

August 17, 2010

***VIA ELECTRONIC FILING
AND OVERNIGHT DELIVERY***

Oregon Public Utility Commission
550 Capitol Street NE, Suite 215
Salem, OR 97301-2551

Attn: Filing Center

RE: UP ___ - Application Requesting Approval of Sale of interest in Windstar/Dave
Johnston Transmission Facilities

Enclosed for filing by PacifiCorp dba, Pacific Power is an Application Requesting
Approval of the Sale of an undivided interest to Black Hills Power in certain Wyoming
transmission facilities. An original and one (1) copy will be provided via overnight
delivery.


PacifiCorp respectfully requests that all data requests regarding this matter be addressed
to:

By E-mail (preferred): datarequest@pacificorp.com.

By regular mail: Data Request Response Center
PacifiCorp
825 NE Multnomah, Suite 2000
Portland, OR 97232

Please direct informal questions with respect to this filing to Joelle Steward, Regulatory
Manager, at (503) 813-5542.

Very truly yours,


Andrea L. Kelly
Vice President, Regulation

Enclosure

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UP _____

In the Matter of the Application of
PACIFICORP, dba PACIFIC POWER For
an Order Authorizing the Sale of an
Undivided Ownership Interest in Certain
Wyoming Transmission Facilities

APPLICATION OF PACIFICORP AND
WAIVER OF PAPER SERVICE

1 Pursuant to ORS 757.480(1)(a) and OAR 860-027-0025, PacifiCorp, d.b.a.
2 Pacific Power (Company), seeks approval from the Public Utility Commission of Oregon
3 (Commission) for the proposed sale of an undivided joint ownership interest in certain
4 transmission facilities to Black Hills Power, Inc. (Black Hills Power), a South Dakota
5 corporation. This transaction will result in Black Hills Power receiving an undivided
6 joint ownership interest equal to approximately 450 megawatts of bi-directional
7 transmission capacity from PacifiCorp's Windstar substation to PacifiCorp's Dave
8 Johnston substation utilizing an upgraded double-bundled 230 kilovolt (kV) transmission
9 line between the two substations. The Facilities are located in Converse County,
10 Wyoming. Additionally, pursuant to OAR 860-013-0070(4), the Company respectfully
11 waives paper service in this docket. The Company respectfully requests that this matter
12 be decided by December 15, 2010 to allow the Company to meet its obligations under
13 the transaction contract.

14 **I. Background**

15 Black Hills Power is a South Dakota corporation. Black Hills Power is a joint
16 owner with Basin Electric Power Cooperative and Powder River Energy Corporation of a
17 transmission system (the Common Use System), and is the tariff administrator of the

1 Joint Open Access Transmission Tariff for the Common Use System, which governs the
2 provision of transmission and interconnection service on the Common Use System.
3 Black Hills Power is constructing new transmission assets in eastern Wyoming and has
4 the need to connect the new assets to PacifiCorp's transmission system at the Windstar
5 substation in order to provide increased transmission capacity on Black Hills Power's
6 transmission system.

7 PacifiCorp proposes to sell to Black Hills Power an undivided joint ownership
8 interest in PacifiCorp's transmission assets at Windstar substation, including certain
9 interconnection upgrades at Windstar, 230 kV equipment at the Dave Johnston
10 substation, and the upgraded double bundled 230 kV transmission line connecting these
11 substations (Facilities). The Facilities that are the subject of this transaction are equal to
12 approximately 450 megawatts (MW) of bi-directional transmission capacity from
13 PacifiCorp's Windstar substation to PacifiCorp's Dave Johnston substation. As part of
14 the transaction and in order to facilitate Black Hills Power's interconnection, certain
15 upgrades will be required at the Windstar substation, including six new 230 kV breakers,
16 bus work, metering, protection and controls, communications, and associated upgrades.
17 In addition, PacifiCorp will upgrade a two-mile long portion of PacifiCorp's 230 kV
18 transmission line between the Dave Johnston and Windstar substations. Upon the
19 completion of this transaction, Black Hills Power will hold 450 MW of the 2000 MW
20 capacity Windstar substation, 450 MW of the 3000 MW capacity Dave Johnston
21 substation, and 450 MW of the total 800 MW capacity of the transmission line between
22 the Windstar and Dave Johnston substations. The Facilities are fully described in Exhibit

1 A to the Purchase and Sale Agreement. Included with this Application as Attachment A
2 is a copy of the Purchase and Sale Agreement.

3 The approximate sales price for this transaction is approximately \$6,220,172 plus
4 sales tax --as stated in Exhibit D of the Purchase and Sale Agreement. The net proceeds
5 of the sale will be \$1,350,480, consisting of the proceeds from the sale of the
6 Windstar/Dave Johnston Property (\$6,220,172), less the net book value of the
7 Windstar/Dave Johnston Property (\$4,150,419) and the estimated construction cost
8 (\$719,273) of the upgraded double bundled 230kV transmission line connecting Windstar
9 and Dave Johnston substations. Oregon's allocated share of the gain, which is \$371,189,
10 will be passed through to customers in Schedule 96, the property sales balancing account
11 adjustment. The final purchase price will be adjusted at closing for actual costs related to
12 the transaction, including upgrade costs. Black Hills Power is financially able and
13 willing to take a joint ownership interest, and payment will be made by wire at closing.

14 Currently, PacifiCorp transmits power over the Facilities to serve its existing
15 customers; however, the capacity associated with the Facilities is not required by
16 PacifiCorp for load service or any other obligation. After successful interconnection of
17 Black Hills Power at the Windstar substation,¹ the Purchase and Sale Agreement,
18 together with a joint operating, ownership and maintenance agreement, will allow Black
19 Hills to utilize its undivided joint ownership interest to deliver energy at 230 kV at the
20 Windstar or Dave Johnston substations.

21 II. Compliance with OAR 860-027-0025(1) Filing Requirements

22 A. Address

23 The Company's exact name and address of its principal business office are:

¹ The interconnection will be governed by a separate interconnection agreement.

1 PacifiCorp
2 825 NE Multnomah Street
3 Portland, OR 97232

4 **B. State in which incorporated; date of incorporation; other states in**
5 **which authorized to transact utility business**

6 PacifiCorp is a corporation organized and existing under and by the laws of the
7 State of Oregon. PacifiCorp's date of incorporation is August 11, 1987. PacifiCorp is
8 authorized to provide retail electric service in Oregon, California, Washington, Idaho,
9 Wyoming and Utah.

10 **C. Communications and notices**

11 All notices and communications with respect to this Application should be
12 addressed to:

PacifiCorp Oregon Dockets
825 NE Multnomah, Ste 2000
Portland, OR 97232
Email: OregonDockets@pacificorp.com

Michelle Mishoe
Legal Counsel
PacifiCorp
825 NE Multnomah, Ste 1800
Portland, OR 97232
Telephone: 503.813.5977
Facsimile: 503.813.7252
Email: michelle.mishoe@pacificorp.com

13 In addition, PacifiCorp respectfully requests that all data requests regarding this
14 matter be addressed to:

15 By e-mail (**preferred**) datarequest@pacificorp.com

16 By regular mail Data Request Response Center
17 PacifiCorp
18 825 NE Multnomah, Suite 2000
19 Portland, OR 97232

20 Informal inquires may also be directed to Joelle Steward, Regulatory Manager at
21 (503) 813-5542.

1 **D. Principal officers**

<u>Name</u>	<u>Title</u>
Gregory E. Abel	Chairman of Board & Chief Executive Officer
Micheal Dunn	President, PacifiCorp Energy
A. Richard Walje	President, Rocky Mountain Power
R. Patrick Reiten	President, Pacific Power
Douglas K. Stuver	Senior Vice President & Chief Financial Officer
Mark C. Moench	Senior Vice President & General Counsel
Bruce N. Williams	Vice President, Treasurer
Natalie L. Hocken	Vice President & General Counsel, Pacific Power

2 **E. Description of business; designation of territories served**

3 The Company engages in the generation, purchase, transmission, distribution and
4 sale of electric energy in Benton, Clatsop, Coos, Crook, Deschutes, Douglas, Gilliam,
5 Hood River, Jackson, Jefferson, Josephine, Klamath, Lake, Lane, Lincoln, Linn, Marion,
6 Morrow, Multnomah, Polk, Sherman, Tillamook, Umatilla, Wallowa, and Wasco
7 Counties in Oregon. PacifiCorp also engages in the generation, purchase, transmission,
8 distribution and sale of electric energy in the states of Washington, California, Idaho,
9 Wyoming and Utah.

10 **F. Statement showing for each class and series of capital stock: brief**
11 **description; amount authorized; amount outstanding; amount held as**
12 **required securities; amount pledged; amount owned by affiliated**
13 **interests; amount held in any fund**

14 Not applicable. See request for waiver in Section IV below.

15 **G. Statement showing for each class and series of long-term debt and**
16 **notes: brief description of amount authorized; amount outstanding;**
17 **amount held as required securities; amount pledged; amount held by**
18 **affiliated interests; amount in sinking and other funds**

19 Not applicable. See request for waiver in Section IV below.

20 **H. Purpose of application; description of consideration and method of**
21 **arriving at amount thereof**

1 The Company seeks approval of the sale and transfer to Black Hills Power an
2 undivided joint ownership interest in approximately 450 MW of bi-directional
3 transmission capacity from PacifiCorp's Windstar substation to PacifiCorp's Dave
4 Johnston substation through an upgraded double-bundled 230kV transmission line
5 between the two substations for the approximate consideration of \$6,220,172 plus sales
6 tax, as stated in Exhibit D of the Purchase and Sale Agreement. The Purchase and Sale
7 Agreement is included with this Application as Attachment A.

8 **I. Statement of facilities to be disposed of; description of present use and**
9 **proposed use; inclusion of all operating facilities of parties to the**
10 **transaction**

11 PacifiCorp transmits power using the Windstar substation, Dave Johnston
12 substation and connecting transmission lines to serve its existing customers. However,
13 the Company does not use all of the transmission capacity from these assets. Black Hills
14 Power intends to use its interest which allows its use of 450 MW bi-directional
15 transmission capacity to delivery energy to either the Windstar or Dave Johnston
16 substations.

17 **J. Statement by primary account of cost of the facilities and applicable**
18 **depreciation reserve**

19 Attachment B to this Application contains a spreadsheet showing the proposed
20 accounting entries for this transaction.

21 **K. Required filings with other state or federal regulatory bodies**

22 In addition to this Application, this proposed transaction also requires the
23 approval of the Federal Energy Regulatory Commission,² the California Public Utilities

² Black Hills Power is responsible for obtaining approval from the Federal Energy Regulatory Commission.
Page 6 – UP _____ PacifiCorp Application for Approval of Windstar/Dave Johnston Property Sale

1 Commission, the Wyoming Public Service Commission, and the Idaho Public Utility
2 Commission.

3 **L. Facts relied upon by applicant to show transaction is within the public**
4 **interest**

5 ORS 757.480 requires Commission approval for sales of property necessary and
6 useful in the performance of public service with a value in excess of \$100,000. See ORS
7 757.480(1)(a). OAR 860-027-0025(1)(l) requires that the utility show that such a
8 proposed sale is “consistent with the public interest.” The Commission has previously
9 held that this standard requires only a “no harm” showing.³

10 The proposed transaction will not harm customers and will provide regional
11 reliability benefits. Customers will benefit from the cash payment from Black Hills for
12 the purchase of the undivided joint ownership interest in transmission assets for which
13 the associated capacity is not required by PacifiCorp for load service or any other
14 obligation. Additionally, the transaction will result in increased regional reliability as a
15 result of the new Black Hills Power 230kV transmission line interconnected at
16 PacifiCorp’s Windstar substation. Moreover, joint planning and assessment of overall
17 system performance and efficient use of available land indicate that the optimal regional
18 solution is for Black Hills Power to interconnect a new line at PacifiCorp’s Windstar
19 substation, rather than Black Hills constructing its own substation and other transmission
20 facilities.

³ See, e.g., *In the Matter of a Legal Standard for Approval of Mergers*, Docket UM 1011, Order No. 01-778 (Sept. 4, 2001) (“The remainder of the statutory scheme, those statutes governing transfer, sale, affiliated interest transactions, and contracts, either expresses no standard (for instance, ORS 757.480, .485) and has been read to require a no harm standard, or contains a ‘not contrary to the public interest’ standard (ORS 757.490, .495.)”) (emphasis added); *In the Matter of the Application of PacifiCorp*, Docket UP 168, Order No. 00-112, at 6 (Feb. 29, 2000) (regarding the sale of the Centralia generating plant); *In the Matter of Portland General Electric*, Docket UP 158, Order No. 00-111, at 2 (Feb. 29, 2000) (regarding the sale of the Colstrip generating units); *In the Matter of the Application of Portland General Electric*, Docket UP 165/UP 170, Order No. 99-730, at 7(Nov. 29, 1999) (regarding the sale of the Centralia generating plant).

1 **M. Reasons relied upon for entering into the proposed transaction;**
2 **benefits to customers**

3 Please refer to sections I. and L. above.

4 **N. Amount of stock, bonds, or other securities, now owned, held or**
5 **controlled by applicant, of the utility from which stock or bonds are**
6 **proposed to be acquired**

7 Not applicable. See request for waiver in Section IV below.

8 **O. Statement of franchises held; date of expiration; facilities of**
9 **transferees**

10 Not applicable. See request for waiver in Section IV below.

11 **III. Compliance with OAR 860-027-0025(2) Filing Requirements**

12 **A. Exhibit A. Articles of Incorporation**

13 Not applicable. See request for waiver in Section IV below.

14 **B. Exhibit B. Bylaws**

15 Not applicable. See request for waiver in Section IV below.

16 **C. Exhibit C. Resolution of directors authorizing transaction**

17 This transaction did not require approval from the Company's board of directors.

18 See request for waiver in Section IV below.

19 **D. Exhibit D. Mortgages, trust, deeds or indentures securing obligation**
20 **of each party**

21 Not applicable. See request for waiver in Section IV below.

22 **E. Exhibit E. Balance sheet showing booked amounts, adjustments to**
23 **record the proposed transaction and pro forma, with supporting fixed**
24 **capital or plant schedules in conformity with the forms in the annual**
25 **report**

26 This transaction will not materially affect the Company's balance sheet. See
27 request for waiver in Section IV below.

28 **F. Exhibit F. Known contingent liabilities**

1 There are no known contingent liabilities associated with this transaction. See
2 request for waiver in Section IV below.

3 **G. Exhibit G. Comparative income statements showing recorded results**
4 **of operations, adjustments to record the proposed transaction and pro**
5 **forma, in conformity with the form in the annual report**

6 The transaction will not materially affect the Company's income statement. See
7 request for waiver in Section IV below.

8 **H. Exhibit H. Analysis of surplus for the period covered by income**
9 **statements referred to in G**

10 The transaction will not materially affect the Company's income statement. See
11 request for waiver in Section IV below.
12

13 **I. Exhibit I. Copy of contract for transaction and other written**
14 **instruments**

15 Included with this Application as Attachment A is a copy of the Purchase and
16 Sale Agreement.
17

18 **J. Exhibit J. Copy of each proposed journal entry to be used to record**
19 **the transaction**

20 Please refer to Attachment B.

21 **K. Exhibit K. Copy of each supporting schedule showing the benefits, if**
22 **any, which each applicant relies upon to support the facts required by**
23 **(1)(l) of this rule and reasons as required by (1)(m).**

24 This Application and attachments contain the necessary information to
25 demonstrate the benefits of this transaction and for the Commission to base its decision.

26 **IV. Request for Waiver of certain filing requirements**

27 Oregon Administrative Rules 860-027-0025(1) and (2) require certain information
28 and exhibits be provided when filing an application for authority to transfer utility

1 property. The Company either provides the required information as noted above, or
2 seeks the Commission's waiver of the requirements as follows:

3 (a) The information required in OAR 860-027-0025(1)(a)-(e), (h)-(m) is
4 provided in the Application above. Because this transaction does not involve the
5 acquisition or sale of financial instruments, the Company respectfully requests waiver of
6 the requirements of OAR 860-027-0025(1)(f), (g), (n) and (o). A grant of this waiver will
7 not impede the Commission's analysis of this Application.

8 (b) OAR 860-027-0025(2)(a) & (b) require submittal of a copy of the
9 Company's articles of incorporation and bylaws. The Company respectfully requests a
10 waiver of these filing requirements on the grounds that production of these documents
11 would be burdensome and would not advance the Commission's analysis of this
12 application because the subject transaction involves an encumbrance on utility property
13 and does not affect the Company's corporate structure or governance.

14 (c) OAR 860-027-0025(2)(c) requires submittal of a copy of the board of
15 director's resolution authorizing the transaction. The Company respectfully requests a
16 waiver of this requirement, as no board resolution was necessary for approval of the sale
17 of the Facilities.

18 (d) OAR 860-027-0025(2)(e) requires submittal of balance sheets showing
19 booked amounts, adjustments to record the proposed transaction and pro forma
20 information. The Company respectfully requests that the requirement to provide pro
21 forma information be waived because the sale of the facilities will not materially affect
22 the Company's financial statements.

1 (e) OAR 860-027-0025(2)(f) requires submittal of a statement of all known
2 contingent liabilities as of the date of the application. The Company respectfully requests
3 a waiver of this requirement as the Company is unaware of any contingent liabilities that
4 remain outstanding as of the date of this Application.

