notwithstanding anything to the contrary provided in this Term Sheet or the Definitive Agreements, in the event of a breach of the obligations of one of the parties or otherwise, such party would be liable for direct damages only and shall under no circumstances would such party be liable to the other party for consequential (including, without limitation, lost profits, business interruption and the like), incidental, punitive, exemplary or similar damages.

Indemnification

Respondent would indemnify, hold harmless and defend PSE and its affiliates, directors, officers, employees, representatives, and agents from and against any claims, damages, loss, liability, judgment, award, fine, penalty, cost or expense, including reasonable fees of attorneys arising out of, relating to or in connection with any event, occurrence, circumstance, condition, action or omission prior to Closing. The Definitive Agreements would also set forth provisions by which each party would indemnify, hold harmless and defend the other party and its affiliates, directors, officers, employees, representatives and agents from and against certain losses with respect to false or inaccurate representations and warranties or breaches of covenants and obligations under the Definitive Agreements.

Due Diligence

For a specified period commencing on the date of notice by PSE to Respondent that it has been selected for negotiation of the terms and conditions of a potential transaction (such period, including any extension thereof to which the parties may agree, the "Due Diligence Period"), PSE would be entitled to conduct, and Respondent would fully cooperate (and cause its affiliates to cooperate) with PSE and facilitate, an in-depth due diligence review of the Project, Respondent, Guarantor and any affiliate of Respondent that would be a party to a Definitive Agreement and matters relating thereto, including without limitation the technical, construction, engineering and transmission agreements, commercial, legal, information systems, human resources (subject to

applicable legal confidentiality and other restrictions), insurance, regulatory aspects (including the availability and terms of all required permits and licenses) associated with the development, permitting, design, engineering, construction, interconnection, start-up, commissioning, operation and maintenance of the Project and reasonable access to the Project site for such purposes, provided that any such review shall not unreasonably disrupt the business of Respondent (or its affiliates) or its directors, officers, employees and agents. The Due Diligence Period would terminate prior to the end of such specified period upon the termination of the Term Sheet by either party.

During the Due Diligence Period, Respondent (and its affiliates) would, subject to its reasonable policies and procedures applicable to the presence of third parties at the Project, provide to certain designated PSE employees, representatives and agents access to the Project for the purpose of observing and monitoring the manufacture, fabrication, assembly, installation, construction, start-up, testing and commissioning of the Project and any parts or components thereof. PSE's employees, representatives and agents would be permitted access to the Project and specified areas therein and the premises of contractors, vendors and consultants and attend meetings and review and copy (subject to provisions of any applicable confidentiality agreement between the parties) information, data and documents in connection with its due diligence review. PSE's employees, representatives and agents would be subject to and observe Respondent's (and contractors') rules regarding safety, security and confidentiality and would not interfere with or hinder the construction of the Project.

Dispute Resolution The Definitive Agreements would contain appropriate provisions for the resolution of disputes, including provisions for the attempted resolution of disputes by alternative dispute resolution. The forum for the resolution of any dispute arising under or in connection with this Term Sheet or the Definitive Agreements would be King County, Washington.

Expenses Each party shall bear its own legal, accounting, regulatory and other professional fees and expenses and other costs associated with the RFP and a potential transaction, regardless of whether a transaction is consummated.

Assignability The parties would not be permitted to assign the Definitive Agreements or its rights and obligations thereunder without the prior written consent of the other, such consent not to be unreasonably withheld or delayed. PSE would have the right, post-Closing or in connection with the Closing, to assign, pledge or otherwise alienate its undivided interest in the Project for security purposes without the consent of the Respondent,

but on prior written notice to Respondent, for the purposes of any financing or refinancing relating thereto. Respondent would have the right, subject to the limitations set forth in this Term Sheet, post-Closing, to assign, pledge or otherwise alienate its undivided interest in the Project for security purposes without the consent of PSE, but on prior written notice to PSE, for the purposes of any financing or refinancing relating thereto. Except as otherwise agreed by the parties in the Definitive Agreements, no such assignment by either PSE or Respondent would relieve the assignor and in the case of Respondent, Guarantor, of its obligations to the other party.

This Term Sheet is for discussion purposes only to facilitate PSE's evaluation and assessment of proposals submitted in response to the RFP relating to a potential transaction for the acquisition of rights and interest in a wind generation project. It is not intended to create a binding or enforceable agreement, contract or commitment or to be complete and all inclusive of the terms and conditions of a potential transaction. This is not an offer, agreement or a commitment of PSE, Respondent or Guarantor or any parent company or affiliate of any of them. The potential transaction described above would be subject to further review and approval of the board of directors of each of PSE, Respondent or Guarantor, the conduct and completion of due diligence by PSE to its satisfaction and the execution of the Definitive Agreements containing all appropriate provisions, including, but not limited to, those relating to credit, limitation of damages, indemnification, remedies and force majeure.

EXHIBIT A

**PROTOTYPE OF CERTAIN GENERAL CONDITIONS
FOR EPC CONTRACT**

CERTAIN EPC CONTRACT GENERAL CONDITIONS

GC-1. Definitions

For purposes of this Exhibit A, the capitalized terms below shall have the following meanings:

1.1 "EPC Contract and "Project," shall have their respective meanings specified in the Prototype Ownership Term Sheet.

1.2 "Additional Insureds" means Owner, its respective successors and assigns, and the respective directors, officers, employees, agents and representatives of each of the foregoing.

1.3 "EPC Contractor" means the contractor responsible for the design, engineering, procurement, construction, start-up, testing and commissioning of the Project and the performance of the Work pursuant to the terms and conditions of the EPC Contract.

1.4 "FERC License" means any approval, consent, permission, license or other authorization of the Federal Energy Regulatory Commission related to the construction, operation, maintenance and repair of the Project.

1.5 "Owner" shall mean PSE and Respondent.

1.6 "Site" means the real property on which the Project would be installed, constructed, operated and maintained, which would be described in detail in an exhibit to the EPC Contract.

1.7 "Milestone Schedule" means the timetable for the accomplishment of critical elements of the permitting, design, engineering, procurement, construction, testing, start-up, commissioning and other Work associated with the completion of the Project, which would be set forth in a detailed exhibit to the EPC Contract.

1.8 "Support" means the following: EPC Contractor's directors, officers, employees, agents and representatives; EPC Contractor's suppliers and subcontractors of any tier; the respective directors, officers, employees, agents and representatives of EPC Contractor's suppliers and subcontractors of any tier; and any other person or entity acting under the direction or control or on behalf of EPC Contractor or any of EPC Contractor's suppliers or subcontractors of any tier in connection with or incident to the performance of the Work or the EPC Contract.

1.9 "Work" means all of the following furnished (or to be furnished) and the performance of all other obligations and Services under the EPC Contract by EPC Contractor or its Support: personnel, labor and supervision; technical, professional and other services;

equipment, materials, supplies, tools, goods and other property; transportation; designs, plans, specifications, drawings, and other documents; information, data and other items.

GC-2. Authorized Representatives

2.1 For purposes of administering the EPC Contract, Owner would be represented by the person designated from time to time in writing by Owner as Owner's representative assigned to administer the EPC Contract (the "Owner's Representative") and by such other persons as the Owner's Representative may from time to time authorize in writing to act for him.

2.2 EPC Contractor would designate and have at all times a competent, authorized representative, acceptable to Owner, to represent and act with full authority for EPC Contractor (the "EPC Contractor Representative"). EPC Contractor would give Owner written notice of the name, address and telephone number (day and night) of the EPC Contractor Representative and of any change in such designation. The EPC Contractor Representative would have full authority to act in the name and on behalf of EPC Contractor and to accept all notices and other communications to EPC Contractor under the EPC Contract. The EPC Contractor Representative would be present, or be duly represented by a competent individual acceptable to Owner who would be present, at the Site at all times when Work is actually in progress. During periods when performance of the Work was not actually in progress, arrangements acceptable to Owner would be made for representation of EPC Contractor with respect to any emergency Work which may be required. All notices, requests, approvals, consents, orders, instructions, directions and other communications given to the EPC Contractor Representative by Owner would be as binding as if given to EPC Contractor.

GC-3. Status of EPC Contractor

3.1 EPC Contractor would be and act as an independent contractor (and not as the agent or representative of Owner) with regard to performance of the Work and the EPC Contract. EPC Contractor would not represent that it is, or hold itself out as, an agent or representative of Owner. In no event would EPC Contractor be authorized to enter into any agreements or undertakings for or on behalf of Owner or to act as or be an agent or representative of Owner.

3.2 Subject to compliance with the requirements of the EPC Contract, EPC Contractor would perform the Work in accordance with its own methods.