5 (f) OAR 860-027-0025(2)(g) & (h) require submittal of comparative income
6 statements showing the results of operations as affected by the transaction and an analysis
7 of “surplus” for the period of the income statements, respectively. For the reasons set
8 forth in Section IV(e) above, the Company respectfully requests that this Commission
9 waive these requirements.

10 (g) OAR 860-027-0025(2)(k) requires submittal of schedules upon which the
11 applicant relies for the contention that the transaction is in the public interest. The
12 Company relies upon the statements made in this Application and respectfully requests a
13 waiver of this filing requirement.

14 **V. Prayer for Relief**

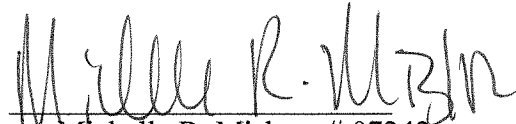
15 PacifiCorp respectfully requests a Commission order:

16 (a) finding that the sale of an undivided interest in the Facilities will not harm
17 the Company’s customers and is consistent with the public interest;

18 (b) granting other such relief as the Commission deems necessary and proper.

DATED this 17th day of August, 2010.

Respectfully submitted,



Michelle R. Mishoe, # 07242

Legal Counsel
Pacific Power

ATTACHMENT A
PURCHASE AND SALE AGREEMENT



P.O. Box 2757
Portland, OR 97208-2757

February 23, 2010

Mr. Larry D. Williamson
FERC Tariff and Compliance Manager
Black Hills Corporation
409 Deadwood Avenue
P.O. Box 1400
Rapid City, SD 57709

Re: Windstar / Dave Johnston Agreements

Dear Mr. Williamson:

Last week PacifiCorp sent Black Hills Corporation a fully executed copy of the Purchase and Sale Agreement and Transmission Interconnection Agreement for its record.

A review of the documents show the date was not filled in on the cover sheet and first paragraph of each agreement. To remedy that situation, enclosed is a replacement dated cover sheet and first page to update each agreement.

Also noted, on PacifiCorp's signature page for each agreement, the name and title was not filled in so attached is a copy of each page showing that information either to add to each document or supply the previously omitted information for Black Hills reference.

Please accept our apologies for this inconvenience.

Sincerely,

Les Bahls for Les Bahls

Les Bahls
Director, Customer Accounts

P. O. Box 2757
Portland, OR 97208-2757

825 NE Multnomah, Suite 1600
Portland, OR 97232



February 18, 2010

Larry D. Williamson
FERC Tariff and Compliance Manager
Black Hills Corporation
409 Deadwood Avenue
Rapid City, SD 57709-1400

**RE: Fully Executed Purchase and Sale Agreement and Transmission System
Interconnection Agreement**

Dear Mr. Williamson:

Enclosed please find one (1) fully executed Purchase and Sale Agreement and one (1) fully executed Transmission System Interconnection Agreement dated February 18, 2010.

If more information is required, please contact me at (503) 813-7090.

Sincerely,

A handwritten signature in black ink, appearing to read "Les Bahls", written over a horizontal line.

Les Bahls
Director, Transmission Account Manager

Enclosures

EXECUTION COPY

PURCHASE AND SALE AGREEMENT

BETWEEN

BLACK HILLS POWER, INC.

AND

PACIFICORP

February 18, 2010

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Schedule 3.05	Title
Schedule 4.03	Governmental Authorizations

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (this "Agreement"), dated this ___ day of February, 2010 (the "Execution Date"), is between Black Hills Power, Inc., a South Dakota corporation ("Buyer"), and PacifiCorp, an Oregon corporation ("Seller"). Buyer and Seller are sometimes hereinafter referred to individually as "Party" and collectively as "Parties".

RECITALS:

WHEREAS, Seller is a transmission provider which owns and operates certain facilities for the transmission of electric power and energy located in Wyoming;

WHEREAS, Buyer is a joint owner with Basin Electric Power Cooperative and Powder River Energy Corporation of certain transmission facilities (the "Common Use System"), and is the tariff administrator of the Joint Open Access Transmission Tariff for the Common Use System, which governs the provision of transmission and interconnection service on the Common Use System;

WHEREAS, Buyer desires to obtain transmission connectivity with Seller, Western Area Power Administration and Missouri Basin Power Project as indicated in Buyer's Interconnection Request to Seller, dated August 13, 2007 ("Interconnection Request");

WHEREAS, in response to Buyer's Interconnection Request, Seller prepared and delivered to Buyer a System Impact and Facilities Study Report, dated as of November 24, 2009, which Buyer finds satisfactory;

WHEREAS, the Parties have entered into that certain Transmission System Interconnection Agreement, dated as of the date hereof (the "Transmission Interconnection Agreement"), pursuant to which the Parties have agreed on the terms and conditions by which Buyer may interconnect to Seller's Windstar 230 kV substation (as further described in Exhibit A, the "Windstar Substation"), including the interconnection equipment and facilities that will be required as result thereof, including the Windstar Substation Upgrades, and the allocation of responsibility as between the Parties for the costs and expenses of such interconnection equipment and facilities;

WHEREAS, Buyer intends to construct and own a 230 kV transmission line (as further described in Exhibit A, the "Buyer Planned Transmission Line") which Buyer desires to interconnect at Seller's Windstar Substation;

WHEREAS, Seller intends to upgrade its existing Casper # 1 transmission line, which is a 230 kV transmission line (as upgraded and as further described in Exhibit A, the "Seller Upgraded Transmission Line") between the Windstar Substation and the Dave Johnston 230 kV substation (as further described in Exhibit A, the "Dave Johnston Substation");

WHEREAS, following completion of the Seller Upgraded Transmission Line and Windstar Substation Upgrades, Seller desires to sell to Buyer and Buyer desires to purchase from

Seller an undivided ownership interest in the Windstar Substation, the Dave Johnston Substation, and the Seller Upgraded Transmission Line (each a “Component” and, collectively, the “Components” or the “Transmission Facilities”), subject to the terms and conditions set forth in this Agreement, and thereafter the Parties desire to jointly own the Transmission Facilities as tenants in common pursuant to a Joint Ownership, Operating and Maintenance Agreement to be entered into between the Parties at Closing; and

WHEREAS, the Parties desire to memorialize the terms and conditions by which Seller will sell to Buyer and Buyer will purchase from Seller an undivided ownership interest in the Transmission Facilities.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

ARTICLE I DEFINITIONS

1.01 Definitions. Unless the context otherwise requires, the following capitalized terms have the meanings given to them below:

“Adverse Regulatory Event” means one or more Governmental Authorities takes one or more actions as a result of, in connection with or arising out of the Contemplated Transaction that has or reasonably is expected to have a Material Adverse Effect on Seller or any of its Affiliates.

“Affiliate” means, with respect to a Party, each Person that, directly or indirectly, controls, is controlled by or is under common control with, such designated Party. For the 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, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

“Agreement” means this Purchase and Sale Agreement (including all Exhibits and Schedules attached hereto), as the same may be amended and supplemented from time to time in accordance with the terms hereof.

“Approved Courts” has the meaning set forth in Section 11.06(b).

“Bill of Sale” has the meaning set forth in Section 2.07(a)(iii).

“Buyer” has the meaning set forth in the preamble.

“Buyer Planned Transmission Line” has the meaning set forth in the recitals.

“Buyer’s Ownership Interest” means Buyer’s undivided ownership interest in the Transmission Facilities which shall be calculated as of the Closing in accordance with Exhibit B.

“Business Day” means any day except a Saturday, Sunday and any day which is a legal holiday or a day on which banking institutions in New York City are authorized or obligated by Governmental Requirements to close.

“Claim” means any demand, claim, action, investigation, legal proceeding (whether at law or in equity) or arbitration.

“Closing” has the meaning set forth in Section 2.06.

“Closing Date” has the meaning set forth in Section 2.06.

“Common Use System” has the meaning set forth in the recitals.

“Component” and “Components” has the meaning set forth in the recitals.

“Component Capacity Share” has the meaning set forth in Exhibit B.

“Component Share” has the meaning set forth in Exhibit B.

“Contemplated Transaction” has the meaning set forth in Section 2.06.

“Dave Johnston Substation” has the meaning set forth in the recitals.

“Effective Time of Closing” has the meaning set forth in Section 2.06.

“Encumbrance” means any charge, claim, equitable interest, lien, option, pledge, security interest, right of first refusal, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income, or exercise of any other attribute of ownership.

“Excluded Assets” has the meaning set forth in Section 2.02.

“Execution Date” has the meaning set forth in the preamble.

“FERC” means the Federal Energy Regulatory Commission.

“Final Order” means an action by a Governmental Authority that has not been reversed, stayed, enjoined, set aside, annulled or suspended, with respect to which any waiting period prescribed by applicable Governmental Requirements before the Contemplated Transaction may be consummated has expired or been terminated, and as to which all conditions to the consummation of the Contemplated Transaction prescribed by applicable Governmental Requirement have been satisfied.

“Force Majeure” mean an event or circumstance beyond the reasonable control of and without the fault or negligence of Seller which, despite the exercise of reasonable diligence, cannot be prevented, avoided or removed by Seller including, to the extent satisfying the above requirements, acts of God; earthquake; abnormal weather condition; hurricane; flood; lightning;

high winds; drought; peril of the sea; explosion; fire; war (declared or undeclared); military action; sabotage; riot; insurrection; civil unrest or disturbance; acts of terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out that are of an industry or sector-wide nature and that are not directed solely or specifically at Seller; the binding order of any Governmental Authority, provided that Seller has in good faith reasonably been contesting such order; the failure to act on the part of any Governmental Authority, provided that such action has been timely requested and diligently pursued; unavailability of equipment, supplies or products, but only to the extent caused by Force Majeure; failure of equipment, provided that the equipment has been operated and maintained in accordance with Good Utility Practice; and transportation delays or accidents, but only to the extent otherwise caused by Force Majeure; provided, however, that neither insufficiency of funds, financial inability to perform nor changes in market conditions shall constitute Force Majeure.

“Good Utility Practice” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region, including those practices required by Federal Power Act section 215(a)(4).

“Governmental Authority” means any federal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power; or any court or governmental tribunal, in each case, having jurisdiction over the Contemplated Transaction, either Party or its Affiliates or the ownership, construction, use or operation and maintenance of the Transmission Facilities.

“Governmental Authorizations” means any license, permit, order, approval, filing, waiver, exemption, variance, clearance, entitlement, allowance, franchise, or other authorization from or by a Governmental Authority.

“Governmental Requirements” means all laws, statutes, ordinances, rules, regulations, codes, and similar acts or promulgations or other legally enforceable requirements of any Governmental Authority.

“Indemnified Party” has the meaning set forth in Section 9.04(a).

“Indemnifying Party” has the meaning set forth in Section 9.04(a).

“Interconnection Request” has the meaning set forth in the recitals.

“Joint Ownership, Operating and Maintenance Agreement” has the meaning set forth in Section 2.07(a)(iv).

“License” has the meaning set for in Section 2.07(a)(vi).

“Losses” means the amount of any loss, liability, claim, damage, payment, costs and expense (including reasonable attorneys’ fees), whether or not involving a third-party claim.

“Material Adverse Effect” means, in respect of a Party, an event, circumstance, condition, or occurrence of whatever nature that materially and adversely affects: (a) the business, assets, property, results of operation, or financial condition of such Party or any of its Affiliates, including a material adverse regulatory impact on such Party or any of its Affiliates; (b) such Party’s ability to perform its obligations under this Agreement or any of the Related Documents; or (c) the validity or enforceability of this Agreement or any of the Related Documents, including the ability of such Party to enforce any of its remedies hereunder or thereunder.

“Mortgage and Deed of Trust” means that certain Mortgage and Deed of Trust, dated as of January 9, 1989, as amended and supplemented, between PacifiCorp and The Bank of New York Mellon Trust Company, N.A.

“NERC” means the North American Electric Reliability Corporation or any successor thereto.

“NERC Reliability Coordination Agreement” has the meaning set forth in Section 5.09.

“Ownership Interest” means Buyer’s Ownership Interest or Seller’s Ownership Interest.

“Ownership Interests” means Buyer’s Ownership Interest and Seller’s Ownership Interest.

“Party” and “Parties” has the meaning set forth in the preamble.

“Permitted Encumbrances” means (i) any of the Encumbrances listed on Schedule 1.01 attached hereto; (ii) any Encumbrance pursuant to any lease, easement, license, right of way or other real property interest agreement or document of any kind, copies of which Seller has provided to Buyer on or prior to Closing, or any applicable governmental regulations which relates to all or a portion of the real property on which the Transmission Facilities are located; (iii) statutory liens for current taxes or assessments not yet due or payable; (iv) mechanics’, carriers’, workers’, repairers’, landlords’, and other similar liens arising or incurred in the ordinary course of business relating to obligations as to which there is no default on the part of Seller, or pledges, or deposits, or other liens securing the performance of statutory obligations; (v) any Encumbrances set forth in any state, local, or municipal franchise or governing ordinance under which any portion of the Purchased Facilities are owned or operated; or (vi) Encumbrances, including zoning, entitlement, restriction, and other land use regulations by Governmental Authorities, which, together with all other Encumbrances, do not materially detract from the value of or materially interfere with the present use of the Transmission Facilities or the conduct of the business thereon as it is currently being used and conducted.

“Person” means an individual, partnership, corporation, limited liability company, joint venture, association, trust, unincorporated organization, governmental entity, or other form of entity.

“Pre-Funded Amount” has the meaning set forth in Section 2.03.

“Proceeding” means any action, arbitration, audit, hearing, investigation, litigation, or suit (whether civil, criminal, administrative, investigative, or informal) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Authority or arbitrator.

“Proprietary Information” has the meaning set forth in Section 10.06.

“Purchase Price” has the meaning set forth in Section 2.03.

“Purchased Facilities” has the meaning set forth in Section 2.01.

“Related Documents” means the Bill of Sale, the Joint Ownership, Operating and Maintenance Agreement, the Transmission Interconnection Agreement, the NERC Reliability Coordination Agreement and each other document, certificate or instrument delivered by each of the Parties on the Closing in accordance with the Contemplated Transaction.

“Representatives” means, with respect to a Party, the directors, officers, shareholders, partners, members, employees, agents, consultants, contractors or other representatives of such Party.

“Required Closing Governmental Authorizations” means the Governmental Authorizations required to be obtained by the Parties in order to consummate the Contemplated Transaction in accordance with this Agreement as listed on Exhibit C.

“Seller” has the meaning set forth in the preamble.

“Seller Marks” means the rights of Seller and its Affiliates to the names “PacifiCorp,” “Rocky Mountain Power” or any trade names, trademarks, service marks, corporate names or logos, or any derivative or combination thereof, that are confusingly similar thereto.

“Seller Target Date” has the meaning set forth in Section 5.01(a).

“Seller Upgraded Transmission Line” has the meaning set forth in the recitals.

“Seller’s Ownership Interest” means Seller’s undivided ownership interest in the Transmission Facilities which shall be calculated as of the Closing in accordance with Exhibit B.

“Substation Target Date” has the meaning set forth in Section 5.01(b).

“Transmission Capacity” has the meaning set forth in Exhibit B.

“Transmission Facilities” has the meaning set forth in the recitals.

“Transmission Facilities Capacity Share” has the meaning set forth in Exhibit B.

“Transmission Interconnection Agreement” has the meaning set forth in the recitals.

“Transferee” has the meaning set forth in Section 10.01.

“Transferor” has the meaning set forth in Section 10.01.

“Windstar Substation” has the meaning set forth in the recitals.

“Windstar Substation Upgrades” has the meaning give to the defined term “PacifiCorp Transmission System Interconnection Facilities” in the Transmission Interconnection Agreement.

1.02 Rules of Construction. The following rules of interpretation shall apply in this Agreement:

- (a) The masculine shall include the feminine and neuter.
- (b) References to “Articles,” “Sections,” “Exhibits” and “Schedules” shall be to articles, sections, exhibits and schedules of this Agreement.
- (c) The Exhibits and Schedules attached hereto are incorporated in and are intended to be a part of this Agreement.
- (d) This Agreement was negotiated and prepared by both Parties with the advice and participation of counsel. The Parties have agreed to the wording of 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.
- (e) Each reference in this Agreement to any agreement or document or a portion or provision thereof shall be construed as a reference to the relevant agreement or document as amended, supplemented or otherwise modified from time to time.
- (f) Each reference in this Agreement to Governmental Requirements and to terms defined in, and other provisions of, Governmental Requirements shall be references to the same (or a successor to the same) as amended, supplemented or otherwise modified from time to time.
- (g) Whenever an event is to be performed, a period commences or ends, or a payment is to be made on or by a particular date and the date in question falls on a day which is not a Business Day, the event shall be performed, or the payment shall be made, on the next succeeding Business Day; provided, however, that all calculations shall be made regardless of whether any given day is a Business Day and whether or not any given period ends on a Business Day.

(h) Each reference in this Agreement to a Person includes its successors and permitted assigns; and each reference to a Governmental Authority includes any Governmental Authority succeeding to its functions and capacities.

(i) In this Agreement, the words “include,” “includes” and “including” are to be construed as being at all times followed by the words “without limitation.”

(j) The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall, unless otherwise specified, refer to this Agreement as a whole and not to any particular provision of this Agreement.

ARTICLE II PURCHASE AND SALE OF TRANSMISSION FACILITIES

2.01 Purchase and Sale. Subject to the terms and conditions set forth in this Agreement, at the Closing, Seller shall sell, assign, convey, transfer and deliver to Buyer, and Buyer shall purchase and acquire from Seller, free and clear of all Encumbrances (other than Permitted Encumbrances), Buyer’s Ownership Interest in all of Seller’s right, title, and interest in, and to, the assets constituting the Transmission Facilities, but excluding the Excluded Assets (the “Purchased Facilities”).

2.02 Excluded Assets. The Purchased Facilities do not include any property or assets of Seller not described in Section 2.01 and, notwithstanding any provision to the contrary in Section 2.01 or elsewhere in this Agreement, the Purchased Facilities do not include the following property or assets of Seller (the “Excluded Assets”), and Buyer shall have no liability with respect thereto:

- (a) the Seller Marks;
- (b) all cash, cash equivalents, bank deposits, accounts receivable, and any income, sales, payroll or other tax receivables;
- (c) any refund or credit (i) related to taxes paid by or on behalf of Seller, whether such refund is received as a payment or as a credit against future taxes payable, or (ii) relating to a period before the Closing Date;
- (d) any Transmission Facilities that have been disposed of in the ordinary course and in accordance with Good Utility Practice prior to Closing;
- (e) all of the claims or causes of action of Seller against any Person;
- (f) all insurance policies maintained by or on behalf of Seller or any of its Affiliates, and rights thereunder, including any such policies and rights in respect of the Transmission Facilities;
- (g) the rights of Seller arising under or in connection with this Agreement, any certificate or other document delivered in connection herewith, and any of the transactions contemplated hereby and thereby; and

(h) all other assets and properties of Seller other than the Purchased Facilities.

2.03 Purchase Price. The total consideration to be paid by Buyer to Seller at Closing for Buyer's Ownership Interest in the Purchased Facilities will be determined in accordance with Exhibit D (the "Purchase Price"). Not less than fifteen (15) Business Days before the Closing Date, Seller shall deliver to Buyer a written notice setting forth the Purchase Price and reasonable detail on the calculation of the Purchase Price in accordance with Exhibit D, including any amount of the Purchase Price which Buyer has already paid to Seller pursuant to the Transmission Interconnection Agreement in respect of the Purchased Facilities, but excluding any amounts paid to Seller pursuant to the Transmission Interconnection Agreement in respect of "Black Hills Power Transmission System Interconnection Facilities" as defined in the Transmission Interconnection Agreement (the "Pre-Funded Amount").

2.04 Payment. On the Closing Date, Buyer shall pay to Seller the Purchase Price (less the Pre-Funded Amount), by wire transfer (in immediately available funds in the lawful currency of the United States) to an account or accounts designated by Seller.

2.05 Allocation of Purchase Price. The Parties have jointly determined and set forth in Exhibit D the proper allocation of the Purchase Price among the assets comprising Buyer's Ownership Interest in the Purchased Facilities. The allocation shall be binding on the Parties, and neither of them shall file, or cause to be filed, any tax return or form, or take a position with any tax authority or jurisdiction, that is inconsistent with this allocation. Each Party will provide the other Party promptly with any other information required to complete any tax return or form. Each Party will notify the other, and will provide the other, with reasonably requested cooperation and information in the event of an examination, audit or other proceeding regarding the allocations provided for in this Section 2.05.

2.06 Closing. Unless this Agreement is terminated early pursuant to Section 8.01, the closing (the "Closing") of the purchase and sale of Buyer's Ownership Interest in the Purchased Facilities (the "Contemplated Transaction") shall take place at the offices of Seller located at 825 NE Multnomah Street, Suite 2000, Portland, Oregon 97232, or at such other place as the Parties may mutually agree upon, at 10:00 a.m., local time (the "Effective Time of Closing"), on the date ("Closing Date") that is two (2) Business Days after satisfaction or waiver of the conditions specified in Articles VI and VII (other than conditions that by their terms are to be satisfied on the Closing Date).

2.07 Closing Deliverables.

(a) At the Closing, Seller shall deliver to Buyer (in form and substance reasonably acceptable to Buyer) each of the following, duly executed (where applicable):

(i) a certificate duly executed by an authorized officer or representative of Seller, dated as of the Closing Date, certifying that each of the conditions set forth in Section 7.01 and Section 7.02 has been satisfied as of the Closing Date;

(ii) a certificate duly executed by an authorized officer or representative of Seller, dated as of the Closing Date, setting forth and certifying (A) the text of

the resolutions of the board of directors (or similar body) of Seller authorizing the execution, delivery, and performance of this Agreement and each Related Document to which Seller is a party; and (B) the incumbency and signature of the officer(s) or representatives of Seller executing this Agreement and the Related Documents to which Seller is a party;

(iii) a bill of sale (“Bill of Sale”) in the form attached hereto as Exhibit E, or otherwise in form and substance reasonably satisfactory to the Parties;

(iv) a joint ownership, operating and maintenance agreement (the “Joint Ownership, Operating and Maintenance Agreement”) in the form attached hereto as Exhibit F, or otherwise in form and substance reasonably satisfactory to the Parties;

(v) copies of all Required Closing Governmental Authorizations that Seller is responsible for obtaining pursuant to Exhibit C;

(vi) a license (the “License”) in the form attached hereto as Exhibit H, or otherwise in form and substance reasonably satisfactory to the Parties;

(vii) the NERC Reliability Coordination Agreement in the form attached hereto pursuant to Section 5.09 as Exhibit G, or otherwise in form and substance reasonably satisfactory to the Parties; and

(viii) such other documents, certificates or instruments as Buyer may reasonably request of Seller for the purpose of (A) evidencing the accuracy of Seller’s representations and warranties in Article III, (B) evidencing the performance and compliance by Seller with its covenants in Article V, or (C) otherwise facilitating the consummation of the Contemplated Transaction.

(b) At the Closing, Buyer shall deliver to Seller (in form and substance reasonably acceptable to Seller) each of the following, duly executed (where applicable):

(i) the Purchase Price;

(ii) a certificate duly executed by an authorized officer or representative of Buyer, dated as of the Closing Date, certifying that each of the conditions set forth in Section 6.01 and Section 6.02 has been satisfied as of the Closing Date;

(iii) a certificate duly executed by an authorized officer or representative of Buyer, dated as of the Closing Date, setting forth and certifying (A) the text of the resolutions of the board of directors (or similar body) of Buyer authorizing the execution, delivery, and performance of this Agreement and each Related Document to which Buyer is a party; and (B) the incumbency and signature of the officer(s) or representatives of Buyer executing this Agreement and the Related Documents to which Buyer is a party;

(iv) the Joint Ownership, Operating and Maintenance Agreement in the form attached hereto as Exhibit F, or otherwise in form and substance reasonably satisfactory to the Parties;

(v) the License in the form attached hereto as Exhibit H, or otherwise in form and substance reasonably satisfactory to the Parties;

(vi) the NERC Reliability Coordination Agreement in the form attached hereto pursuant to Section 5.09 as Exhibit G, or otherwise in form and substance reasonably satisfactory to the Parties;

(vii) copies of all Required Closing Governmental Authorizations that Buyer is responsible for obtaining pursuant to Exhibit C; and

(viii) such other documents, certificates or instruments as Seller may reasonably request of Buyer for the purpose of (A) evidencing the accuracy of Buyer's representations and warranties in Article IV, (B) evidencing the performance and compliance by Buyer with its covenants in Article V, or (C) otherwise facilitating the consummation of the Contemplated Transaction.

2.08 Closing Costs. Each Party shall bear its own closing costs, including any taxes and fees imposed by Governmental Requirements upon it in connection with the Contemplated Transaction; provided, however, that (a) Buyer shall be responsible for and shall pay or reimburse Seller for all sales tax in connection with the Contemplated Transaction; and (b) the Parties shall share equally in the costs and expenses, including filing fees, associated with obtaining the Required Closing Governmental Authorizations.

2.09 Property Taxes. The property taxes and assessments relating to the Transmission Facilities for the current tax year shall be pro-rated between the Parties at Closing, such that Seller is responsible for all such taxes up to the Closing Date and Buyer is responsible, in accordance with Buyer's Ownership Interest, for its share of such taxes thereafter.

ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer as of the Execution Date as follows:

3.01 Formation and Good Standing; Authority; Binding. Seller is duly formed, validly existing and in good standing under the laws of the jurisdiction of its formation. Seller has all requisite power necessary to own its assets and carry on its business as now being conducted and as proposed to be conducted under this Agreement. Seller has all necessary power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement, and the execution and delivery of this Agreement and the performance by it of this Agreement have been duly authorized by all necessary corporate action on its part. This Agreement has been duly and validly executed and delivered by Seller and constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms, except as the same may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and by principles of equity regardless of whether such principles are considered in a proceeding at law or in equity.

3.02 No Conflicts. The execution and delivery of this Agreement and the performance by Seller of this Agreement do not: (a) violate its organizational documents; (b) violate any Governmental Requirements applicable to it; or (c) result in a breach of or constitute a default of any material agreement to which it is a party, and which, in the case of Section 3.02(a), Section 3.02(b) and Section 3.02(c), would not individually or in the aggregate have a Material Adverse Effect on Buyer or any of its Affiliates.

3.03 Compliance with Laws; Governmental Authorizations.

(a) Seller is in compliance with all Governmental Requirements that are applicable to the Transmission Facilities, except where non compliance would not individually or in the aggregate have a Material Adverse Effect on Buyer or any of its Affiliates.

(b) Except as disclosed on Schedule 3.03(b), all material Governmental Authorizations required by Governmental Requirements to have been obtained by Seller in connection with the due execution and delivery of, and performance by it of its obligations under, this Agreement, have been duly obtained or made and are in full force and effect.

3.04 Proceedings. To Seller's knowledge, no Proceeding has been commenced or threatened: (a) by or against Seller that relates to the Transmission Facilities; or (b) that challenges or that may have the effect of preventing, delaying or making illegal, the Contemplated Transaction.

3.05 Title. Except as set forth on Schedule 3.5, Seller has good title to all of the Transmission Facilities, free and clear of all Encumbrances (other than Permitted Encumbrances).

3.06 Sufficient Funds. Seller has sufficient funds to finance the construction of the Seller Upgraded Transmission Line and to perform its other obligations under this Agreement.

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller as of the Execution Date as follows:

4.01 Formation and Good Standing; Authority; Binding. Buyer is duly formed, validly existing and in good standing under the laws of the jurisdiction of its formation. Buyer has all requisite power necessary to own its assets and carry on its business as now being conducted and as proposed to be conducted under this Agreement. Buyer has all necessary power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement, and the execution and delivery of this Agreement and the performance by it of this Agreement have been duly authorized by all necessary corporate action on its part. This Agreement has been duly and validly executed and delivered by Buyer and constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms, except as the same may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and by principles of equity regardless of whether such principles are considered in a proceeding at law or in equity.

4.02 No Conflicts. The execution and delivery of this Agreement and the performance by Buyer of this Agreement do not: (a) violate its organizational documents; (b) violate any Governmental Requirements applicable to it; or (c) result in a breach of or constitute a default of any material agreement to which it is a party, and which, in the case of Section 4.02(a), Section 4.02(b) and Section 4.02(c), would not individually or in the aggregate have a Material Adverse Effect on Seller or any of its Affiliates.

4.03 Compliance with Governmental Authorizations. Except as disclosed on Schedule 4.03, all material Governmental Authorizations required by Governmental Requirements to have been obtained by Buyer in connection with the due execution and delivery of, and performance by it of its obligations under, this Agreement, have been duly obtained or made and are in full force and effect.

4.04 Proceedings. To Buyer's knowledge, no Proceeding has been commenced or threatened: (a) by or against Buyer that relates to the Transmission Facilities; or (b) that challenges or that may have the effect of preventing, delaying or making illegal, the Contemplated Transaction.

4.05 Sufficient Funds. Buyer has sufficient funds to finance the purchase of the Purchased Facilities and to perform its other obligations under this Agreement.

4.06 Brokers or Finders. Buyer has incurred no obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement or the Contemplated Transaction and will indemnify and hold Seller harmless from any such payment that is or is alleged to be due.

ARTICLE V COVENANTS OF PARTIES

5.01 Construction of the Seller Upgraded Transmission Line and Windstar Substation Upgrades.

(a) From and after the Execution Date, Seller shall use commercially reasonable efforts to complete development, design, engineering, procurement, construction, permitting, testing and commissioning of the Seller Upgraded Transmission Line by December 31, 2010 (the "Seller Target Date"), all of which shall be carried out under the sole and exclusive supervision and direction of Seller. Each Party acknowledges that the completion of the Seller Upgraded Transmission Line may be affected by matters beyond the control or contemplation of the Parties and that Seller shall have the sole and absolute discretion to extend the Seller Target Date. The Parties further acknowledge and agree that: (i) the Seller Target Date is a current estimate based upon expected permitting and construction timelines; (ii) the Seller Target Date is not binding on Seller and may be extended by Seller, in its sole and absolute discretion, to account for any change in circumstance that affects the Seller Upgraded Transmission Line, including events of Force Majeure and any market conditions that impact the viability of the Seller Upgraded Transmission Line; and (iii) Seller shall not have any liability or obligation whatsoever to Buyer if the Seller Upgraded Transmission Line is not completed by the Seller Target Date.

(b) From and after the Execution Date, Seller shall use commercially reasonable efforts to design, procure, construct and install the Windstar Substation Upgrades pursuant to the Transmission Interconnection Agreement by June 30, 2011 (the "Substation Target Date"), provided that Seller acknowledge that Buyer desires the Windstar Substation Upgrades to be completed by December 31, 2010 to allow for an earlier Closing Date. All of the Windstar Substation Upgrades shall be carried out under the sole and exclusive supervision and direction of Seller. Each Party acknowledges that the completion of the Windstar Substation Upgrades may be affected by matters beyond the control or contemplation of the Parties and that Seller shall have the sole and absolute discretion to extend the Substation Target Date. The Parties further acknowledge and agree that: (i) the Substation Target Date is a current estimate based upon expected permitting and construction timelines; (ii) the Substation Target Date is not binding on Seller and may be extended by Seller, in its sole and absolute discretion, to account for any change in circumstance that affects the Windstar Substation Upgrades, including events of Force Majeure; and (iii) notwithstanding anything to the contrary contained in this Agreement or the Transmission Interconnection Agreement, Seller shall not have any liability or obligation whatsoever to Buyer if the Windstar Substation Upgrades are not completed by the Substation Target Date.

5.02 Conditions and Commercially Reasonable Efforts. Subject to the terms of this Agreement, each Party will use commercially reasonable efforts to effectuate the transactions contemplated by this Agreement and to fulfill all of the conditions to its obligations under this Agreement and will do all such acts and things as reasonably may be required to carry out its obligations hereunder and to consummate the transactions contemplated by this Agreement on or before June 30, 2011, including making or cooperating with the other Party in the making of applications for Required Closing Governmental Authorizations. Notwithstanding the foregoing, neither Party will be required in connection with any Required Closing Governmental Authorization to agree to any payment or any condition of approval that is not reasonably acceptable to it (other than any such payment or condition that, individually or in the aggregate, have no more than a de minimis adverse affect on the Party). Seller will use commercially reasonable efforts to obtain a written release of the Encumbrance on the Transmission Facilities pursuant to the Mortgage and Deed of Trust on or before December 31, 2010.

5.03 Filings with Governmental Authorities. Prior to Closing, each Party will provide prior written notice to the other Party before making any filing with, or initiating any discussion or proceeding with, any Governmental Authority in the course of obtaining any Required Closing Governmental Authorizations from such Governmental Authority. Prior to filing applications, pre-filed testimony or responses to data requests to any Governmental Authority in the course of obtaining any Required Closing Governmental Authorizations from such Governmental Authority, each Party will provide such materials to the other Party for its information.

5.04 Compliance. Each Party shall comply with all Governmental Requirements and Governmental Authorizations applicable to it in connection with the Contemplated Transaction, except where non compliance will not have a Material Adverse Effect on the other Party or any of its Affiliates.

5.05 Risk of Loss. Seller will bear the risk of loss or damage to the Transmission Facilities prior to the Effective Time of Closing. From and after the Effective Time of Closing, the Parties will share in all losses or damages to the Transmission Facilities in accordance with the Joint Ownership, Operating and Maintenance Agreement.

5.06 Maintenance of Transmission Facilities. Subject to Section 5.01, prior to Closing, Seller, at its own cost and expense, will maintain the Transmission Facilities, consistent with past practices and in accordance with Good Utility Practice. At and after the Closing, the Transmission Facilities shall be operated and maintained in accordance with the Joint Ownership, Operating and Maintenance Agreement.

5.07 Notice. Each Party may notify the other Party in writing of any development known to it prior to Closing which at the time of notification causes any of its representations or warranties in this Agreement to be materially inaccurate. Unless the other Party terminates this Agreement pursuant to Section 8.01, the written notice pursuant to this Section 5.07 will be deemed to have qualified the representations or warranties, to have amended any Schedule referenced in such Section, and to have caused any breach of representation or warranty that otherwise might have existed hereunder by reason of the development to be cured. Upon request of the other Party, the Party providing notice of a material inaccuracy of any of its representations and warranties shall, if possible, provide reasonable assurances to the other Party, in writing, that it will be able to perform its obligations under this Agreement.

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

5.09 NERC Reliability Coordination Agreement. The Parties shall negotiate in good faith to reach agreement no later than one hundred and twenty (120) days after the Execution Date on a form of agreement between the Parties pursuant to which the Parties shall coordinate compliance with NERC reliability requirements (the "NERC Reliability Coordination Agreement"). Once the Parties reach agreement on the form of the NERC Reliability Coordination Agreement, this Agreement shall automatically be amended to incorporate such agreed upon form as Exhibit G attached hereto.