3.3 EPC Contractor would represent that it is, and that at all times during performance of the Work it would be, fully experienced and properly qualified, licensed, equipped, organized and financed to perform the Work.

GC-4. Performance by EPC Contractor

4.1 EPC Contractor would efficiently, expeditiously and effectually perform the Work in an orderly and workmanlike manner. EPC Contractor would enforce discipline and order among its Support. EPC Contractor would ensure that all persons performing Work comply with all jobsite work rules. EPC Contractor would ensure that only fully experienced and properly qualified persons perform the Work. EPC Contractor would, if so requested by Owner, remove from performance of the Work any person whom Owner determines to be incompetent, insubordinate, careless, disorderly or otherwise objectionable. EPC Contractor would not thereafter use such person in the performance of the Work without Owner's prior written permission. EPC Contractor would not hire any employee of Owner to perform any of the Work.

4.2 EPC Contractor would confine all operations in the performance of the Work (including, but not limited to, offices, storage, assembly, vehicle and equipment parking, ingress, egress and movement of materials, equipment and workers) to such areas and during such time periods as are specified in the EPC Contract or designated by Owner. Unless otherwise directed by Owner, EPC Contractor would deliver to (or provide for delivery to and receipt at) the site of the Work, unload and store all materials, equipment and other items to be installed, used, consumed or incorporated in the Work or otherwise used in connection with the EPC Contract. Should EPC Contractor find it necessary or advantageous to use any additional land for ingress to, or egress from, or movement of materials, equipment or workers to or from work areas, or for any purpose whatever, EPC Contractor would provide and make its own arrangements for the use of such additional land.

4.3 EPC Contractor would keep its work areas and access to such areas cleared of rubbish, refuse and other debris and in a neat, clean and safe condition. EPC Contractor would clean up garbage, equipment parts, oil filters, fuel and oil spills and similar items on a daily basis. Any disposal of fuel, oil or equipment waste within the confines of the site of the Work would be subject to Owner's prior approval. Upon completion of any portion of any of the Work, EPC Contractor would promptly remove all rubbish, refuse and other debris and all of its equipment, temporary structures and surplus materials not to be used at or near the same location during later stages of the Work.

4.4 If EPC Contractor employed any workers engaged in the construction, alteration, painting or repair of a building, structure or other work at a site owned, possessed or controlled by Owner where other workers covered by a collective bargaining agreement are so engaged, then, to the extent permitted by applicable law, EPC Contractor would ensure that the wages, hours, work assignments and other conditions of such employment are consistent with the provisions of such collective bargaining agreement (other than any provision relating to the recognition of a particular union). Whenever EPC Contractor has knowledge of any actual or potential labor dispute which may in any way affect, delay or arise in connection with or as a result of the performance of the EPC Contract, EPC Contractor would immediately notify and submit all relevant information to Owner.

GC-5. Compliance with Laws; Permits

5.1 EPC Contractor would comply, and would ensure that the Work and all of EPC Contractor's Support comply, with all applicable laws, ordinances, rules, regulations, orders, licenses, permits and other requirements, now or hereafter in effect, of any governmental authority (including, but not limited to, the FERC License and any other requirements which are imposed upon Owner and applicable to the Work on the Project). EPC Contractor would execute and deliver to Owner all documents as may be required to effect or to evidence such compliance. All laws, ordinances, rules, regulations, orders, licenses and permits required to be incorporated in agreements of this character would be incorporated in the EPC Contract by reference.

5.2 Unless otherwise specified in the EPC Contract or directed by Owner, EPC Contractor would obtain and pay for all permits, inspections, licenses and fees and would furnish all bonds, security or deposits required to perform the Work in accordance with the EPC Contract, except that Owner would be responsible for obtaining and maintaining the FERC License. EPC Contractor would advise Owner in writing and consult with Owner prior to applying for any permit or other authorization from, or entering into any agreement with, any governmental authority with regard to the Work or the Project.

5.3 EPC Contractor would comply with Executive Order No. 11246, Executive Order No. 11701, the Vietnam Era Veteran's Readjustment Assistance Act of 1972 and the Rehabilitation Act of 1973, and all orders, rules and regulations promulgated thereunder (including, but not limited to, 41 CFR Part 60-1, 41 CFR Part 60-250 and 41 CFR Part 60-741), all as the same may have been or may be amended. The "equal opportunity clause" of 41 CFR Section 60-1.4(b), the "Affirmative Action Obligations for Disabled Veterans and Veterans of the Vietnam Era" clause of 41 CFR Section 60-250.4 and the "Affirmative Action for Handicapped Workers" clause of 41 CFR Section 60-741.4 would be incorporated in the EPC Contract by reference. EPC Contractor would certify that segregated facilities (within the meaning of 41 CFR Section 60-1.8) are not and will not be maintained or provided for EPC Contractor's employees and that EPC Contractor would not permit its employees to perform Work at any location under EPC Contractor's control where segregated facilities are maintained. EPC Contractor would obtain a similar certification from any of its Support as required by 41 CFR Section 60-1.8.

GC-6. Cooperation and Coordination

6.1 EPC Contractor would acknowledge and anticipate that the Work may be interfered with and delayed from time to time on account of the concurrent performance of work by Owner or others. EPC Contractor would fully cooperate with Owner and others and coordinate the Work with such other work so as to minimize any delay or hindrance of any work and to assure orderly and expeditious performance and completion of the Project as a whole.

6.2 If any part of the Work depended upon the results of other work by Owner or others, EPC Contractor would, prior to commencing such Work, notify Owner in writing of any actual or apparent deficiencies or defects in such other work that render it unsuitable for performance of the Work in accordance with the EPC Contract. Failure of EPC Contractor to so notify Owner would constitute acceptance by EPC Contractor of such other work as suitable for performance of the Work in accordance with the EPC Contract, except as to latent defects which may subsequently be discovered in such other work.

GC-7. Inspection

7.1 EPC Contractor would perform such detailed examination, inspection and quality surveillance of the Work as would ensure that the Work is progressing and is being completed in strict accordance with the EPC Contract. Further, EPC Contractor would determine when it is necessary to perform, and would perform, tests (in addition to those requested by Owner or required by the EPC Contract) to verify its inspections and to ensure that the Work is being completed in strict accordance with the EPC Contract. EPC Contractor would give Owner reasonable advance notice of all inspections and tests performed by EPC Contractor. EPC Contractor would reimburse Owner for all costs incurred by or at the request of Owner to perform inspections and tests that reveal or otherwise indicate noncomplying or defective Work.

7.2 All Work would at all times be subject to inspection and testing by Owner. EPC Contractor would furnish Owner sufficient, safe and proper facilities and equipment at all times and at all places where inspections or tests may take place and all samples, drawings, specifications, data, lists, documents and other information for such inspections and tests as may be performed by Owner.

7.3 No acceptance of any Work would be construed to result from any inspections, tests or delays or failures to inspect or test by Owner. No inspection, test, delay or failure to inspect or test, or failure to discover any defect or noncompliance, by Owner would relieve EPC Contractor of any of its obligations under the EPC Contract or impair Owner's right to reject defective or noncomplying items or any other right or remedy afforded to Owner under the EPC Contract or otherwise by law, notwithstanding Owner's knowledge of the defect or noncompliance or the substantiality or ease of its discovery of any defect or noncompliance.

GC-8. Protection of Property and Persons

8.1 EPC Contractor would take all precautions which are necessary to prevent bodily harm to persons and damage to any property or environment in connection with performance of the Work. Without limiting the generality of the foregoing, EPC Contractor would erect and maintain such fences, barricades, signs, flags, flashers, excavation covers and other safeguards as are required. EPC Contractor would as necessary inspect all equipment, materials, supplies, tools, goods and other items to discover any conditions which involve a risk of bodily harm to persons or a risk of damage to any property or environment

and would be solely responsible for discovery and correction of, and protection against, any such conditions.

8.2 Until completion and acceptance of all of the Work, EPC Contractor would be responsible for and would bear any and all risk of loss, deterioration, theft, vandalism or destruction of or damage to the Work and anything used (or to be used or consumed) in connection with the Work unless such loss, theft, destruction or damage results from the sole negligence of Owner. EPC Contractor would provide storage and comply with all reasonable requests of Owner to enclose or otherwise protect the Work and anything used (or to be used or consumed) in connection with the Work.

8.3 Unless otherwise specified in the EPC Contract or directed in writing by Owner, all existing structures and other improvements damaged, altered or removed by EPC Contractor or any of its Support in connection with the performance of the Work would be repaired, replaced or otherwise restored by EPC Contractor to at least as good quality and condition as existed prior to such damaging, alteration or removal. EPC Contractor would restore the areas affected by performance of the Work to at least the condition as existed prior to such performance. EPC Contractor would protect all land monuments and property marks from disturbance and damage and would not remove the same without the prior written consent of Owner.

8.4 Unless otherwise specified in the EPC Contract or directed in writing by Owner, EPC Contractor would ensure that no utility (including all supply, disposal, distribution and communication systems, and all similar or related facilities, equipment and other property) is damaged, altered, removed or interrupted by EPC Contractor or any of its Support in connection with the performance of the Work. Underground utilities shown in the EPC Contract are shown only in their approximate locations because exact locations are unknown. EPC Contractor would perform all excavation and other Work which may affect any utility with utmost care so as to protect all utilities (whether or not shown in the EPC Contract) from damage, alteration, removal and interruption. If EPC Contractor requires the temporary shutoff of any utility, EPC Contractor would request Owner's approval thereof at least twenty-four (24) hours in advance of the time it requires the shutoff. EPC Contractor would perform the Work requiring the shutoff only after such approval has been obtained and on such days and at such hours as Owner may direct.

8.5 EPC Contractor would ensure that the handling, transporting, storage and use of explosives in connection with the Work or the EPC Contract is done only with the highest degree of care. EPC Contractor would give Owner at least three (3) working days' advance written notice of each delivery, storage and use of explosives.

GC-9. Schedule; Progress Reports

9.1 Upon Owner's request, EPC Contractor would prepare and submit to Owner for approval detailed schedules for the orderly performance and completion of the Work or portions thereof in accordance with the EPC Contract. EPC Contractor would ensure that all

schedules submitted by EPC Contractor in accordance with such requirement conform to the Milestone Schedule. EPC Contractor would comply with the Milestone Schedule and all other schedules approved by Owner.

9.2 EPC Contractor would continuously update and keep current all Project schedules and would furnish as requested to Owner periodic progress reports on the actual progress of the Work. Such progress reports would include, but not be limited to, a copy of the updated schedules indicating progress to date and the duration of any delays occurring within the reporting period for which EPC Contractor believes it is entitled under the EPC Contract to an extension of the time for performance of the Work. Notwithstanding any other provision of the EPC Contract to the contrary, the time for performance of the Work would not be extended on account of any delay, nor would the compensation under the EPC Contract be increased on account of any delay, unless EPC Contractor included a timely claim for such extension in the progress report covering the period of such delay. EPC Contractor would in any event promptly notify Owner in writing of any proposed changes in the Milestone Schedule or any other schedules for performance of any Work and of any event which could delay performance of any Work. Such notice would indicate the expected duration of the delay, the anticipated effect of the delay on the Project schedules and the action being taken to overcome or mitigate the delay.

GC-10. Warranty

10.1 EPC Contractor would warrant that: (a) the Work would be performed in a workmanlike and skillful manner; (b) the Work would be of good quality and free from all defects in workmanship, material, design (other than a defect in any design provided by Owner) and title; (c) the Work would be in compliance with the requirements of the EPC Contract; and (d) all materials, equipment and other items incorporated (or to be incorporated) in the Work or consumed (or to be consumed) in the performance of the Work would be new and suitable for the purpose intended. Subject to extension pursuant to the provisions of the EPC Contract addressing the subject matter of paragraph (10.2) below, the warranties provided by EPC Contractor would continue until the expiration of the later of (i) one (1) year after acceptance by Owner of all of the Work; or (ii) such longer period as may be specified elsewhere in the EPC Contract. The period prior to the expiration of the warranties, as it may be from time to time extended in accordance with the provisions of the EPC Contract, is sometimes referred to herein as the "warranty period."

10.2 If at any time during the warranty period EPC Contractor receives from Owner written notice of any failure to comply with the warranty set forth in the provisions of the EPC Contract addressing the subject matter of paragraph (10.1) above, EPC Contractor would promptly correct such noncompliance and remedy any damage to other parts of the Work or any other property resulting from such noncompliance. The warranty period would then be extended as to any corrected Work until the expiration of the later of: (i) one (1) year after acceptance by Owner of the correction; or (ii) such longer period as may be specified elsewhere in the EPC Contract. All costs incidental to such correction and remedying (including, but not limited to, the removal, replacement and reinstallation of equipment

necessary to gain access and all other costs incurred as the result of the defect or noncompliance) would be borne by EPC Contractor.

GC-11. Designs, Plans, Drawings, Specifications and Other Documentation

11.1 The designs, plans, drawings, specifications, and other documentation included in the EPC Contract involve valuable property rights of Owner, would remain the property of Owner and would not be used or disclosed by EPC Contractor for any purpose other than for performance of the EPC Contract. EPC Contractor would furnish any and all additional designs, plans, drawings (including, but not limited to, shop drawings), specifications and other documentation required for performance of the Work (other than those furnished by Owner).

11.2 Owner's review, notations, comments, changes, directions, approvals or granting or withholding authority to proceed with performance of the Work in connection with any design, plan, drawing, specification or other documentation submitted by EPC Contractor would not in any event: constitute or be construed as acceptance, verification or approval of any Work covered by such documentation; relieve EPC Contractor of any obligations under the EPC Contract; or impair Owner's right to reject defective or noncomplying Work or any right or remedy afforded to Owner under the EPC Contract or otherwise by law, notwithstanding Owner's knowledge of any defect or noncompliance or the substantiality or ease of discovery of any defect or noncompliance.

GC-12. Environmental Control

EPC Contractor would take suitable measures and provide suitable facilities to prevent pollution, oil and chemical spills, soil erosion and the introduction of any substances or materials into any stream, river, lake or other body of water which may pollute or silt the water or constitute substances or materials deleterious to fish or wildlife. Further, EPC Contractor would use all reasonable efforts to maintain the site of the Work free from fugitive dust (i.e., dust that becomes airborne or visual). EPC Contractor would be responsible for all costs of corrective measures required as a result of any pollution, erosion or siltation, including its effects on adjacent properties. Without limiting the generality of the foregoing, EPC Contractor would comply with the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§ 6901 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq. and all of the rules, regulations and orders promulgated thereunder, all as the same may have been or may be amended from time to time (e.g., in connection with the handling, processing, storage and disposal of any hazardous or toxic substance).

GC-13. Liens

13.1 EPC Contractor would promptly pay (and secure the discharge of any liens asserted by) all persons and entities (including, but not limited to, EPC Contractor's Support) furnishing labor, equipment, materials or other items in connection with the performance of

the Work. EPC Contractor would furnish to Owner such releases of claims and other documents as may be requested by Owner from time to time to evidence such payment (and discharge). Owner may withhold all or any part of the compensation otherwise payable under the EPC Contract to EPC Contractor until such documents are so furnished. If any of such persons or entities are not promptly paid (or if any of such liens are not promptly discharged), Owner may, at its option, make such payments (and secure such discharge) at EPC Contractor's expense.

13.2 Prior to final payment under the EPC Contract, EPC Contractor would furnish Owner with proof satisfactory to Owner that all payments and claims for which EPC Contractor is responsible under the EPC Contract have been made or settled and with a release and waiver by EPC Contractor of all claims against Owner and a release and waiver of all liens and rights of liens, arising out of or in connection with the EPC Contract, the Work or any costs incurred or items furnished in connection therewith.

GC-14. Records

14.1 Until the expiration of three (3) years after final acceptance by Owner of all of the Work, EPC Contractor would keep and maintain complete and accurate records of its costs and expenses related to the Work or the EPC Contract in accordance with sound and generally accepted accounting principles applied on a consistent basis. To the extent the EPC Contract provides for compensation on a cost-reimbursable basis or whenever such records may, in the opinion of Owner, be useful in determining any amounts payable to EPC Contractor or Owner (e.g., in the nature of a refund, credit or otherwise), EPC Contractor would provide Owner access to all such records for examination, copying and audit until the expiration of three (3) years after acceptance by Owner of all of the Work.

14.2 Until the expiration of three (3) years after acceptance by Owner of all of the Work, EPC Contractor would keep and maintain for examination, copying and audit by Owner complete and accurate records with regard to the Work and the EPC Contract, including, but not limited to, (a) records of the shipment, receipt, possession, storage, use, consumption, installation, incorporation or disposition of all equipment, materials, supplies, tools, goods, information, designs, plans, drawings, specifications, data, and other items received, possessed, stored, used, consumed, installed, incorporated or disposed of in connection with the Work or the EPC Contract; and (b) EPC Contractor's agreements with its Support. Until the expiration of three (3) years after acceptance by Owner of all of the Work, EPC Contractor would provide Owner access at all reasonable times to all such records for examination, copying and audit.