ARTICLE VI SELLER'S CONDITIONS PRECEDENT TO CLOSING

Seller's obligation to sell Buyer's Ownership Interest in the Purchased Facilities and to take the other actions required to be taken by Seller at the Closing is subject to the satisfaction, at

or prior to the Closing, of each of the following conditions (any of which may be waived, in whole or in part, in writing only by Seller):

6.01 Accuracy of Representations. Except as provided in Section 5.07, all representations and warranties made in this Agreement by Buyer shall be true and correct in all material respects as of the Closing Date as fully as though such representations and warranties have been made on and as of the Closing Date.

6.02 Buyer's Performance. Buyer shall have complied in all material respects with all covenants and agreements made by it in Article V to be performed prior to Closing.

6.03 Delivery of Documents. Each document and other item required to be delivered by Buyer pursuant to Section 2.07(b) shall have been delivered to Seller. In addition, the Transmission Interconnection Agreement shall be in full force and effect.

6.04 Required Closing Governmental Authorizations. All Required Closing Governmental Authorizations shall have been obtained and shall be Final Orders, and the terms and conditions of the Required Closing Governmental Authorizations, individually or in the aggregate, shall not have and shall not reasonably be expected to have a Material Adverse Effect on Seller or any of its Affiliates.

6.05 No Prohibition. Neither the consummation nor the performance of the Contemplated Transaction shall, directly or indirectly (with or without notice or lapse of time), materially contravene, or conflict with, or result in a material violation of, any Governmental Requirement or Governmental Authorization applicable to the Transmission Facilities or Seller or any of its Affiliates.

6.06 No Injunction. No litigation or injunction shall be pending, threatened or reasonably likely to be commenced or issued (a) involving any challenge to, or seeking damages or other relief in connection with the Purchased Facilities or the Contemplated Transaction, (b) that may have the effect of preventing, delaying, making illegal, or otherwise interfering with the Contemplated Transaction, or (c) imposing or seeking to impose material damages or sanctions directly arising out of the Contemplated Transaction on Seller or any of its Affiliates.

6.07 Completion of Facilities. The Seller Upgraded Transmission Line and the Windstar Substation Upgrades shall have been constructed and commissioned in accordance with Section 5.01.

6.08 Release of Mortgage and Deed of Trust Encumbrance. The Encumbrance on the Transmission Facilities pursuant to the Mortgage and Deed of Trust shall have been released in form and substance reasonably acceptable to Seller.

6.09 No Material Adverse Effect. Since the Execution Date, no Material Adverse Effect on Seller or any of its Affiliates shall have occurred and be continuing.

ARTICLE VII
BUYER'S CONDITIONS PRECEDENT TO CLOSING

Buyer's obligation to purchase Buyer's Ownership Interest in the Purchased Facilities and to take the other actions required to be taken by Buyer at the Closing is subject to the satisfaction, at or prior to the Closing, of each of the following conditions (any of which may be waived, in whole or in part, by Buyer in writing):

7.01 Accuracy of Representations. Except as provided in Section 5.07, all representations and warranties made in this Agreement by Seller shall be true and correct in all material respects as of the Closing Date as fully as though such representations and warranties have been made on and as of the Closing Date.

7.02 Seller's Performance. Seller shall have complied in all material respects with all covenants and agreements made by it in Article V to be performed prior to Closing.

7.03 Delivery of Documents. Each document and other item required to be delivered by Seller pursuant to Section 2.07(a) shall have been delivered to Buyer. In addition, the Transmission Interconnection Agreement shall be in full force and effect.

7.04 Required Closing Governmental Authorizations. All Required Closing Governmental Authorizations shall have been obtained and shall be Final Orders, and the terms and conditions of the Required Closing Governmental Authorizations, individually or in the aggregate, shall not have and shall not reasonably be expected to have a Material Adverse Effect on Buyer or any of its Affiliates.

7.05 No Prohibition. Neither the consummation nor the performance of the Contemplated Transaction shall, directly or indirectly (with or without notice or lapse of time), materially contravene, or conflict with, or result in a material violation of, any Governmental Requirement or Governmental Authorization applicable to the Transmission Facilities or Buyer or any of its Affiliates.

7.06 No Injunction. No litigation or injunction shall be pending, threatened or reasonably likely to be commenced or issued (a) involving any challenge to, or seeking damages or other relief in connection with the Purchased Facilities or the Contemplated Transaction, (b) that may have the effect of preventing, delaying, making illegal, or otherwise interfering with the Contemplated Transaction, or (c) imposing or seeking to impose material damages or sanctions directly arising out of the Contemplated Transaction on Buyer or any of its Affiliates.

7.07 Completion of Facilities. The Seller Upgraded Transmission Line and the Windstar Substation Upgrades shall have been constructed and commissioned in accordance with Section 5.01.

7.08 Release of Mortgage and Deed of Trust Encumbrance. The Encumbrance on the Transmission Facilities pursuant to the Mortgage and Deed of Trust shall have been released in form and substance reasonably acceptable to Buyer.

7.09 No Material Adverse Effect. Since the Execution Date, no Material Adverse Effect on Buyer or any of its Affiliates shall have occurred and be continuing.

ARTICLE VIII TERMINATION

8.01 Termination. Except as to those provisions that are expressly intended to survive termination, this Agreement may be terminated at any time prior to the Closing:

(a) by the Parties, if the Parties mutually agree in writing to terminate this Agreement;

(b) by Buyer, if Buyer delivers a written notice to Seller that it is terminating this Agreement because: (i) one or more of the conditions set forth in Article VII (which will be specified in detail in such notice) cannot be met on or before June 30, 2011 (or such later date as the Parties may agree to in writing, such agreement not unreasonably to be withheld, provided that in no event shall such date be extended more than one (1) year), and such condition or conditions have not been satisfied (or waived by Buyer) within thirty (30) days after the date such notice is delivered by Buyer to Seller; or (ii) Seller has breached in a material respect one or more of its covenants or agreements contained in Article V or one or more of its representations and warranties contained in Article III (which will be specified in detail in such notice), and such breach has not been remedied (or waived by Buyer) within thirty (30) days after the date such notice is delivered by Buyer to Seller; or (iii) Seller notifies Buyer pursuant to Section 5.07 of a material inaccuracy, and Buyer delivers its termination notice within ten (10) days of receipt of Seller's notice; or (iv) the actual Purchase Price is materially different than the total estimated Purchase Price, as stated in Article III of Exhibit D to this Agreement.

(c) by Seller, if Seller delivers a written notice to Buyer that it is terminating this Agreement because: (i) one or more of the conditions set forth in Article VI (which will be specified in detail in such notice) cannot be met on or before June 30, 2011 (or such later date as the Parties may agree to in writing, such agreement not unreasonably to be withheld, provided that in no event shall such date be extended more than one (1) year), and such condition or conditions have not been satisfied (or waived by Seller) within thirty (30) days after the date such notice is delivered by Seller to Buyer; or (ii) Buyer has breached in a material respect one or more of its covenants or agreements contained in Article V or one or more of its representations and warranties contained in Article IV (which will be specified in detail in such notice), and such breach has not been remedied (or waived by Seller) within thirty (30) days after the date such notice is delivered by Seller to Buyer; or (iii) Buyer notifies Seller pursuant to Section 5.07 of a material inaccuracy, and Seller delivers its termination notice within ten (10) days of receipt of Buyer's notice; or (iv) an Adverse Regulatory Event has occurred (which will be specified in detail in such notice).

(d) by either Party, if the Party delivers a written notice to the other Party that it is terminating this Agreement because a court of competent jurisdiction in the United States or any state has issued an order, judgment or decree (other than a temporary restraining order) restraining, enjoining or otherwise prohibiting the Contemplated Transaction and such order, judgment or decree has become final and nonappealable; or

(e) by either Party, if the Party delivers a written notice to the other Party that it is terminating this Agreement because the Closing has not occurred on or before June 30, 2011 (or such later date as the Parties may agree to in writing, such agreement not unreasonably to be withheld, provided that in no event shall such date be extended more than one (1) year), provided that the Closing has not occurred as a result of a default by the Party terminating this Agreement.

8.02 Effect of Early Termination. In the event of termination of this Agreement by either or both of the Parties pursuant to Section 8.01, this Agreement will terminate and the transactions contemplated hereby will be abandoned, without further action by either Party, whereupon the liabilities of the Parties hereunder will terminate, except as otherwise expressly provided in this Agreement. Termination pursuant to Section 8.01 will be the sole remedy of the Parties with respect to breaches of any representation, warranty, covenant or agreement contained in this Agreement and neither Party nor any of its Affiliates or Representatives will have any liability or further obligation to the other Party or any of its Affiliates or Representatives pursuant to this Agreement, except for obligations accruing prior to such termination.

ARTICLE IX INDEMNIFICATION

9.01 Survival. All representations, warranties, covenants, and agreements in this Agreement, the Schedules, the certificates delivered pursuant to Sections 2.07(a)(i) and 2.07(b)(i), and any other certificate or document delivered pursuant to this Agreement will survive the Closing.

9.02 Indemnification.

(a) From and after the Closing, Seller hereby agrees to indemnify, defend and hold harmless Buyer and its Affiliates and Representatives from and against any and all Losses, whether or not involving a third-party Claim, asserted against or suffered by Buyer resulting from or arising out of or in connection with:

(i) the breach in any material respect of any representation or warranty made by Seller in this Agreement; and

(ii) the breach in any material respect by Seller of any covenant or agreement contained in this Agreement to be performed by Seller (subject to Section 5.01(c) in the case of any covenant and agreement in Section 5.01); and

(iii) the ownership or operation of the Transmission Facilities, to the extent the Losses arise from events or conditions that were created or caused by Seller before the Closing and relate to: (A) any release, threatened release, or disposal of hazardous materials from, in, upon, or adjacent to the Transmission Facilities; or (B) any violation of environmental laws or environmental permits pertaining to the Transmission Facilities.

provided, however, that Seller shall have no such liability unless and until the amount of such Losses, individually or in the aggregate, exceed one hundred thousand dollars (\$100,000) and then, only for the Losses above that amount.

(b) From and after the Closing, Buyer hereby agrees to indemnify, defend and hold harmless Seller and its Affiliates and Representatives from and against any and all Losses, whether or not involving a third-party Claim, resulting from or arising out of or in connection with:

(i) the breach in any material respect of any representation or warranty made by Buyer in this Agreement; and

(ii) the breach in any material respect by Buyer of any covenant or agreement contained in this Agreement to be performed by Buyer;

provided, however, that Buyer shall have no such liability unless and until the amount of such Losses, individually or in the aggregate, exceed one hundred thousand dollars (\$100,000) and then, only for the Losses above that amount.

(c) Notwithstanding anything to the contrary contained in this Agreement, the maximum amount of the indemnification obligation of Seller under Section 9.02(a) to Buyer and its Affiliates and Representatives shall not exceed an amount equal to the Purchase Price. Notwithstanding anything to the contrary contained in this Agreement, the maximum amount of the indemnification obligation of Buyer under Section 9.02(b) to Seller and its Affiliates and Representatives shall not exceed an amount equal to the Purchase Price.

(d) The Parties acknowledge and agree that if any Party has knowledge of a material failure of any condition set forth in Article VI or Article VII or of a material breach by the other Party of any representation or warranty or covenant or agreement contained in this Agreement, through disclosure by the other Party pursuant to Section 5.07 or otherwise, and such Party proceeds with the Closing, such Party shall be deemed to have waived such condition or breach (but then only to the extent of such Party's knowledge at Closing) and such Party and its successors, assigns and Affiliates and Representatives shall not be entitled to be indemnified pursuant to this Article IX, to sue for damages or to assert any other right or remedy for any Losses reasonably relating to such condition or breach and such Party's knowledge thereof at Closing, notwithstanding anything to the contrary contained herein or in any Related Document.

(e) Seller and Buyer acknowledge and agree that, from and after the Closing, the sole and exclusive remedy for any breach or inaccuracy, or alleged breach or inaccuracy, of any representation or warranty in this Agreement or any covenant or agreement to be performed hereunder on or prior to the Closing Date, will be indemnification in accordance with this Article IX. In furtherance of the foregoing, except to the extent provided under this Article IX, Seller and Buyer hereby waive, to the fullest extent permitted by applicable Governmental Requirements, any and all other rights, claims, and causes of action (including rights of contributions, if any) that may be based upon, arise out of, or relate to this Agreement, or the negotiation, execution, or performance of this Agreement (including any tort or breach of contract claim or cause of action based upon, arising out of, or related to any representation or

warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement), known or unknown, foreseen or unforeseen, which exist or may arise in the future, that it may have against the other arising under or based upon any Law (including any such Law under or relating to environmental matters), common law, or otherwise. Notwithstanding the foregoing, nothing contained in this Section 9.02(e) shall limit in any respect any remedy to which any Party may be entitled in respect of any fraudulent breach of this Agreement or any other fraud.

9.03 Time Limitations.

(a) If the Closing occurs, subject to Section 9.02(d), Seller will have liability for indemnification pursuant to Section 9.02(a) only if on or before the first anniversary of the Closing Date, Buyer notifies Seller of a claim specifying the factual basis of the claim in reasonable detail to the extent then known by Buyer.

(b) If the Closing occurs, subject to Section 9.02(d), Buyer will have liability for indemnification pursuant to Section 9.02(b) only if on or before the first anniversary of the Closing Date, Seller notifies Buyer of a claim specifying the factual basis of the claim in reasonable detail to the extent then known by Seller.

9.04 Notice and Procedure for Indemnification.

(a) If any Party shall claim indemnification hereunder arising from any Claim of a third party, the Party seeking indemnification (the "Indemnified Party") shall notify in writing the Party from which indemnification is sought (the "Indemnifying Party") of the basis for such Claim, setting forth the nature of the Claim in reasonable detail. The Indemnifying Party shall have no liability under this Article IX for any Claim for which such notice is not provided, but only to the extent that the failure to give such notice materially impairs the ability of the Indemnifying Party to respond to or to defend the Claim.

(b) The Indemnifying Party shall have the right to assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party; provided, however, that if the defendants in any such proceeding include both the Indemnified Party and the Indemnifying Party, and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are in conflict with those available to the Indemnifying Party and that such conflict materially prejudices the ability of the counsel selected by the Indemnifying Party to represent both parties, the Indemnified Party shall have the right to select separate counsel reasonably satisfactory to the Indemnifying Party, at the Indemnifying Party's expense, to assert such legal defenses and to otherwise participate in the defense of such Claim on behalf of such Indemnified Party, and the Indemnifying Party shall be responsible for the reasonable fees and expenses of such separate counsel.

(c) Should any Indemnified Party be entitled to indemnification under this Article IX as a result of a Claim by a third party, and should the Indemnifying Party fail to assume the defense of such Claim within a reasonable period of time after the Indemnified Party has provided the Indemnifying Party written notice of such Claim, the Indemnified Party may, at

the expense of the Indemnifying Party, contest (or, with or without the prior consent of the Indemnifying Party), settle such Claim.

(d) Except to the extent expressly provided herein, no Indemnified Party shall settle any Claim with respect to which it has sought or is entitled to seek indemnification pursuant to this Article IX unless (i) it has obtained the prior written consent of the Indemnifying Party, or (ii) the Indemnifying Party has failed to assume the defense of such Claim within a reasonable period of time after the Indemnified Party has provided the Indemnifying Party written notice of such Claim.

(e) Except to the extent expressly provided otherwise herein, no Indemnifying Party shall settle any Claim with respect to which it may be liable to provide indemnification pursuant to this Section without the prior written consent of the Indemnified Party; provided, however, that if the Indemnifying Party has reached a bona fide settlement agreement with the plaintiff(s) in any such proceeding, which settlement includes a full release of the Indemnified Party for any and all liability with respect to such Claim, and the Indemnified Party does not consent to such settlement agreement, then the dollar amount specified in the settlement agreement, plus the Indemnified Party's reasonable legal fees and other costs related to the defense of the Claim paid or incurred prior to the date of such settlement agreement, shall act as an absolute maximum limit on the indemnification obligation of the Indemnifying Party with respect to the Claim, or portion thereof, that is the subject of such settlement agreement.

9.05 Net Amount. In the event that an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Article IX, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party's actual Losses, net of any insurance or other recovery actually received by the Indemnified Party.

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

9.07 No Release of Insurers. The provisions of this Article IX shall not be deemed or construed to release any insurer from its obligation to pay any insurance proceeds in accordance with the terms and conditions of valid and collectible insurance policies.

9.08 Limitation on Liability. Notwithstanding anything to the contrary provided for in this Agreement or under any applicable Governmental Requirements, no Party will, in any event, be liable to the other Party, either in contract or in tort, for any consequential, incidental, indirect, special, or punitive damages of the other Party, including loss of future revenue, income, or profits, diminution of value, or loss of business reputation or opportunity, relating to the breach or alleged breach hereof or otherwise, whether or not the possibility of such damages has been disclosed to the other Party in advance or could have been reasonably foreseen by such other Party; provided, however, that the exclusion of consequential, incidental, indirect, special, and punitive damages as set forth above does not apply to any such damages sought by third parties against Buyer or Seller, as the case may be, in connection with Losses that may be indemnified pursuant to this Article IX.