GC-15. Rights in Property

15.1 All materials, information, property and other items accumulated or developed in connection with the Work (including, but not limited to, documents, designs, plans, specifications, drawings, calculations, maps, sketches, notes, reports, data, estimates, models, samples, completed Work and Work in progress), together with all copyrights and other

rights associated with ownership of such items, would become the property of Owner when so accumulated or developed, whether or not delivered to Owner. EPC Contractor would deliver such items, together with all materials, information, property and other items furnished by Owner or the cost of which is included in the compensation payable under the EPC Contract, to Owner upon request and in any event upon the completion, termination or cancellation of the EPC Contract.

15.2 EPC Contractor would not, without the prior written consent of Owner, disclose to third parties any information accumulated or developed in connection with the Work unless: (i) the information was known to EPC Contractor prior to the date of the EPC Contract; (ii) the information is in the public domain at the time of disclosure by EPC Contractor; or (iii) the information is received by EPC Contractor from a third party who did not receive the same directly or indirectly from Owner or in connection with the Work. If so requested by Owner, EPC Contractor would obtain from its Support nondisclosure agreements in form and content satisfactory to Owner.

GC-16. Payments

16.1 Payments otherwise payable under the EPC Contract may be withheld, in whole or in part, by Owner on account of (a) the failure of EPC Contractor to correct defective or noncomplying Work; (b) the failure of EPC Contractor to cure any noncompliance with any of the provisions of the EPC Contract; (c) the failure of EPC Contractor to pay, satisfy or discharge any claim (or potential claim which reasonable evidence indicates may be filed) of Owner, any of EPC Contractor's Support or any other person against EPC Contractor arising out of or in connection with the EPC Contract or the Work; or (d) a reasonable doubt that the EPC Contract can be completed within the time specified or for the balance of the compensation payable under the EPC Contract. If the foregoing causes are removed to the satisfaction of Owner, the withheld payments would promptly be made. If such causes are not promptly removed after written notice, Owner may (but need not) rectify the same at EPC Contractor's expense and deduct all costs and expenses incurred thereby from such withheld payments. If such withheld payments are insufficient to satisfy the same or if any claim against EPC Contractor would be discharged by Owner after final payment is made, EPC Contractor would promptly reimburse and pay to Owner all costs and expenses incurred thereby (including, but not limited to, reasonable attorneys' fees), regardless of when such claim arose or whether such claim imposed a lien upon the Work or the real property upon which the Work is situated. Owner would not be authorized to withhold under the EPC Contract more than is reasonably estimated to be sufficient to satisfy Owner's claims.

16.2 EPC Contractor would reimburse Owner on demand for all amounts paid and costs incurred by Owner at EPC Contractor's expense under the EPC Contract or otherwise. Owner may, at its option, apply any amounts payable under the EPC Contract against any amounts now or hereafter owing by EPC Contractor to Owner under the EPC Contract or otherwise.

16.3 EPC Contractor would submit to Owner breakdowns of the compensation payable to EPC Contractor under the EPC Contract that segregate such compensation into the dollar amounts corresponding to such categories as Owner may specify as necessary to conform to Owner's accounting requirements or to comply with the accounting requirements of governmental authorities. If requested by Owner, EPC Contractor would submit to Owner for Owner's budgetary purposes an estimated breakdown of the total compensation payable under the EPC Contract segregated according to such categories, together with an estimated schedule of progress payments to EPC Contractor that would result from such breakdown.

GC-17. Taxes

Except as otherwise required by law, EPC Contractor would be responsible for, bear the expense of and pay all taxes, excises, levies, duties and assessments applicable to or incurred in connection with the Work or the EPC Contract measured by the gross or net receipts or income from any transaction relating to the EPC Contract (such as the Washington State business and occupation tax and Federal income tax) or any allocated portion thereof, or by the gross value of the material, equipment or services covered hereby, or by any other lawfully imposed method.

GC-18. Insurance

18.1 EPC Contractor would ensure that, with respect to all persons performing the Work, EPC Contractor or its Support maintain in effect at all times during the performance of the Work coverage or insurance in accordance with the applicable laws relating to workers' compensation and employer's liability insurance (including, but not limited to, the Washington Industrial Insurance Act), regardless of whether such coverage or insurance is mandatory or merely elective under the law.

18.2 EPC Contractor would secure and maintain such property and liability insurance as would protect Contract or, the Support and the Additional Insureds from and against any and all claims and liabilities arising out of personal injury (including death) or property damage that may result from performance of the Work, whether such performance is by EPC Contractor or any of its Support.

18.3 Without limiting the generality of the foregoing, prior to commencement of the Work, EPC Contractor would secure insurance with provisions, coverages and limits as specified elsewhere in the EPC Contract. EPC Contractor or its Support would maintain such insurance and coverages in full force and effect at all times (a) until all of EPC Contractor's obligations under the Contract have been fully performed, all of the Work has been accepted by Owner and all operations of EPC Contractor and its Support (including, but not limited to, removal of equipment and other property) on or about the site of the Work have been concluded and (b) in the case of completed operations and products liability insurance, until the expiration of two (2) years after all of EPC Contractor's obligations under the EPC Contract have been fully performed.

18.4 Prior to commencement of the Work and at such other times as Owner may request, EPC Contractor would deliver to Owner certificates of insurance (with endorsements attached) as evidence that policies providing the insurance required by the EPC Contract are in full force and effect. EPC Contractor would also furnish Owner with such additional assurance and evidence of such insurance (such as copies of all insurance policies, certified by an authorized representative of the insurer) as Owner may from time to time request.

18.5 Within thirty (30) days after any renewal of or any notice of termination, cancellation, expiration or alteration of any policy of insurance required under the EPC Contract, EPC Contractor would deliver to Owner a certificate of insurance with respect to any renewal or replacement policy. Such certificate of insurance with respect to any renewal or replacement policy would be delivered to Owner prior to the effective date of such renewal, termination, cancellation, expiration or alteration, as the case may be.

18.6 All Policies of insurance required under the EPC Contract would: (a) be placed with such insurers and under such forms of policies as may be acceptable to Owner; (b) with the exception of workers' compensation and employers' liability insurance, be endorsed to name the Additional Insureds as additional insureds; (c) be primary insurance with respect to the interests of the Additional Insureds and any insurance or self-insurance maintained by any of the Additional Insureds would be excess and not contributory insurance with respect to the insurance required hereunder; (d) with the exception of workers' compensation and employers' liability insurance, apply severally and not collectively to each insured against whom any claim is made or suit is brought, except that the inclusion of more than one insured would not operate to increase the insurance company's limits of liability as set forth in the insurance policy; and (e) provide that the policies would not be cancelled or their limits or coverage reduced or restricted without giving at least thirty (30) days prior written notice to Owner.

18.7 EPC Contractor would ensure that any policies of insurance that EPC Contractor or any of its Support carry as insurance against loss of or damage to property (including, but not limited to, equipment, tools, vehicles, watercraft and aircraft) or against liability for property damage or bodily injury (including death) would include a waiver of the insurer's right of subrogation against Owner and the Additional Insureds. To the extent permitted by its policies, EPC Contractor hereby waives all rights of subrogation against Owner and the Additional Insureds.

18.8 The requirements of the EPC Contract as to insurance and acceptability to Owner of insurers and insurance to be maintained by EPC Contractor and its Support are not intended to and would not in any manner limit or qualify the liabilities and obligations assumed by EPC Contractor under the EPC Contract.

GC-19. Surety Bonds

To the extent requested by Owner, EPC Contractor would furnish to Owner, at such times and in such amount, form and content as Owner may in writing request, surety bonds

issued by a surety acceptable to Owner with performance, payment, fidelity and maintenance clauses payable to Owner, in which case the premiums for such bonds would be paid by Owner.

GC-20. Indemnity and Release

20.1 Subject to the provisions of the EPC Contract addressing the limitations set forth in paragraph 20.2, EPC Contractor would release and would defend, indemnify and hold harmless the Additional Insureds and each of them from and against all claims, losses, harm, costs, liabilities, damages and expenses (including, but not limited to, reasonable attorneys' fees) arising, whether before or after acceptance of the Work and whether suffered by any of the Additional Insureds or any other person or entity, directly or indirectly out of or in connection with: (a) any defect in the Work; (b) any fault, negligence, strict liability or product liability of EPC Contractor or its Support in connection with the Work or the EPC Contract; (c) any lien asserted upon any property of any of the Additional Insureds in connection with the Work or the EPC Contract; (d) any failure of EPC Contractor, any Support or the Work to comply with any applicable law, ordinance, rule, regulation, order, license, permit and other requirement, now or hereafter in effect, of any governmental authority; or (e) any failure of EPC Contractor or any Support to comply with the requirements of the EPC Contract; or (f) any breach of or default under the EPC Contract by EPC Contractor.

20.2 To the fullest extent permitted by applicable law, the provisions of the EPC Contract addressing the subject matter of paragraph 20.1 would apply regardless of any fault, negligence, strict liability or product liability of the Additional Insureds. However, EPC Contractor would not be required to indemnify any Additional Insured against liability for damages arising out of bodily injury or property damage caused by or resulting from the sole negligence of such Additional Insured or its agents or employees. Further, in the case of concurrent negligence of EPC Contractor and/or any Support on the one hand and any of the Additional Insureds on the other hand, EPC Contractor would be required to indemnify the Additional Insureds only to the extent of the negligence of the EPC Contractor and/or the Support.

20.3 In connection with any action to enforce EPC Contractor's obligations under the provisions of the EPC Contract addressing the subject matter of paragraph 20.1, EPC Contractor waives any immunity, defense or protection under any workers' compensation, industrial insurance or similar laws (including, but not limited to, the Washington Industrial Insurance Act, Title 51, of the Revised Code of Washington).

20.4 EPC Contractor releases and would defend, indemnify and hold harmless the Additional Insureds and each of them from and against all claims, losses, harm, costs, liabilities, damages, expenses (including, but not limited to, reasonable attorneys' fees), and royalties based upon any actual or alleged infringement or misappropriation of any patent, copyright, trade secret, trademark or other intellectual property right by any Work. Further, if any Work infringes or misappropriates any patent, copyright, trade secret, trademark or

other intellectual property right, EPC Contractor would either: (a) procure for Owner the right to use such Work; (b) replace such Work with substantially equal Work that does not infringe or misappropriate any such right; or (c) modify such Work so that it no longer infringes or misappropriates any such right.

20.5 The provisions of the EPC Contract providing for limitation of or protection against liability of Owner would be deemed to also protect each of the Additional Insureds.

GC-21. Changes

21.1 Owner may, at any time, by written notice thereof to EPC Contractor ("Change Order") make changes in the Work within the general scope of the EPC Contract, including, but not limited to: (a) changes in, substitutions for, additions to or deletions of any Work; (b) changes in the specifications or drawings; (c) changes in schedule or acceleration, deceleration or suspension of performance of any Work; and (d) changes in the location, alignment, dimensions or design of items included in the Work.

21.2 If any change consistent with the provisions of the EPC Contract addressing the subject matter of this GC-21 would cause an increase or decrease in EPC Contractor's cost of, or the time required for, the performance of any part of the Work, an equitable adjustment in the compensation to EPC Contractor and in the schedule for the performance of the Work would be made to reflect such increase or decrease, and the EPC Contract would be modified in writing accordingly. Such equitable adjustment would constitute full compensation to EPC Contractor for such change, and EPC Contractor would not include such change in any other claim for increased compensation or extension of time.

21.3 Notwithstanding any dispute or delay in reaching agreement or arriving at a mutually acceptable equitable adjustment, EPC Contractor would, if so requested by Owner, immediately proceed in accordance with such Change Order. If EPC Contractor intends to assert a claim for an equitable adjustment in schedule or compensation for a change, EPC Contractor must, within ten (10) days after receipt of any Change Order which does not set forth an acceptable adjustment, submit to Owner a written statement setting forth the basis and nature of the adjustment claimed. EPC Contractor would not be entitled to any adjustment unless such statement is submitted by EPC Contractor to Owner within the applicable ten (10) day period.

21.4 If any change results in a decrease in the Work to be performed, EPC Contractor would not be entitled to anticipated profit on work not performed and the loss of anticipated profit would not reduce the decrease in EPC Contractor's compensation resulting from such change. Further, EPC Contractor would not be entitled to any reallocation of cost, profit or overhead. EPC Contractor would not be entitled under pursuant to the provisions of the EPC Contract addressing the subject matter of this GC-21 to any increase in compensation or extension of schedule to the extent that: (a) any change under such provisions of the EPC Contract would have been made or required due to any cause or requirement for which EPC Contractor is not entitled to such increase or extension; or (b)

such increase or extension is provided for or excluded under any provision of the EPC Contract.

GC-22. Optional Termination

22.1 Owner may, at its option, terminate the EPC Contract as to all, or from time to time as to any portion, of the Work not then performed at any time by written notice thereof to EPC Contractor, whether or not EPC Contractor is in default. Upon receipt of any written notice of termination, EPC Contractor would for that Work affected by such termination: (a) discontinue work on the date and to the extent specified in the notice; (b) place or enter into no further agreements with its Support for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work as is not terminated; (c) transfer title and deliver to Owner as directed by Owner all or any part of (i) the materials, Work in process and completed Work and other items produced as a part of, or acquired in connection with, the performance of the Work terminated, and (ii) the completed or partially completed plans, drawings, information and other property which, if the EPC Contract had been completed, would have been required to be furnished to Owner; (d) assist Owner in making an inventory of all materials and equipment at the site of the Work, en route to the site of the Work, in storage or manufactured away from the site of the Work and on order from EPC Contractor's Support; (e) remove from the site of the Work all materials and equipment listed in said inventory which are designated in writing by Owner not to be used by Owner in completing such Work; (f) as directed by Owner, either terminate or assign to Owner all or any part of the right, title and interest of EPC Contractor under EPC Contractor's agreements with its Support to the extent relating to Work as to which the EPC Contract is terminated (EPC Contractor would include the right to make such assignments in all such agreements); (g) settle, with the prior written approval of Owner, all outstanding liabilities and all claims arising out of the termination directed by Owner of agreements with EPC Contractor's Support; (h) use its best efforts to minimize its cost and expenses due to such termination; (i) complete performance of such part of the Work as would not have been terminated; and (j) take such action as may be necessary, or as Owner may direct, for the protection and preservation of the property related to the EPC Contract which is in the possession of EPC Contractor or its Support or is at the site of the Work or in transit thereto, and in which Owner has or may acquire an interest.

22.2 After receipt of any written notice of termination, EPC Contractor would submit to Owner EPC Contractor's termination claim for amounts claimed pursuant to procedure set forth in paragraph 22.3 below, in the form and with the certification prescribed by Owner. Such claim would be submitted promptly but in no event later than two (2) months after the effective date of termination. If EPC Contractor failed to submit its termination claim within the time allowed, Owner may determine on the basis of information available to it the amount, if any, due EPC Contractor by reason of the termination, and such determination would be final. After Owner has made a determination consistent with the provisions of EPC Contract addressing the subject matter of this paragraph 22.3, Owner would pay or credit to EPC Contractor the amount so determined, which payment or credit

would be deemed to satisfy all claims of EPC Contractor against Owner by reason of such termination.

22.3 Upon any termination pursuant to the provisions of the EPC Contract addressing the subject matter of this paragraph GC-22, EPC Contractor would waive any and all claims for additional compensation or damages (including any claim for loss of anticipated profit) on account thereof, and agrees that the sole remedy of EPC Contractor is to receive payment or credit consistent with the terms provided this paragraph. Upon such termination EPC Contractor would be entitled to be paid or credited that portion of the compensation otherwise payable under the EPC Contract which is allocable to all Work satisfactorily performed, together with EPC Contractor's actual reasonable costs occasioned by such termination and not previously paid for, less the aggregate amount of any compensation previously paid to EPC Contractor under the EPC Contract. In no event, however, would EPC Contractor be entitled under the provisions of the EPC Contract addressing the subject matter of this GC-22 to be paid or credited an amount in excess of EPC Contractor's actual reasonable costs occasioned by such termination plus the total compensation otherwise payable under the EPC Contract reduced by the aggregate amounts of all compensation paid to EPC Contractor under the EPC Contract and further reduced by that portion of the total compensation under the EPC Contract which is allocable to Work with regard to which the EPC Contract is not so terminated. In arriving at the amount due EPC Contractor under the provisions of the EPC Contract addressing the subject matter of this paragraph, EPC Contractor would not be entitled to anticipated profit on Work not performed or to any reallocation of cost, profit or overhead. Owner would in no event be liable for any loss of revenue or profit incurred by EPC Contractor or any of the Support as a result of the termination. Further, there would be deducted: (a) all unliquidated advance or other payments on account theretofore made to EPC Contractor applicable to the terminated portion of the EPC Contract, (b) any claim which Owner may have against EPC Contractor in connection with the EPC Contract and (c) the agreed price for, or the proceeds of sale of, any materials, supplies or other things kept by EPC Contractor or sold, pursuant to the provisions of the EPC Contract addressing the subject matter of this GC-22, and not otherwise recovered by or credited to Owner. EPC Contractor would promptly refund to Owner any amounts previously paid to EPC Contractor in excess of the amount due EPC Contractor under such provisions of the EPC Contract.