ARTICLE X
PROPRIETARY INFORMATION

10.01 Disclosure of Proprietary Information Prohibited. Any Proprietary Information of a Party (the “Transferor”) which is disclosed to or otherwise received or obtained by the other Party (the “Transferee”) incident to this Agreement shall be held in confidence and the Transferee shall not (subject to Sections 10.02 and 10.05) knowingly publish or otherwise disclose any Proprietary Information of the Transferor to any Person for any reason or purpose whatsoever, without the prior written approval of the Transferor, subject to any exclusions set forth in Section 10.03, which approval may be granted or withheld by the Transferor in its sole discretion. Without limiting the generality of the foregoing, each Party shall observe at a minimum the same safeguards and precautions with regard to the other Party’s Proprietary Information which such Party observes with respect to its own information of the same or similar kind.

10.02 Disclosure by Representatives. Each Party agrees that it will make available Proprietary Information received from the other Party to its own Representatives only on a need-to-know basis, and that all Persons to whom such Proprietary Information is made available will be made aware of the confidential nature of such Proprietary Information, and will be required to hold such Proprietary Information in confidence in accordance with the terms hereof.

10.03 Permitted Disclosures. Notwithstanding anything to the contrary contained in this Article X:

(a) A Transferee may provide any Proprietary Information to any Governmental Authority having jurisdiction over or asserting a right to obtain such information, provided that (i) such Governmental Authority orders that such Proprietary Information be provided, and (ii) unless prohibited from so doing by applicable Governmental Requirements, the Transferee promptly advises the Transferor of any request for such information by such Governmental Authority and cooperates in giving the Transferor an opportunity to present objections, requests for limitation, and/or requests for confidentiality or other restrictions on disclosure or access, to such Governmental Authority.

(b) Either Party may, to the extent required, disclose Proprietary Information to any Governmental Authority in connection with the application for any Governmental Authorization, provided that unless prohibited from so doing by applicable Governmental Requirements, the Party shall provide the other Party prior written advance notice of such disclosure and the Proprietary Information that is to be disclosed.

(c) Either Party may disclose such Proprietary Information regarding the terms of this Agreement as such Party deems necessary to enable it to comply with the Securities Exchange Act of 1934, or the rules, regulations and forms of the Securities and Exchange Commission, issued thereunder or the applicable rules of any stock exchange.

10.04 Injunctive Relief. In the event of a breach or threatened breach of the provisions of this Article X by any Transferee, the Transferor shall be entitled to an injunction restraining such Party from such breach or threatened breach. Nothing contained herein shall be construed

as prohibiting the Transferor from pursuing any other remedies available at law or equity for such breach or threatened breach of this Agreement.

10.05 Publicity. Any public relations matters, including public announcements and press releases or similar publicity, arising out of or in connection with the terms of this Agreement or the Contemplated Transaction, shall be coordinated and agreed to among the Parties.

10.06 Proprietary Information Defined. For purposes of this Agreement, “Proprietary Information” means all information, written or oral, which has been or is disclosed by the Transferor, or by any Representative of the Transferor, or which otherwise becomes known to the Transferee, or to any Representative of such Transferee, or any other party in a confidential relationship with, the Transferee, and which (a) relates to matters such as patents, trade secrets, research and development activities, draft or final contracts or other business arrangements, books and records, budgets, cost estimates, pro forma calculations, engineering work product, environmental compliance, vendor lists, suppliers, manufacturing processes, energy consumption, pricing information, private processes, and other similar information, as they may exist from time to time, (b) relates to the existence or the terms, including pricing and other commercial terms, of this Agreement, or (c) the Transferor expressly designates in writing to be confidential, provided that “Proprietary Information” shall exclude information falling into any of the following categories:

(i) Information that, at the time of disclosure hereunder, is in the public domain, other than information that entered the public domain by breach of this Agreement by Transferee;

(ii) Information that, after disclosure hereunder, enters the public domain, other than information that enters the public domain by breach of this Agreement by Transferee;

(iii) Information, other than that obtained from third parties, that prior to disclosure hereunder, was already in Transferee’s possession, either without limitation on disclosure to others or subsequently becoming free of such limitation;

(iv) Information obtained by Transferee from a third party having an independent right to disclose the information; or

(v) Information that is available through independent research without use of or access to the Proprietary Information.

10.07 Survival. The provisions of this Article X shall continue in full force and effect during the term of this Agreement and for a period of two (2) years thereafter, notwithstanding the expiration or termination of this Agreement, with respect to any Proprietary Information obtained by any Party prior to such expiration or termination.

**ARTICLE XI
MISCELLANEOUS**

11.01 Notices.

(a) Any notice, demand, request or other communication required or permitted to be given pursuant to this Agreement shall be in writing and signed by the Party giving such notice, demand, request or other communication and shall be hand delivered or sent by registered letter, overnight courier or facsimile to the other Party at the address set forth below:

If to Buyer: Black Hills Power, Inc.
409 Deadwood Avenue
Rapid City, SD 57701
Attn: Director of Transmission Services
Facsimile: 605-721-2735
Telephone: 605-721-2226

With a copy to: Black Hills Power
625 Ninth Street
P.O. Box 1400
Rapid City, SD 57701
Attn: General Counsel
Facsimile: 605-719-9960
Telephone: 605-721-2303

If to Seller: PacifiCorp
825 NE Multnomah Street, Suite 1600
Portland, OR 97232
Attn: Transmission Department
Facsimile: 503-813-6893
Telephone: 503-813-7090

With a copy to: Rocky Mountain Power
201 South Main, Suite 2300
Salt Lake City, UT 84111
Attn: Legal Department
Facsimile: 801-220-3299
Telephone: 801-220-4568

(b) Each Party shall have the right to change the place to which any notice, demand, request or other communication shall be sent or delivered by similar notice sent in like manner to the other Party. The effective date of any notice, demand, request or other communication issued pursuant to this Agreement shall be when: (i) delivered to the other Party's address personally, by messenger, by a nationally or internationally recognized overnight delivery service or otherwise; (ii) sent to the other Party by facsimile, with confirmation of

transmission by the transmitting equipment; or (iii) received or rejected by the other Party, if sent by certified mail, return receipt requested, in each case, addressed to the other Party at its address or facsimile number and marked to the attention of the person designated below (or to such other address or facsimile number or person as a Party may designate by notice to the other Party effective as of the date of receipt by such other Party).

11.02 Entire Agreement. This Agreement, the Exhibits and Schedules attached hereto, and the other documents between the Parties referenced herein constitute the entire agreement between the Parties and supersede all prior agreements and understandings, whether oral and written, between the Parties with respect to the subject matter hereof. There are no oral understandings, terms or conditions and neither Party has relied upon any representation or warranty, expressed or implied, not contained in this Agreement.

11.03 Parties Bound. This Agreement shall be binding upon each of the Parties and its respective successors and permitted assigns.

11.04 Assignments. Neither Party shall have the right to assign any of its rights or obligations under this Agreement, without the prior written consent of the other Party; provided, however, that Buyer may, without consent, assign any or all of its rights under this Agreement to any Affiliate of Buyer and may designate any such Affiliate to acquire the Purchased Facilities; provided, further, that any such assignment shall not relieve Buyer of its obligations or liabilities under this Agreement.

11.05 Amendments and Waivers.

(a) This Agreement may not be amended, supplemented or otherwise modified, other than pursuant to an instrument in writing executed by both of the Parties.

(b) No waiver by a Party of any one or more defaults by the other Party in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature. Any delay, less than any applicable statutory period of limitations, in asserting or enforcing any rights under this Agreement shall not be deemed a waiver of such rights. Failure of any Party to enforce any provisions hereof shall not be construed to waive such provision, or to affect the validity of this Agreement or any part thereof, or the right of any Party thereafter to enforce each and every provision thereof.

11.06 Choice of Law.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Wyoming, without giving effect to conflicts of laws principles.

(b) Each Party irrevocably consents and accepts for itself and in respect of its property, generally and unconditionally, in any dispute, controversy or claim arising out of or relating to this Agreement or the breach, interpretation, termination, performance or validity of this Agreement, the exclusive jurisdiction of the state courts situated in Wyoming and the United States District Court for the District of Wyoming and appellate courts from any appeal thereof

(the “Approved Courts”), and irrevocably waives any objection which it may now or hereafter have to the jurisdiction of the Approved Courts. Each Party further irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any suit, proceeding or other action brought pursuant to this Section 11.06(b) in any of the Approved Courts, and irrevocably waives, to the fullest extent permitted by law, and agrees not to plead or claim in any such Approved Court that any suit, proceeding or other action brought therein has been brought in an inconvenient forum.

11.07 Headings. Article and Section headings used in this Agreement (including headings used in any Schedules and Exhibits attached hereto) are for convenience of reference only and shall not affect the construction of this Agreement.

11.08 Relationship of Parties. The covenants, obligations, and liabilities of the Parties are intended to be several and not joint or collective, and nothing herein contained shall ever be construed to create an association, joint venture, trust, or partnership, or to impose a trust or partnership covenant, obligation, or liability on or with regard to either of the Parties. Each Party shall be individually responsible for its own covenants, obligations, and liabilities as herein provided. No Party shall be under the control of, or shall be deemed to control, the other Party. Neither Party shall have a right nor power to bind the other Party without its express written consent, except as otherwise provided in this Agreement.

11.09 Severability. In the event that any provision of this Agreement or the application thereof becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect and the application of such provision to other persons or circumstances will be interpreted so as reasonably to effect the intent of the Parties. The Parties further agree to replace such illegal, void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such illegal, void or unenforceable provision.

11.10 No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to nor shall be construed to confer upon or give to any Person (other than the Parties) any rights or remedies under or by reason of this Agreement or any transaction contemplated herein.

11.11 Further Assurances. Each Party agrees to execute and deliver from time to time such additional documents, and take such additional actions, as may be reasonably required by the other Party to give effect to the purposes and intent hereof.

11.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be original, and all of which together shall constitute one agreement. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original. At the request of either Party, the Parties will confirm facsimile transmitted signatures by signing an original document.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each of the Owners has caused its duly authorized representative to execute this Joint Ownership, Operating and Maintenance Agreement as of the date first above written.

BLACK HILLS POWER:

BLACK HILLS POWER, INC.

By: *Stuart Wevik*
Name: *Stuart Wevik*
Title: *VP Electric Utilities*
V.P.

PACIFICORP:

PACIFICORP, IN ITS CAPACITY AS BOTH OWNER AND AGENT

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, each of the Parties has caused its duly authorized representative to execute this Purchase and Sale Agreement as of the date first above written.

BUYER: **BLACK HILLS POWER, INC.**

By: _____
Name: _____
Title: _____

SELLER: **PACIFICORP**

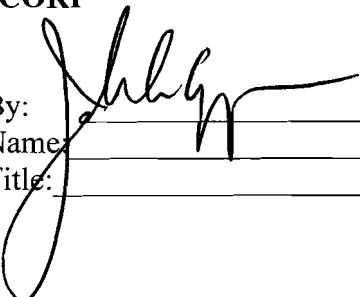
By:  _____
Name: _____
Title: _____

EXHIBIT A

Description of Transmission FacilitiesI. Description of Windstar Substation.

The Windstar Substation consists of all of the facilities and equipment making up Seller's 230 kV Windstar substation located in Converse County, Wyoming, including (i) the 230kV bus, five breakers, switches, foundations, substation fences, grounding grid, control houses, communication and SCADA facilities, 230kV metering, and protection and control equipment, and (ii) network upgrades required to support the Black Hills Power's proposed interconnection of the Buyer Planned Transmission Line comprised of six additional 230 kV breakers, bus work, foundations, protection and control equipment and other related upgrades, including proposed direct assigned interconnection facilities contemplated and required to connect to the Buyer Planned Transmission Line.

Equipment and facilities included in the Windstar Substation is indicated as the shaded area in Drawing 1 to this Exhibit A.

II. Description of Dave Johnston Substation.

The Dave Johnston Substation consists of all of the facilities and equipment making up Seller's 230 kV Dave Johnston substation located in Converse County, Wyoming, including the 230kV breakers, fourteen circuit breakers and appurtenant 230 kV bus and switches, substation fences, grounding grid, control houses, communication and SCADA facilities, 230kV metering, foundations and protection and control equipment, but excluding the 69 kV and 115 kV portions of the substation.

Equipment and facilities included in the Dave Johnston Substation is indicated as the shaded area in Drawing 1 to this Exhibit A.

III. Description of Buyer Planned Transmission Line.

The Buyer Planned Transmission Line consists of a new 230 kV transmission line to be constructed from Buyer's Common Use System in northeastern Wyoming and terminating at the Windstar Substation.

IV. Description of Seller Upgraded Transmission Line.

The Seller Upgraded Transmission Line consists of all of the facilities and equipment making up Seller's Casper #1 230kV transmission line between the Windstar Substation and the Dave Johnston Substation located in Converse County, Wyoming, including poles and structures, conductors, lightning protection and grounding appurtenances, and any communication fiber optics attached to the Seller Upgraded Transmission Line.

Equipment and facilities included in the Seller Upgraded Transmission Line is indicated as the shaded area in Drawing 1 to this Exhibit A.

DRAWING 1

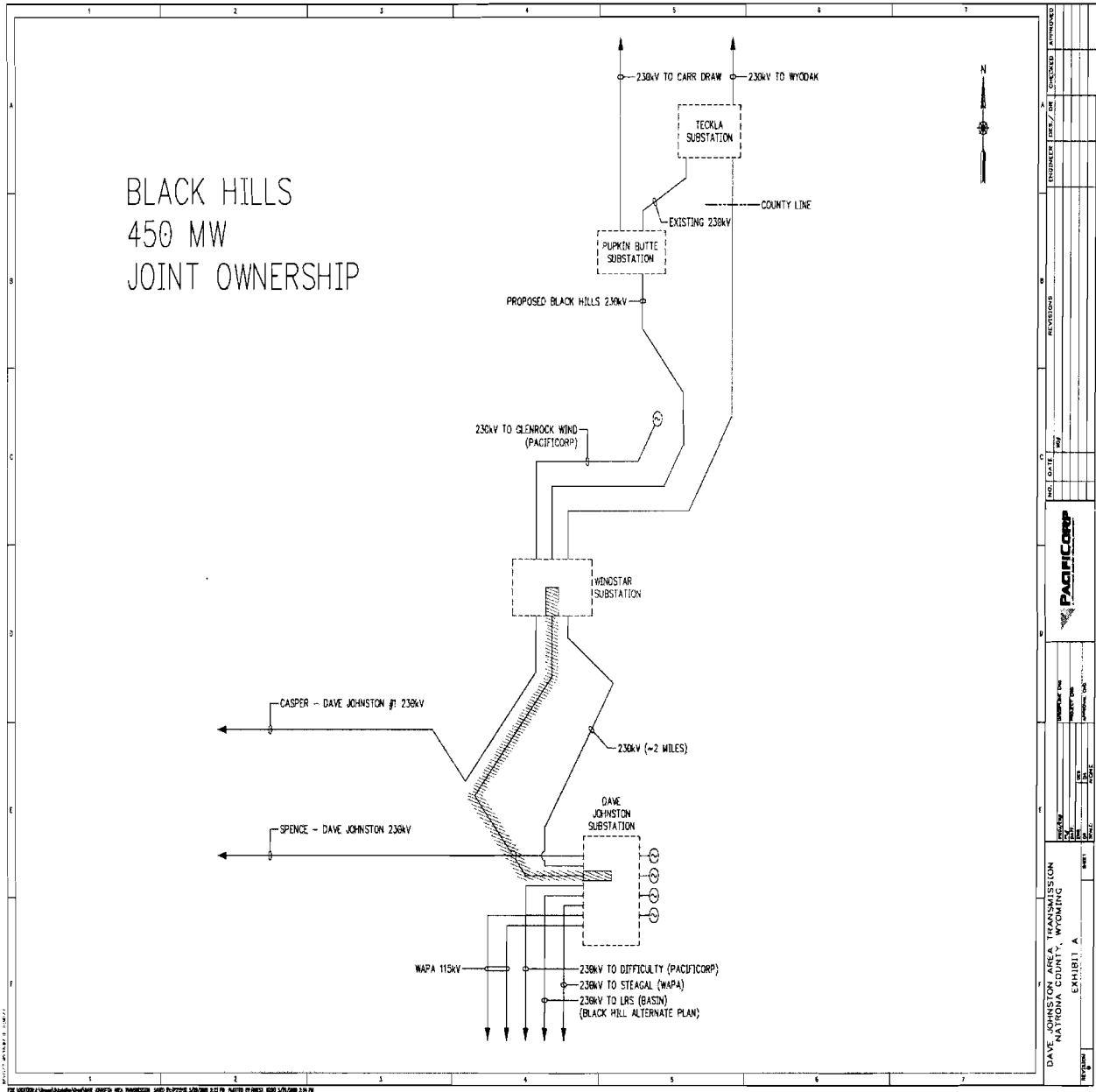


EXHIBIT B

Calculation of Ownership Interests

Each Party's Ownership Interest in the Transmission Facilities shall be calculated at Closing based on the average of the Party's percentage share ("Component Share") of the total transmission capacity, as reasonably determined by Seller at the Closing ("Transmission Capacity"), of each Component, where:

(a) each Party's Component Share of each Component shall be equal to the quotient of (i) the Party's Component Capacity Share of such Component at the time, divided by (ii) the Transmission Capacity of such Component at the time; and

(b) each Party's "Component Capacity Share" in each Component shall be equal to:

(i) in the case of Buyer, Buyer's Transmission Facilities Capacity Share calculated in accordance with this Exhibit B at the Closing; and

(ii) in the case of Seller, the Transmission Capacity of each Component at the Closing, less Buyer's Component Capacity Share of each Component at the Closing.

Each Party's Ownership Interest shall entitle it to a share of the bi-directional transmission capacity of the Transmission Facilities (in MW) representing a continuous transmission path between the Windstar Substation and the Dave Johnston Substation across the Seller Upgraded Transmission Line ("Transmission Facilities Capacity Share") which shall be calculated for purposes of this Agreement at Closing as follows:

(a) Buyer shall have a Transmission Facilities Capacity Share equal to 450 MW¹, provided that if any of Buyer's Component Capacity Share of any Component is below 450 MW, then Buyer's Transmission Facilities Capacity Share shall be equal to such lower Component Capacity Share; and

(b) PacifiCorp shall have a Transmission Facilities Capacity Share equal to all transmission capacity of the Transmission Facilities (in MW) which is not part of Buyer's Transmission Facilities Capacity Share

¹ This assumes that the Transmission Capacity of each of the Components and the Component Capacity Shares, Component Shares and Ownership Interests of each of the Owners is as set forth in the table in this Exhibit B.

Sample Calculation of Ownership Interests²

Assuming that on the Execution Date the Transmission Capacity of each of the Components is as follows and that each Party has the following Component Shares, Component Capacity Shares and Transmission Facilities Capacity Shares, then each Party's Ownership Interest on the Execution Date would be as follows:

Transmission Facilities	Transmission Capacity	PacifiCorp's Component Capacity Share	Black Hills Power's Component Capacity Share	PacifiCorp's Component Shares and Ownership Interest	Black Hills Power's Component Shares and Ownership Interest	PacifiCorp's Transmission Facilities Capacity Share ³	Black Hills Power's Transmission Facilities Capacity Share
Windstar Substation	2000 MW	1550 MW	450 MW	77.5%	22.5%		
Dave Johnston Substation	3000 MW	2550 MW	450 MW	85.0%	15.0%		
Seller Upgraded Transmission Line	800 MW	350 MW	450 MW	43.75%	56.25%		
Transmission Facilities				68.75%	31.25%	350-2550 MW	450 MW

² This sample calculation is for information purposes only and is not binding on the Parties. Each Party's Ownership Interest shall be calculated as of the Closing Date based on the circumstances then existing, including the Transmission Capacity of each of the Components and each Party's Component Shares, Component Capacity Shares and Transmission Facilities Capacity Share at the time.

³ If higher, PacifiCorp's Transmission Facilities Capacity Share shall be equal to all transmission capacity of the Transmission Facilities (in MW) which is not part of Buyer's Transmission Facilities Capacity Share.

EXHIBIT C

Required Closing Governmental Authorizations

<u>Governmental Authority</u>	<u>Party Responsible for Application</u>
1. Oregon Public Utility Commission Approval	Seller
2. California Public Utilities Commission Approval	Seller
3. Wyoming Public Service Commission Approval	Seller
4. Idaho Public Utility Commission Approval	Seller
5. Utah Public Services Commission Approval	Seller
6. FERC Approval Under Federal Power Act Section 203	Buyer

EXHIBIT D

Determination of Purchase Price and Allocation of Purchase PriceI. Determination of Purchase Price

The Purchase Price will be equal to the sum of the following three (3) amounts in paragraphs (i), (ii) and (iii) below, all of which shall be calculated by Seller as of the Closing Date as follows, plus a gross-up amount calculated in accordance with paragraph (iv) below:

- (i) Buyer's applicable Component Share of the replacement cost of the Windstar Substation, which shall be based on the actual cost and expense of developing, designing, engineering, procuring, constructing, permitting, testing and commissioning the Windstar Substation, including all costs and expenses incurred by or on behalf of PacifiCorp (including allocable overhead and internal costs and expenses) to develop, design, engineer, procure, construct, permit, test and commission the Windstar Substation, including the Windstar Substation Upgrades; plus
- (ii) Buyer's applicable Component Share of the replacement cost of the Seller Upgraded Transmission Line, which shall be based on the actual cost and expense of developing, designing, engineering, procuring, constructing, permitting, testing and commissioning the Seller Upgraded Transmission Line, including all costs and expenses incurred by or on behalf of PacifiCorp (including allocable overhead and internal costs and expenses) to develop, design, engineer, procure, construct, permit, test and commission the Seller Upgraded Transmission Line; plus
- (iii) Buyer's applicable Component Share of the depreciated replacement cost of the Dave Johnston Substation, which shall be based on the estimated replacement cost and expense of developing, designing, engineering, procuring, constructing, permitting, testing and commissioning the Dave Johnston Substation, including all costs and expenses that would be incurred by or on behalf of PacifiCorp (including allocable overhead and internal costs and expenses) to develop, design, engineer, procure, construct, permit, test and commission the Dave Johnston Substation, depreciated through the Closing Date.
- (iv) if and to the extent that any of the amounts calculated in respect of the Components pursuant to paragraphs (i), (ii) or (iii) above are less than Seller's net book value of such Components, then such amounts shall be grossed up to cover any income tax that Seller shall incur on income realized in respect of such Components as a result of the Contemplated Transaction.

II. Allocation of Purchase Price

The Purchase Price will be allocated to the three (3) Components consistent with the method of calculation of the Purchase Price above.

III. Sample Calculation

The following is a non-binding estimate of the Purchase Price based on cost and expense estimates as of the Execution Date. The final Purchase Price will be adjusted by Seller at the Closing based on (i) the actual cost and expense of developing, designing, engineering, procuring, constructing, permitting, testing and commissioning the Windstar Substation, including the Windstar Substation Upgrades, and the Seller Upgraded Transmission Line and (ii) the estimated costs and expense of developing, designing, engineering, procuring, constructing, permitting, testing and commissioning the Dave Johnston Substation, in each case, in accordance with Article I of this Exhibit D.

Summary of Estimate of Purchase Price

Estimated price for a 22.5% undivided ownership interest in the Windstar Substation:

Price will be adjusted to equal 22.5% of the actual costs and expenses of the Windstar Substation Upgrades as of the Closing Date, excluding Black Hills Power's interconnection costs	\$3,219,322
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Estimated price for a 56.3% undivided ownership interest in the Seller Upgraded Transmission Line:

Price will be adjusted to equal 56.3% of the actual costs and expenses of the Seller Upgraded Transmission Line as of the Closing Date	\$719,273
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Estimated price for a 15% undivided ownership interests in the Dave Johnston Substation:

Price will be adjusted to equal 15% of the estimated replacement costs as of the Closing Date, depreciated through the Closing Date	\$2,281,577
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Total estimated Purchase Price:	<u>\$6,220,172</u>
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Plus estimated sales tax at 5%:	\$311,008
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Total:	<u>\$6,531,180</u>
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Estimated Price for a 22.5% Undivided Ownership Interest in the Windstar Substation

Estimated replacement cost (based on cost estimates) of Windstar Substation:

Site	Windstar Substation
Glenrock Wind line Terminal Comm/Sub	
Windstar Substation (Glenrock upgrades): 230 kV New Sub	\$6,323,044
DJ-Capser: Fiber & 2-Circuit Loop in Windstar Substation	\$2,304,573
DJ-Yellowcake: Loop into Windstar Substation	\$207,467
DJ Sub: Comm/P&C	\$464,228
Network interconnection upgrades	\$5,008,785
TOTAL PROJECT, (100% w/o – Betterment) Data from project expenditure requisition	<u>\$14,308,097</u>

Windstar Substation Transmission Capacity	=	2000 MW
Black Hills Power's Component Capacity Share	=	450 MW
Black Hills Power's Component Share	=	22.5%

Black Hills Power's estimated cost (excluding sales tax) of Black Hills Power's Component Share of the Windstar Substation ¹	=	\$3,219,322
	=	22.5% x (\$14,308,097)

Estimated Price for a 56.3% Undivided Ownership Interest in the Seller Upgraded Transmission Line

Estimated replacement cost (based on cost estimates) of Seller Upgraded Transmission Line:

	Total
Directs, without Engineering	\$ 1,043,743
Directs, Engineering ONLY	\$ 83,850
Indirects	\$ 151,114
Total	\$ 1,278,707

Seller Upgraded Transmission Line Transmission Capacity	=	800 MW
Black Hills Power's Component Capacity Share	=	450 MW

¹ Black Hills Power's cost will be adjusted based on actual costs and expenses as of the Closing Date.

Black Hills Power's Component Share	=	56.3%
Black Hills Power's estimated cost (excluding sales tax) of Black Hills Power's Component Share of the Seller Upgraded Transmission Line ²	=	\$719,273
	=	56.3% x \$1,278,707

**Estimated price for a 15% undivided ownership interest in
the Dave Johnston Substation**

Estimated replacement cost (based on cost estimates) of Dave Johnston Substation:

Engineering estimate of replacement costs (including 14 breaker positions)	=	\$20,951,120
Accumulated depreciation, estimated @ 27.4%	=	\$(5,740,607)
Total replacement cost net of depreciation	=	\$15,210,513
Dave Johnston Substation Transmission Capacity	=	3000 MW
Black Hills Power's Component Capacity Share	=	450 MW
Black Hills Power's Component Share	=	15%
Black Hills Power's estimated cost (excluding sales tax) of Black Hills Power's Component Share of the Dave Johnston Substation ³	=	\$2,281,577
	=	15% x \$15,210,513

² Black Hills Power's cost will be adjusted based on actual costs and expenses as of the Closing Date.

³ Black Hills Power's cost will be adjusted based on estimated costs and expenses as of the Closing Date.

EXHIBIT E

Form of Bill of Sale

THIS BILL OF SALE is made and entered into as of [____], 20[] (this "Bill of Sale") by PacifiCorp, an Oregon corporation ("Seller"), for the benefit of, Black Hills Power, Inc., a South Dakota corporation ("Buyer"). Capitalized terms used but not defined in this Bill of Sale shall have the meanings assigned to such terms in the Agreement (as defined below).

RECITALS

WHEREAS, pursuant to that certain Purchase and Sale Agreement, dated as of January [], 2010 (the "Agreement"), between Seller and Buyer, Seller has agreed, subject to the terms and conditions of the Agreement, to sell, assign, convey, transfer and deliver to Buyer, free and clear of all Encumbrances (other than Permitted Encumbrances), Buyer's Ownership Interest in all of Seller's right, title, and interest in, and to the assets constituting the Transmission Facilities, but excluding the Excluded Assets (the "Purchased Facilities"); and

WHEREAS, pursuant to the Agreement, Seller has agreed to enter into this Bill of Sale pursuant to which the tangible property included in the Purchased Facilities will be sold, transferred, assigned, conveyed, set over and delivered to Buyer.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller hereby agrees as follows:

1. Assignment. Subject to the terms and conditions of the Agreement, Seller does hereby sell, assign, convey, transfer and deliver to Buyer, free and clear of all Encumbrances (other than Permitted Encumbrances), Buyer's Ownership Interest in all of Seller's right, title, and interest in and to the Purchased Facilities.
2. Excluded Assets Not Assigned. Notwithstanding anything expressed herein to the contrary, the Excluded Assets are specifically excluded from the Purchased Facilities as provided in the Agreement and shall be retained by Seller at and following the Closing.
3. Further Assurances. Seller shall, from time to time after the delivery of this Bill of Sale, at Buyer's request and expense, prepare, execute and deliver to Buyer such other instruments of conveyance and transfer and take such other action as Buyer may reasonably request so as to more effectively sell, transfer, assign and deliver and vest in Buyer title to and possession of Buyer's Ownership Interest in the Purchased Facilities free and clear of all Encumbrances (other than Permitted Encumbrances) as provide in the Agreement and to further effect the purposes of this Bill of Sale.

4. Relationship to Agreement. The provisions of this Bill of Sale are subject, in all respects, to the terms and conditions of the Agreement, including all of the covenants, representations and warranties, indemnification, remedies (including limitations) contained therein, all of which shall survive the execution and delivery of this Bill of Sale to the extent indicated in the Agreement.

5. No Waiver. It is understood and agreed that nothing in this Bill of Sale shall constitute a waiver or release of any claims arising out of the contractual relationships between Seller and Buyer.

6. No Third Party Beneficiary. Nothing in this Bill of Sale, express or implied, is intended or shall be construed to confer upon, or give to, any person other than Buyer, Seller and their successors and permitted assigns any remedy or claim under or by reason of this Bill of Sale or any agreements, terms, covenants or conditions hereof and all the agreements, terms, covenants and conditions contained in this Bill of Sale shall be for the sole and exclusive benefit of Buyer, Seller and their successors and permitted assigns.

7. Binding Effect. This Bill of Sale and all of the provisions hereof shall be binding upon and shall inure to the benefit of Seller, Buyer and their respective successors and permitted assigns.

8. Governing Law. This Bill of Sale shall be governed by and construed in accordance with the laws of the State of Wyoming (regardless of the laws that might otherwise govern under applicable principles of conflicts of law) as to all matters, including matters of validity, construction, effect, performance and remedies.

9. Construction. This Bill of Sale is delivered pursuant to and is subject to the Agreement. In the event of any conflict between the terms of the Agreement and the terms of this Bill of Sale, including the terms set forth in Paragraph 7 (Binding Effect) hereof, the terms of the Agreement shall prevail.

10. Severability. Any term or provision of this Bill of Sale that is invalid or unenforceable in any situation will not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

11. Counterparts. This Bill of Sale may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Bill of Sale and all of which, when taken together, will be deemed to constitute one and the same agreement.

12. Notices. All notice, requests, demands and other communications under this Bill of Sale shall be given in accordance with Section 11.01 of the Agreement and at the addresses set forth therein.

[Signature page follows]

IN WITNESS WHEREOF, Seller has caused its duly authorized representative to execute this Bill of Sale as of the date first above written.

PACIFICORP

By: _____
Name:
Title:

EXHIBIT F

Form of Joint Ownership, Operating and Maintenance Agreement

**JOINT OWNERSHIP, OPERATING
AND MAINTENANCE AGREEMENT**

BETWEEN

BLACK HILLS POWER, INC.

AND

PACIFICORP

[____], []

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JOINT OWNERSHIP, OPERATING AND MAINTENANCE AGREEMENT

This Joint Ownership, Operating and Maintenance Agreement (this "Agreement"), dated this [] day of [], 20[] (the "Execution Date"), is between Black Hills Power, Inc., a South Dakota corporation ("Black Hills Power"), and PacifiCorp, an Oregon corporation ("PacifiCorp"). Black Hills Power and PacifiCorp are sometimes hereinafter referred to individually as "Owner" and collectively as "Owners".

RECITALS:

WHEREAS, PacifiCorp is a transmission provider which owns and operates certain facilities for the transmission of electric power and energy located in Wyoming;

WHEREAS, PacifiCorp has upgraded its Casper #1 230 kV transmission line (as further described in Exhibit A, the "Transmission Line") between the Windstar 230 kV Substation (as further described in Exhibit A, the "Windstar Substation") and the Dave Johnston 230 kV substation (as further described in Exhibit A, the "Dave Johnston Substation"). Collectively the Transmission Line, the Windstar Substation and the Dave Johnston Substation are referred to herein as the "Transmission Facilities"

WHEREAS, Black Hills Power is a joint owner with Basin Electric Power Cooperative and Powder River Energy Corporation of certain transmission facilities (the "Common Use System"), and is the tariff administrator (the "Tariff Administrator") of the Joint Open Access Transmission Tariff for the Common Use System ("Common Use System Joint Tariff"), which governs the provision of transmission and interconnection service on the Common Use System;

WHEREAS, Black Hills Power is in the process of constructing a 230 kV transmission line which it will own and which will be interconnected to the Transmission Facilities at the Windstar Substation;

WHEREAS, pursuant to that certain Purchase and Sale Agreement, dated as of January [], 2010 ("Purchase and Sale Agreement"), between PacifiCorp and Black Hills Power, PacifiCorp has sold to Black Hills Power and Black Hills Power has purchased from PacifiCorp an undivided ownership in the Transmission Facilities; and

WHEREAS, PacifiCorp and Black Hills Power desire to set forth the terms and conditions by which they will jointly own, operate, and maintain the Transmission Facilities.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, PacifiCorp and Black Hills Power agree as follows:

ARTICLE I DEFINITIONS; RULES OF INTERPRETATION

1.01 Definitions. Unless the context otherwise requires, the following capitalized terms have the meanings given to them below:

“Affected Party” has the meaning given to such term in Section 8.01.

“Affected System Operator” has the meaning given to such term in the applicable OATT.

“Affiliate” means, with respect to a Person, each other Person that, directly or indirectly, controls, is controlled by or is under common control with, such designated Person. For the 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, shall mean (i) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (ii) the right to direct the policies or operations of such Person.

“Agent” has the meaning given to such term in Section 3.01.

“Agreement” means this Joint Ownership, Operating and Maintenance Agreement (including all Exhibits attached hereto), as the same may be amended and supplemented from time to time in accordance with the terms hereof.

“Approved Courts” has the meaning given to such term in Section 15.04.

“Bankrupt” means, with respect to any Person, that such Person: (i) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, or (iii) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets.

“Black Hills Power” has the meaning given to such term in the preamble.

“Business Day” means any day except a Saturday, Sunday and any day which is a legal holiday or a day on which banking institutions in New York City are authorized or obligated by Governmental Requirements to close.

“Claims” has the meaning given to such term in Section 11.01(a).

“Code” has the meaning given to such term in Section 14.02.

“Common Use System” has the meaning given to such term in the recitals.