22.4 In the event of any termination pursuant to the provisions of the EPC Contract addressing the subject matter of GC-22, Owner may at its option take over the Work as to which the EPC Contract is terminated and prosecute the same to completion, by contract or otherwise.

22.5 Exercise or failure of Owner to exercise any of its rights under the provisions of the EPC Contract addressing the subject matter of this GC-22 would not excuse EPC Contractor from compliance with the provisions of the EPC Contract nor prejudice rights of Owner to recover damages for any default by EPC Contractor. Whether or not EPC Contractor's right to proceed with the Work is terminated, EPC Contractor and its sureties would be liable for any costs, expenses or damages to Owner resulting from EPC

Contractor's default. The rights and remedies of Owner provided in the EPC Contract addressing the subject matter of this GC-22 are in addition to any other rights and remedies provided by law or under the EPC Contract.

22.6 If Owner purports to terminate or cancel the EPC Contract as to all or any portion of the Work for EPC Contractor's breach or default and it is determined for any reason that EPC Contractor was not in breach or default which would permit such termination or cancellation, such termination or cancellation would be deemed to have been a termination pursuant to the provisions of the EPC Contract addressing the subject matter of this GC-22 and the rights and obligations of the parties would be same as if the notice of termination had been issued pursuant to such provisionj of the EPC Contract.

GC-23. Use of Completed Portions of Work

23.1 Owner may, by written notice thereof to EPC Contractor, take possession of or use of any completed or partially completed portion of the Work at any time prior to acceptance of all of the Work. Immediately prior to Owner's using or taking possession, a joint inspection by representatives of Owner and EPC Contractor would be conducted to determine the condition and state of completion of the Work involved.

23.2 Such possession or use by Owner would not: (a) constitute an acceptance of any part of the Work; (b) relieve EPC Contractor of any risk of loss, deterioration, theft, vandalism, destruction or damage; (c) relieve EPC Contractor of any requirements of the EPC Contract; or (d) act as a waiver by Owner of any of the requirements of the EPC Contract; provided that EPC Contractor would not be liable for the cost of repairs, rework or replacements which may be required due to ordinary wear and tear resulting from such use. However, if such possession or use increases EPC Contractor's cost of, or time required for, completion of the remaining portions of the Work, EPC Contractor would be entitled to an equitable adjustment in the compensation to EPC Contractor and in the schedule for the performance of the Work to reflect such increase, and the EPC Contract would be modified in writing accordingly; provided, that EPC Contractor would not be entitled to any adjustment in compensation or schedule for such possession or use unless EPC Contractor gives Owner prompt written notice that such possession or use would increase EPC Contractor's cost of, or the time required for, performance of the Work. Further, Owner may, by written notice thereof to EPC Contractor, relieve EPC Contractor of the duty of maintaining and protecting certain portions of the Work which have been completed in all respects in accordance with requirements of the EPC Contract.

23.3 Nothing contained in the provisions of the EPC Contract addressing the subject matter of this GC-23 would relieve EPC Contractor of any of its obligations to correct, repair, replace or otherwise be responsible for defective or noncomplying Work.

GC-24. Owner's Performance of EPC Contractor's Obligations

24.1 If Owner directed EPC Contractor to correct noncomplying or defective Work or to otherwise comply with the requirements of the EPC Contract and EPC Contractor thereafter failed to comply or indicates its inability or unwillingness to comply, then Owner would have the right to correct (or cause to be corrected) the noncompliance or defect or otherwise achieve compliance by the most expeditious means available to it (by contract or otherwise) and charge to or otherwise recover (for example, by offset against the compensation otherwise payable under the EPC Contract) from EPC Contractor all costs thereof.

24.2 Owner's rights to make corrections, achieve compliance and charge to or otherwise recover from EPC Contractor the costs thereof are in addition to any and all other rights and remedies available to Owner under the EPC Contract or otherwise by law, and would in no event be construed or interpreted as obliging Owner to make any correction of defective or noncomplying Work or to otherwise achieve compliance with the EPC Contract. Further, EPC Contractor's obligations (including warranty) would not be interpreted or construed as being reduced in any way because of any corrections or other work performed or caused to be performed by Owner or Owner's rights to perform the same.

GC-25. Claims, Questions, Conflicts, Inconsistencies and Ambiguities; Protest; Waiver

25.1 Any claim of EPC Contractor for damages, additional compensation or extension of time, whether under the EPC Contract or otherwise, against Owner would be conclusively deemed to have been waived by EPC Contractor unless a timely written claim therefor is made pursuant to and in strict accordance with the applicable provisions of the EPC Contract or, if no such provision is applicable, unless such claim is set forth in detail in writing and filed with Owner within thirty (30) days after the facts upon which such claim is based become known or should have become known to EPC Contractor.

25.2 Without limiting the generality of the foregoing and except as otherwise specifically provided for elsewhere in the EPC Contract, any claim of EPC Contractor and any question of EPC Contractor related to or arising in connection with performance of all or any part of the Work or the EPC Contract, coordination of the Work, compensation, schedule or interpretation, construction or clarification of the EPC Contract would be promptly submitted by EPC Contractor in writing to Owner for determination. If EPC Contractor is apprised or otherwise becomes aware of or has reason to know of, any conflict, discrepancy or inconsistency between or among, or any ambiguity, error or omission in any of the requirements of the EPC Contract, EPC Contractor would immediately notify Owner thereof for instruction, direction, resolution or clarification as the case may be. EPC Contractor would be fully and solely responsible for requesting all directions, instructions, interpretations, constructions, clarifications and resolutions necessary or appropriate to ensure performance of the Work in accordance with the EPC Contract and for any and all claims, losses, harm, costs, damages and expenses resulting from its failure to do so.

25.3 All determinations, interpretations, constructions, clarifications, resolutions, instructions and directions of Owner, whether in response to a question of EPC Contractor or otherwise, would be final unless EPC Contractor would, within fourteen (14) days after Owner gives EPC Contractor notice of any such determination, interpretation, construction, clarification, resolution, instruction or direction, file with Owner a written protest thereto, setting forth in a detailed and clear manner the basis of such protest. Owner would issue a decision, which would be final, upon each such protest. Notwithstanding any protest or disagreement, EPC Contractor would in any event proceed with performance of the Work and the Contract in accordance with the determination, interpretation, construction, clarification, resolution, instruction and direction of Owner.

GC-26. Assignment; Successors

26.1 EPC Contractor would not (e.g., by contract, operation of law or otherwise) assign all or any part of the EPC Contract or any of its rights hereunder, or subcontract any of the Work, without the prior written consent of Owner, which consent would not be unreasonably withheld. For purposes of the foregoing, any transfer of a controlling interest in EPC Contractor (e.g., by a transfer of securities or otherwise) would be deemed to be an assignment of the EPC Contract. No such assignment or subcontracting would relieve EPC Contractor from its responsibility for performance of the Work in accordance with the EPC Contract or from its responsibility for performance of any of its other obligations under the EPC Contract. EPC Contractor would be fully responsible for the acts, omissions, conduct and performance of its Support.

26.2 If EPC Contractor is composed of more than one person or entity, each such person or entity would be jointly and severally liable under the EPC Contract. The EPC Contract would be fully binding upon EPC Contractor and its successors, assigns and legal representatives.

GC-27. Notices

Any notice, request, approval, consent, order, instruction, direction or other communication under the EPC Contract given by either party to the other party would be in writing and would be delivered in person or mailed, properly addressed and stamped with the required postage, to the intended recipient at the address and to the attention of the person specified below the parties' respective signatures on the Contract for Work. Either party may from time to time change such address by giving the other party notice of such change in accordance with the provisions of the EPC Contract addressing the subject matter of this GC-27.

GC-28. Survival

The provisions of the EPC Contract addressing the subject matter of GC-10, GC-14, GC-15 and GC-20 (and all provisions of the EPC Contract which may reasonably be

interpreted or construed as surviving the completion, cancellation or termination of the EPC Contract) would survive the completion, cancellation or termination of the EPC Contract.