“Common Use System Joint Tariff” has the meaning given to such term in the recitals.

“Component” means each of the Windstar Substation, the Dave Johnston Substation and the Transmission Line.

“Component Capacity Share” has the meaning given to such term in Exhibit B.

“Component Share” has the meaning given to such term in Exhibit B.

“Continuing Owner” has the meaning given to such term in Section 6.03.

“Contract Year” means each twelve (12) month period during the Term commencing on the Execution Date or the anniversary of the Execution Date and ending the day immediately before the first or subsequent anniversary of the Execution Date, as applicable, provided that the final Contract Year shall end on the date that this Agreement expires or is terminated.

“Damaged Facilities” has the meaning given to such term in Section 6.01.

“Dave Johnston Substation” has the meaning given to such term in the recitals.

“Defaulting Owner” has the meaning given to such term in Section 9.01.

“Designated Representative” has the meaning given to such term in Section 2.08(b).

“Dispute” has the meaning given to such term in Section 15.01.

“Dispute Notice” has the meaning given to such term in Section 15.02.

“Disputing Party” has the meaning given to such term in Section 15.02.

“Event of Default” has the meaning given to such term in Section 9.01.

“Execution Date” has the meaning given to such term in the preamble.

“FERC” means the Federal Energy Regulatory Commission.

“FERC Methodology” has the meaning given to such term in Section 3.06.

“Force Majeure” has the meaning given to such term in Section 8.01.

“Good Utility Practice” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry during the relevant time period, or any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, would have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method, or act to the exclusion of all others, but rather to be acceptable practices, methods, or acts generally accepted in the region, including those practices required by Federal Power Act section 215(a)(4).

“Governmental Authority” means any federal, state, local or municipal governmental body; any governmental, quasi-governmental, regulatory or administrative agency, commission, body or other authority exercising or entitled to exercise any administrative, executive, judicial,

legislative, policy, regulatory or taxing authority or power, including FERC, NERC or any regional reliability council; or any court or governmental tribunal, in each case, having jurisdiction over either Owner or any of its Affiliates or the ownership, use, operation and maintenance, repair and reconstruction, or retirement and decommissioning of the Transmission Facilities.

“Governmental Authorizations” means any license, permit, order, approval, filing, waiver, exemption, variance, clearance, entitlement, allowance, franchise, or other authorization from or by a Governmental Authority.

“Governmental Requirements” means all laws, statutes, ordinances, rules, regulations, codes, and similar acts or promulgations or other legally enforceable requirements of any Governmental Authority.

“Indemnified Party” has the meaning given to such term in Section 11.01(a).

“Indemnifying Party” has the meaning given to such term in Section 11.01(a).

“Interconnection Customer” has the meaning given to such term in the applicable OATT.

“NERC” means the North American Electric Reliability Corporation or any successor thereto.

“Non-Defaulting Owner” means an Owner that is not a Defaulting Owner.

“OATT” means: (i) with respect to PacifiCorp, PacifiCorp’s Open Access Transmission Tariff on file with FERC; and (ii) with respect to Black Hills Power, the Common Use System Joint Tariff on file with FERC.

“Operating Committee” has the meaning given to such term in Section 2.08(a).

“O&M Costs” has the meaning given to such term in Section 4.02.

“Other Costs” has the meaning given to such term in Section 3.06.

“Owner” has the meaning given to such term in the preamble.

“Owners” has the meaning given to such term in the preamble.

“Ownership Interest” has the meaning given to such term in Section 2.01(a).

“PacifiCorp” has the meaning given to such term in the preamble.

“Payment Dispute Notice” has the meaning given to such term in Section 3.07(a).

“Person” means an individual, partnership, corporation, limited liability company, joint venture, association, trust, unincorporated organization, Governmental Authority, or other form of entity.

“Proprietary Information” has the meaning given to such term in Section 12.06.

“Purchase and Sale Agreement” has the meaning give to such term in the recitals.

“Qualified Owner” means an Owner that has an OATT on file with FERC under which it is authorized to provide transmission service on its transmission system.

“Quarter” means a three (3) month period beginning each January 1, April 1, July 1 and October 1 of a year and ending the day immediately prior to the first day of the next Quarter.

“Reduction Event” has the meaning given to such term in Section 4.05.

“Regulations” has the meaning given to such term in Section 14.02.

“Remaining Owner” has the meaning given to such term in Section 7.03.

“Representatives” means, in respect of an Owner or Agent, the directors, officers, shareholders, partners, members, employees, agents, consultants, contractors or other representatives of such Owner or Agent.

“Segregated Account” has the meaning given to such term in Section 3.07(a).

“Tariff Administrator” has the meaning given to such term in the recitals.

“Tax Indemnifying Party” has the meaning given to such term in Section 14.04.

“Tax Indemnitee Party” has the meaning given to such term in Section 14.04.

“Taxes” has the meaning given to such term in Section 14.03.

“Term” has the meaning given to such term in Section 13.01.

“Transferee” has the meaning given to such term in Section 12.01.

“Transferor” has the meaning given to such term in Section 12.01.

“Transmission Capacity” has the meaning given to such term in Section 2.01(b).

“Transmission Line” has the meaning given to such term in the recitals.

“Transmission Facilities” has the meaning given to such term in the recitals.

“Transmission Facilities Capacity Share” has the meaning given to such term in Section 2.02.

“WECC” means the Western Electricity Coordinating Council or any successor thereto.

“Windstar Substation” has the meaning given to such term in the recitals.

1.02 Rules of Construction. The following rules of interpretation shall apply in this Agreement:

- (a) The masculine shall include the feminine and neuter.
- (b) References to “Articles,” “Sections” and “Exhibits” shall be to articles, sections and exhibits of this Agreement.
- (c) The Exhibits attached hereto are incorporated in and are intended to be a part of this Agreement.
- (d) This Agreement was negotiated and prepared by both Owners with the advice and participation of counsel. The Owners have agreed to the wording of this Agreement and none of the provisions hereof shall be construed against one Owner on the ground that such Owner is the author of this Agreement or any part hereof.
- (e) Each reference in this Agreement to any agreement or document or a portion or provision thereof shall be construed as a reference to the relevant agreement or document as amended, supplemented or otherwise modified from time to time.
- (f) Each reference in this Agreement to Governmental Requirements and to terms defined in, and other provisions of, Governmental Requirements shall be references to the same (or a successor to the same) as amended, supplemented or otherwise modified from time to time.
- (g) The term “day” shall mean a calendar day, the term “month” shall mean a calendar month, and the term “year” shall mean a calendar year. Whenever an event is to be performed, a period commences or ends, or a payment is to be made on or by a particular date and the date in question falls on a day which is not a Business Day, the event shall be performed, or the payment shall be made, on the next succeeding Business Day; provided, however, that all calculations shall be made regardless of whether any given day is a Business Day and whether or not any given period ends on a Business Day.
- (h) Each reference in this Agreement to a Person includes its successors and permitted assigns; and each reference to a Governmental Authority includes any Governmental Authority succeeding to its functions and capacities.
- (i) In this Agreement, the words “include,” “includes” and “including” are to be construed as being at all times followed by the words “without limitation.”

(j) The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall, unless otherwise specified, refer to this Agreement as a whole and not to any particular provision of this Agreement.

ARTICLE II OWNERSHIP INTERESTS

2.01 Ownership Interests.

(a) The Owners acknowledge and agree that: (i) each Owner owns an undivided ownership interest in the Transmission Facilities which shall be calculated in accordance with Exhibit B (“Ownership Interest”); and (ii) as of the Execution Date, the Owners’ Ownership Interests are as set forth on Exhibit D.

(b) If at any time during the Term the rated transmission capacity, as reasonably determined by Agent (the “Transmission Capacity”), of one or more of the Components should decrease (and Agent reasonably believes such decrease will last for a period of at least thirty (30) days) as a result of a derating or otherwise (including as a result of damage or destruction to the Transmission Facilities as provided for in Section 6.01), then effective as of the date of written notice from Agent to Owners of such decrease, the Transmission Capacity of such Component(s) shall be automatically adjusted and each of the Owner’s Component Share(s) in such Component(s) and Ownership Interest shall remain unchanged, but each of the Owner’s Component Capacity Share(s) in such Component(s) shall be reduced pro rata based on each Owner’s Component Share in each such Component and the Transmission Facilities Capacity Share shall automatically be adjusted in accordance with Exhibit C. The Owners shall memorialize the revised Transmission Capacity of such Component(s) and the revised Component Capacity Shares and the Transmission Facilities Capacity Shares of the Owners in a revised Exhibit D which shall be effective as of the date of such written notice from Agent.

(c) If at any time during the Term the Transmission Capacity of one or more Components should increase (and Agent reasonably believes such increase will last for a period of at least thirty (30) days) as a result of capital upgrades or improvements permitted pursuant hereto, then effective as of the date of written notice from Agent to Owners of such increase, the Transmission Capacity of such Component(s) shall automatically be adjusted and each of the Owner’s Component Share(s) and Component Capacity Share(s) in such Component(s) and each of the Owner’s Ownership Interest and Transmission Facilities Capacity Share shall, to extent required by Section 5.01, but subject to Section 5.02, automatically be adjusted in accordance with Exhibit B and Exhibit C, respectively, and the Owners shall memorialize the revised Transmission Capacity of such Component(s) and any revised Component Capacity Shares, Component Shares, Ownership Interests and Transmission Facilities Capacity Shares of the Owners in a revised Exhibit D which shall be effective as of the date of such written notice from Agent.

(d) The Owners agree that they shall enter into such additional documentation as shall reasonably be required to document any change in the Ownership Interests and Transmission Facilities Capacity Shares of the Owners contemplated hereby, provided that in no event shall an Owner be responsible for paying any amount to the other Owner as a result of any

change in Component Capacity Shares, Component Shares, Ownership Interest or Transmission Facilities Capacity Share except as expressly provided for in this Agreement.

2.02 Transmission Facilities Capacity Share. As owners of an Ownership Interest, each of the Owners shall be entitled to a share of the bi-directional transmission capacity of the Transmission Facilities (representing a continuous transmission path between the Windstar Substation and the Dave Johnston Substation across the Transmission Line) which shall be calculated in accordance with Exhibit C (“Transmission Facilities Capacity Share”). The Owners acknowledge and agree that as of the Execution Date, the Owners’ Transmission Facilities Capacity Shares are as set forth on Exhibit D. Each Owner’s Transmission Facilities Capacity Share entitles the Owner to provide and schedule transmission service over the Transmission Facilities to the extent of the Owner’s Transmission Facilities Capacity Share in accordance with the Owner’s OATT and to schedule and transmit an amount of energy commensurate with the Owner’s Transmission Facilities Capacity Share over the Transmission Facilities on its own behalf or on behalf of the Owner’s transmission customers with interconnection at either the Dave Johnston Substation or Windstar Substation; provided, however, that at no time shall an Owner be entitled to post, sell, schedule or transmit more than its Transmission Facilities Capacity Share of transmission capacity (and a commensurate amount of energy) on the Transmission Facilities, unless otherwise mutually agreed to by the Owners; provided, further, that in the event another Common Use System transmission owner succeeds Black Hills Power as Tariff Administrator for the Common Use System Joint Tariff, that transmission owner shall not succeed to Black Hills Power’s rights as an Owner under this Agreement (including its rights to Black Hills Power’s Transmission Facilities Capacity Share) and shall not become a third-party beneficiary to this Agreement, but shall be permitted to exercise the administrative responsibilities of Tariff Administrator with respect to the provision and scheduling of transmission service over the Transmission Facilities to the extent of Black Hills Power’s Transmission Facilities Capacity Share under the Common Use System Joint Tariff. Effective as of the date that an Owner’s Ownership Interest changes pursuant to the terms of this Agreement, the Owner’s Transmission Facilities Capacity Share shall change in accordance with Exhibit C.

2.03 Qualified Owner. Each Owner shall take all actions required to continue to be a Qualified Owner during the Term. If at any time during the Term an Owner ceases to be a Qualified Owner, then such Owner shall immediately provide notice thereof to the other Owner and take all actions required to resume being a Qualified Owner.

2.04 No Right to Use. For the avoidance of doubt, the provisions of this Agreement shall not confer upon Black Hills Power the right to use or transmit energy over any transmission facilities other than the Transmission Facilities. In addition, Black Hills Power shall not have the right to interconnect to the Transmission Facilities without PacifiCorp’s consent. PacifiCorp’s right to consent shall be exercised in accordance with Good Utility Practice, and shall not be unreasonably withheld, conditioned, or delayed.

2.05 Payments. All payments required to be made by or on behalf of the Owners under the terms of this Agreement, including those payments for costs and expenses incurred by Agent pursuant hereto (including O&M Costs and Other Costs), shall be made to the account or

accounts designated by the Owner or Agent to which the payment is owed, by wire transfer in immediately available funds in the lawful currency of the United States.

2.06 Waiver of Partition Rights. Owners shall own their undivided Ownership Interests in the Transmission Facilities as tenants-in common. The Owners acknowledge that any exercise of the remedy of partition (whether at law or in equity) of the Transmission Facilities or any portion thereof would be impracticable in view of the purposes and requirements of this Agreement, would violate the spirit and intent of this Agreement, and would defeat the Owners' intentions and reasonable expectations as well as the consideration upon which each Owner entered into this Agreement. Accordingly, each Owner agrees that during the Term it (a) will not, directly or indirectly, commence, maintain, support or join in any action or proceedings of any kind to partition the Transmission Facilities or any portion thereof, and (b) waives, after consultation with its qualified legal counsel, any and all rights that it may have under this Agreement or applicable Governmental Requirements (whether at law or in equity) or otherwise to commence, maintain, support or join in any such action or proceeding. Each Owner acknowledges that the other Owner has entered into and will perform the terms of this Agreement in reliance upon the Owner's agreement and adherence to the terms of this Section 2.06, and would not have entered into this Agreement but for such reliance; and that it would be unjust and inequitable for any Owner to violate or to seek relief from any provision of this Section 2.06.

2.07 Severance of Improvements. The Owners agree that all facilities, structures, improvements, equipment and property of whatever kind and nature which make up the Transmission Facilities and which are constructed, placed or affixed on rights-of way, easements, or fee or leased real properties shall, as against all Persons or entities (including the Owners), be deemed to be and remain personal property of the Owners, not affixed to the realty.

2.08 Operating Committee.

(a) Within thirty (30) days after the Execution Date, the Owners shall establish a committee (the "Operating Committee") to consult with Agent with respect to certain matters expressly provided for in this Agreement. The Operating Committee shall have no authority or responsibility under this Agreement other than to consult with Agent where expressly provided for in this Agreement.

(b) The Operating Committee shall be comprised of a Designated Representative of each of the Owners. Each Owner shall designate one or more representatives (each a "Designated Representative") to serve on the Operating Committee.

(c) The Operating Committee will meet as and when required to consult with Agent where expressly provided for in this Agreement. The Operating Committee may agree upon procedures for the holding of meetings and the taking of minutes of meetings; provided that a quorum for any meeting of the Operating Committee shall consist of at least one Designated Representative of each Owner.

(d) Each Owner shall have a single vote on the Operating Committee, and any Designated Representative of an Owner may cast that Owner's vote. Decisions of the Operating Committee shall require the unanimous vote of the Owners. Decisions of the Operating Committee shall be binding upon the Owners; provided, however, that the Operating Committee shall not have the authority to vary the terms of this Agreement, and any such variation shall require a formal amendment of this Agreement in accordance with Section 17.04.

ARTICLE III AGENT

3.01 Appointment of Agent. The Owners hereby appoint PacifiCorp, and PacifiCorp hereby accepts appointment, to serve as agent ("Agent") for the Owners in accordance with the terms and conditions of this Article III. Notwithstanding anything to the contrary contained in this Agreement or Governmental Requirements, the Owners and Agent agree that Agent shall have no obligations, responsibilities or duties to the Owners other than as are expressly provided for in this Agreement.

3.02 Authority of Agent. Agent shall supervise and perform, or cause to be supervised and performed, the physical operation and maintenance of, capital upgrades and improvements to, repair and reconstruction of, and retirement and decommissioning of, the Transmission Facilities in accordance with this Article III and Articles IV-VII. In the performance of its obligations under this Agreement, Agent shall have authority:

(a) to make final decisions on all matters relating to: (i) the physical operation and maintenance of the Transmission Facilities pursuant to Article IV; (ii) the development, design, engineering, procurement, construction, permitting, completion, testing and commissioning of capital upgrades or improvements to the Transmission Facilities pursuant to Article V; (iii) the development, design, engineering, procurement, construction, permitting, completion, testing and commissioning of repairs to and reconstruction of the Transmission Facilities pursuant to Article VI; and (iv) the retirement and decommissioning of the Transmission Facilities pursuant to Article VII;

(b) to select and purchase all materials and equipment that will be incorporated into the Transmission Facilities;

(c) to contract for materials, equipment and services (including from third-party consultants and advisors) necessary for: (i) the physical operation and maintenance of the Transmission Facilities pursuant to Article IV; (ii) the development, design, engineering, procurement, construction, permitting, completion, testing and commissioning of capital upgrades or improvements to the Transmission Facilities pursuant to Article V; (iii) the development, design, engineering, procurement, construction, permitting, completion, testing and commissioning of repairs to or reconstruction of the Transmission Facilities pursuant to Article VI; and (iv) the retirement and decommissioning of the Transmission Facilities pursuant to Article VII; and

(d) to contract for materials, equipment and services (including from third-party consultants and advisors) and to take such other actions as Agent may deem necessary or appropriate to perform its obligations under this Agreement.