GC-29. Examination of Contract and Site

EPC Contractor would represent and acknowledge that it has carefully examined the EPC Contract and the Site and that it has satisfied itself as to (and the EPC Contractor would have, and would thereby assume, full and sole responsibility for) the nature, location, character, quality and quantity of the Work and all requirements of the EPC Contract, as well as the conditions and other matters that may be encountered at the Site or affect performance of the Work or the cost or difficulty thereof, including, but not limited to, those conditions and matters affecting: transportation; access; handling, storage and disposal of materials, equipment and other items; availability and quality of labor, water, electric power and utilities; availability and condition of roads; climatic conditions and seasons; physical conditions at the site of the Work and the surrounding locality; topography and ground surface conditions; potential water and air pollution conditions; subsurface geology and the nature and quantity of surface and subsurface materials to be encountered; and equipment and facilities needed preliminary to and at all times during the performance of the Work. The failure of EPC Contractor to fully acquaint itself with any applicable condition or matter would not in any way relieve it from the responsibility for performing the Work in accordance with, and for the compensation provided for in, the EPC Contract.

GC-30. Nonwaiver

Owner's failure or delay to insist upon strict performance of any of the provisions of the EPC Contract, to exercise any rights or remedies provided under the EPC Contract or by law, or to notify EPC Contractor in the event of breach or default under the EPC Contract, as well as the making of, or failure or delay to make, any test or inspection of any Work or the making of any acceptance of or payment for any Work, would not release or relieve EPC Contractor from any of its obligations or warranties under the EPC Contract and would not be deemed a waiver of any right of Owner to insist upon strict performance of the EPC Contract or any of the rights or remedies of Owner as to any Work; nor would any purported oral modification or rescission of the EPC Contract by Owner operate as a waiver of any of the provisions of the EPC Contract.

GC-31. Entire Agreement

31.1 The EPC Contract would embody the entire agreement, and would supersede any and all prior agreements, between Owner and EPC Contractor regarding the Work.

31.2 No change, amendment or modification of any of the provisions of the EPC Contract would be valid unless set forth in a written instrument signed by the party to be bound thereby.

31.3 The EPC Contract would be construed as a whole. The misplacement, addition or omission of a word or character would not change the intent of any part of the EPC Contract from that set forth by the EPC Contract as a whole. All provisions and parts of the EPC Contract would be correlative and complementary, and any Work required by one and not mentioned in another would be performed to the same extent and purpose as though required by all. Details of the Work which are necessary to carry out the intent of the EPC Contract, but which are not expressly required, would be performed or furnished by EPC Contractor as part of the Work without any increase in the compensation otherwise payable under the EPC Contract.

GC-32. Controlling Law

32.1 The EPC Contract would be interpreted, construed and enforced in accordance with and governed by the laws of the State of Washington, without reference to its rules relating to choice of law.

32.2 EPC Contractor would not commence or prosecute any suit, proceeding or claim to enforce the provisions of the EPC Contract, to recover damages for breach of or default under the EPC Contract, or otherwise arising under or by reason of the EPC Contract, other than in the courts of the State of Washington or the District Court of the United States, Western Division, State of Washington. EPC Contractor would irrevocably consent to the jurisdiction of the courts of the State of Washington with venue laid in King County and of the District Court of the United States, Western Division, State of Washington.

Exhibit 3

Wind Energy Avoided Costs Schedules

Below are two cost schedules for 2004 -2023,corresponding to two forms of proposals: merchant development and transfer to PSE ownership of the wind farm;and a wind energy PPA. The avoided costs are based on generic assumptions about the costs of wind power development which are consistent with assumptions made in the Least Cost Plan. The estimated costs do not include system integration,shaping nor transmission costs.

Note: The avoided cost is only an estimate based on generic assumptions for wind resources in the northwest. Proposals will be evaluated and ranked against each other based on the criteria listed in the RFP.

The PSE ownership estimated generic avoided cost is based on assumptions about the company’s capital financing. Table 34 list s the financial assumptions, followed by Table 32a with the levelized cost and 32b which lists the annual costs.

Table 3-1 -- PSE Financing Assumptions

PreTaxCost of Debt	7.2%
Cost of Eqity	11.0%
%Debt	52.6%
%Preferred	2.4%
%Eqity	45.0%
WACC	7.6%
PreTaxWACC	8.9%

Table 3-2a Levelized Cost – PSE Generic Ownership

Generation (\$MWH)	\$2.89
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Table 3-2b Annual Cost – PSE Generic Ownership (Nominal Dollars)

Year	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
\$MWH	48.13	44.68	41.92	39.27	36.64	34.74	33.59	32.45	31.32	30.20
Year	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
\$MWH	56.79	55.70	54.63	53.56	52.51	51.48	50.46	49.46	48.47	47.50

Table 33 lists the independent power producer (PP) finance assumptions for the generic PPA, followed by Table 34a with the levelized generation cost, and Table 34b which lists the resulting annual costs.

Table 3-3 – IPP Financing Assumptions

PreTax Cost of Debt	7.5%
Cost of Equity	17.0%
% Debt	70.0%
% Preferred	0.0%
% Equity	30.0%
WACC	8.5%
PreTax WACC	10.4%

Table 3-4a Levelized Cost -- PPA

Generation (\$/MWh)	\$3.25
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Table 3-4b Annual Cost – PPA (Nominal Dollars)

Year	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
\$/MWh	36.25	37.16	38.09	39.04	40.01	41.01	42.04	43.09	44.17	45.27
Year	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
\$/MWh	46.40	47.56	48.75	49.97	51.22	52.50	53.81	55.16	56.54	57.95

The estimated generic PPA costs do not take into account imputed debt costs, counterparty credit issues and other security and control costs. Those costs will be considered in the proposal evaluation process as described in the RP.

Both avoided cost schedules listed above were based on generic cost assumptions for all wind projects. Those details are listed in Table 35

Table 3-5 Generic Wind Farm Assumptions

All in Cost (\$/W)	1003
Transmission Loss Percent	1.6%
Forced Outage Rates	70%
FOM (\$/yr)	26.10
Transmission (\$/yr)	14.88
Total FOM (\$/yr)	40.98
New Capex (\$/MW Capacity)	0
Depreciable lives (tax)	5
OM (\$/MWh)	1
Fixed O&M Escalator	2.5%

Variable O&M Escalator	2.5%
Capex Escalator	2.5%
PPA Escalator	2.5%
Depreciable Lives Wind	20
Property Tax Rate	1.1%
Insurance Premium	0.1%
Conversion Factor	65.0%
Effective Tax Rate	35.0%
Federal Tax Rate	35.0%
Renewable Tax Credit (\$/MWh)	18

x

Exhibit 4

Monthly Need for New Energy Resources

The table below provides the company's monthly energy needs for twenty years. These values were utilized in the Least Cost Plan and are based on the company's load before decrementing for conservation resources.

Table 4-1 Monthly Energy Need

Energy (aMW)	January	February	March	April	May	June	July	August	September	October	November	December
2004	436	251	139	37	175	0	0	37	360	200	125	355
2005	476	302	190	0	197	0	0	115	419	241	195	405
2006	529	340	339	163	275	0	0	129	432	257	222	435
2007	571	382	274	171	288	0	0	170	468	297	260	473
2008	618	363	314	110	291	0	0	203	502	334	302	519
2009	765	535	344	106	395	0	0	44	333	361	477	714
2010	847	614	437	183	461	33	0	104	395	433	562	810
2011	1007	769	575	323	561	154	37	232	523	573	710	968
2012	1520	1222	1089	819	797	639	518	709	1001	1062	1205	1463
2013	1715	1467	1279	1004	978	819	697	889	1183	1247	1396	1658
2014	1773	1524	1330	1050	1020	859	737	930	1220	1292	1448	1715
2015	1828	1573	1379	1093	1060	898	775	969	1260	1335	1497	1769
2016	1886	1575	1430	1139	1102	939	816	1010	1301	1382	1549	1827
2017	1944	1684	1482	1185	1145	981	857	1052	1343	1426	1707	1990
2018	2109	1841	1586	1284	1188	1022	898	1094	1386	1472	1760	2049
2019	2168	1898	1639	1331	1232	1065	940	1137	1428	1519	1814	2108
2020	2230	1907	1694	1381	1277	1109	983	1181	1473	1567	1870	2169
2021	2295	2017	1751	1432	1324	1154	1028	1227	1519	1618	1927	2233
2022	2361	2079	1809	1484	1372	1201	1074	1273	1567	1669	1987	2298
2023	2430	2145	1871	1539	1422	1249	1122	1323	1616	1723	2049	2367

Exhibit 5

MUTUAL CONFIDENTIALITY AGREEMENT

This Agreement, dated as of _____, 2003, is entered into between Puget Sound Energy, Inc., ("PSE") and _____. PSE and _____ are sometimes referred to in this Agreement as "Party," and collectively as "Parties."

1. The Parties intend to enter into discussions regarding one or more potential transactions between the Parties involving wind power generation facilities in _____. In the course of these discussions, each Party may disclose Confidential Information to the other. For the purposes of this Agreement, "Confidential Information" means any information or data disclosed in connection with such discussions in any form or media whatsoever by either Party (the "Disclosing Party") to another Party or Parties (the "Receiving Party" or the "Receiving Parties") which (a) if in tangible form, or other media that can be converted to readable form, is clearly and conspicuously marked as proprietary, confidential or private when disclosed; or (b) if oral or visual, is identified in writing as proprietary, confidential or private at the same time it is disclosed. "Confidential Information" includes all originals, copies, notes and other manifestations, derivations and analysis of the foregoing.

2. Confidential Information shall not include information that (a) is or becomes generally available to the public through no fault or action of a Receiving Party; (b) a Receiving Party can reasonably demonstrate (i) was known by the Receiving Party, prior to its disclosure by the Disclosing Party, without any obligation to hold it in confidence, (ii) is received from a third party free to disclose such information without restriction, (iii) is independently developed by the Receiving Party without the use of Confidential Information of the Disclosing Party; (c) is approved for release by written authorization of the Disclosing Party, but only to the extent of such authorization; or (d) is related to the transmission of power, including but not limited to, any information which must be disclosed to the transmission function of a Party as part of any transmission request or information exchange that is required to be made public pursuant to FERC rules and regulations. Notwithstanding anything to the contrary set forth in this Agreement, the Receiving Parties shall not be obligated to keep confidential any Confidential Information that (A) is required by law or regulation to be disclosed, but only to the extent and for the purposes of such required disclosure or (B) is disclosed in response to a valid order of a court or other governmental authority having jurisdiction or in pursuance of any procedures for discovery in any proceeding before any such court or governmental authority, but only to the extent of and for the purposes of such order, provided that the Receiving Parties, who are subject to such order or discovery, give the Disclosing Party reasonable advance notice (e.g., so as to afford the Disclosing Party an opportunity to appear, object and obtain a protective order or other appropriate relief regarding such disclosure). The Receiving Parties, who are subject to such order or discovery, shall, at the Disclosing Party's expense, use reasonable efforts to assist the Disclosing Party's efforts to obtain a protective order or other appropriate relief.

3. Notwithstanding any other provision of this Agreement, the confidentiality obligations in this Agreement shall not apply to the “tax structure” or “tax treatment” (as these terms are defined in Section 1.6011-4(c)(8) and (9), or any successor provision, of the Treasury Regulations promulgated under the Internal Revenue Code of 1986, as amended (the “Code”)) of the potential transactions discussed, and each party (and any Representative of each party) may disclose to any and all persons, without limitation of any kind, the “tax structure” and “tax treatment” (as these terms are defined in Sections 1.6011-4(c)(8) and (9), or any successor provision, of the Treasury Regulations) of the potential transactions discussed; provided that the confidentiality provisions of this Agreement shall continue to apply to Confidential Information irrelevant to understanding the tax structure or tax treatment of the potential transactions discussed. In addition, each party acknowledges that it has no proprietary or exclusive right to any tax matter or tax idea related to the potential transactions. Each party recognizes that any privilege it may have with respect to the confidentiality of the discussions, including with respect to confidential communications with an attorney or a federally authorized tax practitioner under Section 7252 of the Code, is not intended to be waived by the foregoing.

4. The Receiving Parties shall (a) use the Confidential Information only for purposes of evaluating one or more potential transactions between the Parties involving power generation facilities; (b) restrict disclosure of the Confidential Information to employees, advisors and active or potential investors or lenders of the Receiving Parties and affiliates with a “need to know” and not disclose it to any other person or entity without prior written consent of the Disclosing Party; (c) advise such employees, advisors, investors and lenders who access the Confidential Information of their obligations with respect thereto; and (d) copy the Confidential Information only as necessary for those employees or advisors who are entitled to receive it, and ensure that all confidential notices are reproduced in full on such copies. A “need to know” means that the employee or advisors require the Confidential Information to perform their responsibilities in evaluating or pursuing one or more potential transactions between the Parties involving power generation facilities.

5. Confidential Information shall be deemed to be the property of the Disclosing Party. This Agreement shall not be interpreted or construed as granting any license or other right under or with respect to any patent, copyright, trademark, trade secret or other proprietary right. The Receiving Parties shall, within 30 days of a written request therefor by the Disclosing Party, either return all of the Disclosing Party’s Confidential Information (or any designated portion thereof) to the Disclosing Party or destroy all such Confidential Information (or any designated portion thereof) and provide an officer’s certificate as to the destruction of such Confidential Information.

6. Neither this Agreement nor any discussions or disclosure hereunder shall (a) be deemed a commitment to any business relationship or contract for future dealing with another Party or (b) prevent either Party from conducting similar discussions with any third party, so long as such discussions do not result in the use or disclosure by a Receiving Party of Confidential Information protected by this Agreement. If the Parties

elect to proceed with any transaction, then all agreements, representations, warranties, covenants and conditions with respect thereto shall be only as set forth in a separate written agreement to be negotiated and executed by the Parties.

7. Each of the Parties acknowledges that the Confidential Information received from another Party constitutes valuable confidential, commercial, business and proprietary information of the Disclosing Party and serious commercial disadvantage or irreparable harm may result for the Disclosing Party if a Receiving Party breaches its nondisclosure obligations under this Agreement. In such event or the threat of such event, the Disclosing Party shall be entitled to injunctive relief, specific performance and other equitable relief without proof of monetary damages. In any action to enforce this Agreement or on account of any breach of this Agreement, the prevailing Party shall be entitled to recover, in addition to all other relief, its reasonable attorneys' fees and court costs associated with such action.

8. This Agreement may not be assigned by either Party without the prior written consent of another Party. No permitted assignment shall relieve a Receiving Party of its obligations hereunder with respect to Confidential Information disclosed to it prior to such assignment. Any assignment in violation of this Paragraph 7 shall be void. This Agreement shall be binding upon the Parties' respective successors and assigns.

9. This Agreement shall be deemed to be effective as of the date first above written, and shall continue thereafter for a period of two (2) years.

10. No Party shall be liable to another Party for any consequential, indirect, incidental, special, exemplary or punitive damages arising out of or related to this Agreement.

11. This Agreement shall be interpreted, construed and enforced in accordance with the laws of the state of Washington, without regard to such state's choice of law principles to the contrary. Each of the Parties irrevocably consents to the exclusive jurisdiction and venue of any state or federal court located in King County, Washington, with regard to any legal or equitable action or proceeding related to this Agreement.

12. This Agreement represents the entire understanding between the Parties with respect to the subject matter hereof and supersedes all prior communications, agreements and understandings relating thereto. The provisions of this Agreement shall not be modified, amended or waived, except by a written instrument duly executed by both of the Parties.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of _____
_____, 2003.

PUGET SOUND ENERGY, INC.

Exhibit 6
Financial Pro forma Template - Capital Costs

Project Capital Cost

<u>Capital Costs</u>	<u>\$000</u>
Land	-
Development Costs	-
Salaries	-
Travel Expenses	-
Preliminary Engineering	-
Permitting	-
Public Affairs	-
Legal	-
Market Assessment	-
Development Fees	-
Other	-
Overhead	-
Site Preparation	-
Facility Costs	-
Turbines	-
Blades	-
Towers	-
Bases	-
Substations	-
Computer Equipment	-
Transmission Interconnection	-
Cables	-
Other	-
Start-up Testing	-
Construction G&A	-
O&M Mobilization	-
Initial Spare Parts	-
Title Insurance	-
Property Taxes during construction	-
Insurance during construction	-
Initial Debt Service Reserve Fund	-
Initial Working Capital	-
Contingency	-
Total Capital Costs	<u>-</u>
<u>Financing Costs</u>	
Construction Loan Closing Costs/Fees	-
Non-Recourse Loan Interest	-
Equity Bridge Loan Interest	-
Lenders Closing Costs	-
Construction Loan Commitment Fees	-
Working Capital Facility Commitment Fee Construction	-
Debt Service Reserve Commitment Fee	-
Term Loan Fees	-
Total Financing Costs	<u>-</u>
Total Project Costs	<u><u>-</u></u>

Exhibit 6
Financial Pro forma Template - Capital Structure

Capital Structure

<u>Construction Financing (\$ in thousands):</u>	<u>% of Total</u>	<u>\$ 000</u>	<u>Rate</u>	<u>Term</u>
Senior Debt	-	-	-	-
Equity	-	-	-	-
Total Project Cost	-	-		
<u>Permanent Financing (\$ in thousands):</u>				
Senior Debt	-	-	-	-
Equity	-	-		
Total Project Cost	-	-		