3.03 Standard of Agent's Work. Agent shall perform its obligations under this Agreement in accordance with Good Utility Practice and applicable Governmental Requirements and Governmental Authorizations.

3.04 Delegation of Responsibilities. Agent may, in its sole and absolute discretion, delegate all or a portion of its obligations under this Agreement to one or more Persons. Notwithstanding any such delegation, Agent shall remain responsible for all such delegated obligations in accordance with the terms of this Agreement.

3.05 Governmental Authorizations. Agent is authorized to prepare and submit to all appropriate Governmental Authorities the necessary reports, applications, plans, specifications and other documents to procure all Governmental Authorizations required to perform its obligations under this Agreement, provided that Agent shall consult with the Owners prior to the submission of any such reports, application, plans, specification and other documents. Nothing in this Section 3.05 shall obligate Agent to prepare and submit to appropriate Governmental Authorities any reports, applications, plans, specifications and other documents to procure any Governmental Authorizations required by the Owners in connection with their ownership of an undivided Ownership Interest in the Transmission Facilities or the recovery of any costs and expenses in connection therewith.

3.06 Billing Estimates and Statements. Not later than August 1 of each year (commencing in the year in which the Execution Date occurs), Agent will deliver to the Owners a good faith estimate of the O&M Costs it expects to incur during that upcoming year; provided, however, that Agent's good faith estimate shall in no way limit the amount of O&M Costs that Agent may incur or recover from the Owners pursuant to this Agreement. Not later than thirty (30) days after the end of each Quarter during the Term, Agent will deliver to the Owners a billing statement of the O&M Costs and any other costs and expenses incurred by or on behalf of Agent in the performance of its obligations under this Agreement ("Other Costs") during such Quarter, provided that failure by Agent to timely deliver a billing statement shall not relieve the Owners of their payment obligation in respect of the O&M Costs and Other Costs in such billing statement. In the event that Agent incurs significant Other Costs, it may elect to deliver to the Owners more frequently than Quarterly, a billing statement of the Other Costs incurred by or on behalf of Agent in the performance of its obligations under this Agreement, provided that in no event shall Agent deliver a billing statement to the Owners more frequently than monthly. Each billing statements will reflect each Owner's share of the O&M Costs and Other Costs, which will be based on each Owner's Component Share for the specific Component to which the O&M Costs and Other Costs relate, unless this Agreement provides otherwise. Each Owner shall pay the amount stated on the billing statement no later than sixty (60) days after the date of the billing statement. Any payment past due will accrue interest, per annum, calculated in accordance with the methodology specified for interest in the FERC regulations at 18 C.F.R. § 35.19a(a)(2)(iii) (the "FERC Methodology").

3.07 Disputed Amounts.

(a) If an Owner disputes any portion of any amount specified in a billing statement delivered by Agent pursuant to Section 3.06, such Owner shall promptly notify Agent and the other Owner in writing of the dispute (a “Payment Dispute Notice”) and shall pay the undisputed amount when due to Agent and the disputed amount as follows: (i) if the disputed amount is less than one hundred thousand dollars (\$100,000), the disputing Owner shall pay the disputed amount when due to Agent to be held in an interest bearing segregated account (“Segregated Account”) subject to release in accordance with the provisions below; or (ii) if the disputed amount is one hundred thousand dollars (\$100,000) or greater or if previously disputed amounts then held by Agent pursuant to Section 3.07(a)(i) are equal to or greater than one hundred thousand dollars (\$100,000) at the time the disputed amount is due, then the disputed amount shall be deposited into an escrow account with a third party escrow agent (mutually acceptable to the Owners) pursuant to an escrow agreement (mutually acceptable to the Owners). If the Owners, in good faith, are not able to agree on a third party escrow agent or the terms of the escrow agreement within thirty (30) days from the date the Payment Dispute Notice is delivered to Agent and the other Owner, the disputing Owner shall pay the disputed amount to Agent to be held in a Segregated Account until selection of the third party escrow agent and the terms of the escrow agreement can be finalized (whereupon Agent shall deposit the disputed amount into the escrow account) or the dispute is resolved pursuant to Article XV (whereupon Agent shall release the disputed amount in accordance with Section 3.07(b)).

(b) The disputed amount shall be resolved pursuant to the provisions of Article XV. If it is determined pursuant to Article XV that an overpayment has been made, then if the disputed amounts are held by Agent in a Segregated Account, Agent will distribute from the Segregated Account the amount of the overpayment, together with interest thereon calculated in accordance with the FERC Methodology, to the disputing Owner or will credit the same amount against the disputing Owner’s future billing statement, and Agent will release to itself from the Segregated Account the remainder of the disputed amount, if any, together with interest thereon calculated in accordance with the FERC Methodology. If it is determined pursuant to Article XV that an underpayment has been made, then if the disputed amounts are held by Agent in a Segregated Account, Agent will release to itself from the Segregated Account the entire disputed amount, together with interest thereon calculated in accordance with the FERC Methodology, and the disputing Owner shall promptly pay the amount of underpayment, together with interest thereon calculated in accordance with the FERC Methodology, calculated from the date the underpayment was due to the date the disputing Owner pays to Agent the amount of underpayment, together with interest thereon calculated in accordance with the FERC Methodology.

(c) If the disputed amounts are held in an escrow account established pursuant to Section 3.07(b), then once the disputed amount is resolved pursuant to provisions of Article XV, the escrow agent shall distribute funds in the escrow account pursuant to the terms of the escrow agreement. All third-party costs incurred by or on behalf of the Owners and Agent in connection with the establishment and maintenance of the escrow account and the execution of the escrow agreement shall be borne by the party not prevailing in the billing statement dispute.

3.08 Assistance. Each Owner shall cooperate with Agent promptly, as and when reasonably requested by Agent, to assist Agent in the performance of its duties, responsibilities and obligations under this Agreement, including executing and delivering such documents, certificates or instruments as Agent may reasonably request in order to perform its duties, responsibilities and obligations under this Agreement.

3.09 Limitation on Liability.

(a) Notwithstanding any provision to the contrary contained in this Agreement, except as provided for in Section 11.01(c), Agent shall have no liability to the Owners in connection with the performance of its duties, responsibilities and obligations under this Agreement, except to the extent that Agent fails to perform any of its material obligations under this Agreement and such failure is not remedied within thirty (30) days after written notice thereof from an Owner, provided that if such failure cannot reasonably be cured within thirty (30) days, then Agent shall have an additional period of time (not to exceed ninety (90) days) in which to cure such failure so long as Agent commences good faith activities to cure the failure during the initial thirty (30)-day cure period and continues to utilize its commercially reasonable efforts to effect a cure. Each Owner agrees that it has a duty to mitigate damages and shall use commercially reasonable efforts to minimize any damages it may incur as a result of Agent's failure to perform any of its obligations under this Agreement (including any fines levied by Governmental Authorities).

(b) Notwithstanding any provision to the contrary contained in this Agreement, neither PacifiCorp nor any of its Affiliates or Representatives shall be liable, whether in contract, tort, negligence, strict liability or otherwise, for any third-party Claim incurred by any Owner as the result of any act or failure to act, in its capacity as Agent under this Agreement, except as provided for in Section 11.01(c).

ARTICLE IV OPERATION AND MAINTENANCE; CURTAILMENT; INTERCONNECTION

4.01 Operation and Maintenance. Agent shall supervise and perform, or cause to be supervised and performed, the physical operation and maintenance of the Transmission Facilities in accordance with Good Utility Practice and applicable Governmental Requirements and Governmental Authorizations. Agent may utilize its employees and supervisory personnel, and any independent technical advisors, consultants, contractors and agents which it may select, as may be required to perform Agent's obligations under this Section 4.01. Agent shall, in consultation with the Operating Committee, make maintenance renewals and replacements that are necessary for the operation of the Transmission Facilities, including any capital upgrades or improvements that may be required by applicable Governmental Requirements and Governmental Authorizations, but excluding capital upgrades or improvements pursuant to Section 5.01, provided that, notwithstanding anything to the contrary contained in this Agreement, the Operating Committee must approve any single O&M Cost in excess of one hundred and fifty thousand dollars (\$150,000) which is not required in connection with an emergency. To the extent commercially practicable, Agent shall provide each of the Designated

Representatives no less than five (5) Business Day's prior written notice before it needs to consult with them pursuant to this Section 4.01.

4.02 O&M Costs. Agent shall bill the Owners pursuant to Section 3.06 for all costs and expenses incurred by or on behalf of Agent in the operation and maintenance of the Transmission Facilities pursuant to Section 4.01, including Agent's overhead and other internal costs and expenses that are allocable to the operation and maintenance of the Transmission Facilities ("O&M Costs").

4.03 Access.

(a) Agent shall, to the extent possible under any rights-of-ways, license, easement or other real property interest agreement applicable to the Transmission Facilities, provide each of the Owners and their designees reasonable access to the Transmission Facilities site to permit the Owners and their designees to inspect the operation and maintenance, capital upgrades and improvements to, repair and reconstruction of, and retirement and decommissioning of the Transmission Facilities, provided that (i) the Owners and their designees' do not interfere with the operation and maintenance, capital upgrades and improvements to, repair and reconstruction of, and retirement and decommissioning of the Transmission Facilities or any portion thereof or pose a safety hazard; (ii) the Owners and their designees comply with any requirements of any rights-of-ways, license, easement or other real property interest agreement applicable to the Transmission Facilities; and (iii) the Owners and their designees performing the inspection comply with Agent's or any other contractor's safety and security rules.

(b) Black Hills Power may, at its cost, at any time during normal business hours and with reasonable prior notice of not less than ten (10) Business Days, but not more often than once in any year, inspect and audit the books and records of Agent, and any of its Affiliates involved in the provision of services to the Owners pursuant to this Agreement, to the extent reasonably relating to the determination of all amounts payable by Black Hills Power under this Agreement within two (2) year prior to the audit notice date. Agent shall, and shall cause any of its relevant Affiliates to, keep and maintain all such records to the extent reasonably relating to the determination of all amounts payable by Black Hills Power under this Agreement and make such records available to Black Hills Power in accordance with the terms of this Agreement. If any audit discloses that an overpayment or underpayment has been made during such two (2)-year period, the amount of the overpayment or underpayment promptly will be paid by the appropriate Owner, together with interest calculated in accordance with the FERC Methodology. Agent shall, and shall cause any of its relevant Affiliates to, make available to Black Hills Power, to the extent commercially practicable, all relevant records, and provide all reasonably requested information, in each case, relating to the subject matter of any such audit, subject in all respects to any confidentiality restrictions applicable to third-party information or contracts, provided that Agent uses, or causes any of its relevant Affiliates to use, commercially reasonable efforts to obtain a waiver of such restrictions for purposes of the audit. Black Hills Power shall reimburse one hundred percent (100%) of all costs and expenses (including internal costs and expenses) reasonably incurred by or on behalf of Agent and any of its Affiliates in complying with the provisions of this Section 4.03(b).

4.04 Insurance.

(a) Agent will determine the appropriate insurance coverages, minimum amounts, self-insurance amounts, deductibles and other insurance policy terms for any insurance that will be obtained and maintained during the operating period, all in accordance with Good Utility Practice. Insurance policies relating to the Transmission Facilities shall name the Owners and Agent as additional insureds and shall contain a severability of interest provision. All insurance shall be placed with insurance companies authorized to do business in the jurisdictions where the Transmission Facilities are located and shall provide that, with respect to the Transmission Facilities, the coverages afforded shall be primary of any other valid and collectible insurance available to the Owners or Agent. Agent, on behalf of the Owners and any other named or additional insureds or loss payees, shall be solely responsible for pursuing claims and/or negotiating settlements in respect of claims under such insurance coverages. Costs for insurance, including any premiums, taxes, fees, deductibles, self-insurance or non-insured costs, whether derived from separate policies of insurance or allocated amounts associated with Agent's existing insurance programs, shall be borne by the Owners according to their respective Ownership Interests.

(b) Property Insurance

(i) Insurance for physical damage to substations and equipment therein that are included as part of the Transmission Facilities in types and amounts that are reasonable and customary for similarly situated utilities. Coverage may be insured or self-insured, or any combination of insured and self-insured.

(ii) Insurance for physical damage to the Transmission Line and any related equipment outside the boundaries of any substation and included as part of the Transmission Facilities shall be fully self-insured.

(iii) Unless otherwise agreed in writing between Agent and Owners, any insurance providing coverage for loss to the Transmission Facilities that may be available under policies of insurance issued to Agent by a captive insurance company affiliate of Agent, shall apply to Agent's Ownership Interest only.

4.05 Curtailement. Agent shall notify the Owners as soon as reasonably practicable upon becoming aware of any planned or unplanned event or circumstance, including an emergency condition or a rating study to meet compliance with regulatory or reliability standards, which physically or otherwise reduces or may reduce the amount of transmission capacity on all or a portion of the Transmission Facilities ("Reduction Event"), including the aggregate amount of reduction in the Transmission Capacity of each Component affected by the Reduction Event and each Owner's pro rata share, based on its Component Share of each affected Component, of such reduction to the extent known by Agent. In the event of a Reduction Event, Agent shall take such actions as Agent, in its sole discretion, may deem prudent and necessary to terminate the Reduction Event and to preserve and maintain the reliability, safety, integrity and operability of the Transmission Facilities and to protect the health and safety of the public. If Agent reasonably believes that a Reduction Event will last for a period of at least thirty (30) days, then in addition to the provisions in this Section 4.05 the

provisions of Section 2.01(b) shall apply. Each of the Owners shall provide notice of each Reduction Event in accordance with its respective OATT.

4.06 Interconnection.

(a) The Owners acknowledge and agrees that all third-party Interconnection Customer requests for interconnection to the Transmission Facilities must be processed in a manner consistent with the respective Owner's OATT to which the Interconnection Customer's request was made. An Owner in receipt of a third-party Interconnection Customer request for interconnection with the Transmission Facilities will promptly notify the other Owner, who will be treated as an Affected System Operator for purposes of processing the Interconnection Customer request.

(b) Nothing in this Agreement will limit in any way the right of PacifiCorp to interconnect one or more transmission lines to the Transmission Facilities, provided that (i) PacifiCorp will coordinate any such interconnections with Agent and (ii) Black Hills Power's Transmission Facilities Capacity Share shall not be reduced by such interconnection.

ARTICLE V CAPITAL UPGRADES

5.01 Capital Upgrades.

(a) At any time during the Term, PacifiCorp may, in its sole discretion, elect to make capital upgrades or improvements to one or more of the Components to increase the transmission capacity rating of such Components, provided that PacifiCorp shall provide Black Hills Power no less than ninety (90) days' prior written notice of any such upgrades or improvements, which notice shall contain reasonable details about the proposed upgrades or improvements. Within sixty (60) days of receipt of the notice from PacifiCorp, Black Hills Power may notify PacifiCorp that it elects to participate in any such upgrade or improvement to the Components, provided that Black Hills Power shall have no such option with respect to any upgrade or improvement proposed by PacifiCorp to the Windstar Substation or the Dave Johnston Substation. If Black Hills Power elects to participate in a proposed upgrade or improvement to the Transmission Line, then the Owners shall meet and agree on the final upgrades or improvements and the allocation of increased transmission capacity associated with such upgrades or improvements between the Owners, together with any amendments to Exhibit B and Exhibit C that may be required as a result of the agreed upon allocation of increased transmission capacity associated with such upgrades or improvements, including any changes to the applicable Transmission Capacity and the Owners' Component Capacity Shares, Component Shares, Transmission Facilities Capacity Shares and Ownership Interests. Agent shall design, permit, construct, install and commission any upgrades or improvements to the Components provided for in this Section 5.01(a) in accordance with Good Utility Practice and applicable Governmental Requirements and Governmental Authorizations. PacifiCorp shall be responsible for all of the costs of such upgrades and improvements; provided, however, that with respect to upgrades and improvements to the Transmission Line which Black Hills Power has elected to participate in, Black Hills Power shall be responsible, to the extent of its percentage allocation of the increased transmission capacity associated with such upgrades or improvements to the

Transmission Line, for all of the costs and expenses incurred by or on behalf of Agent in connection with such upgrades or improvements to the Transmission Line. Effective as of the date of commissioning of such upgrades and improvements, written notice of which Agent shall provide to the Owners, the Transmission Capacity of any upgraded or improved Component shall automatically be adjusted and each of the Owner's Component Share and Component Capacity Share in such Components and each of the Owner's Ownership Interest and Transmission Facilities Capacity Share shall automatically be adjusted in accordance with Exhibit B and Exhibit C, respectively, and the Owners shall memorialize the revised Transmission Capacity of such Components and any revised Component Capacity Shares, Component Shares, Ownership Interests and Transmission Facilities Capacity Shares of the Owners in a revised Exhibit D which shall be effective as of the date of commissioning of such upgrades and improvements.

(b) At any time during the Term, Black Hills Power may provide PacifiCorp written notice of its desire to make capital upgrades or improvements to one or more of the Components to increase the transmission capacity rating of such Components, which notice shall contain reasonable details about the proposed upgrades or improvements. Within thirty (30) days of receipt of the notice from Black Hills Power, PacifiCorp shall notify Black Hills Power in writing if it approves of the proposed upgrades or improvements, which approval shall not be unreasonably withheld, and, if so, whether it elects to participate in the proposed upgrades or improvements. If PacifiCorp elects to participate in the proposed upgrades or improvements, then the Owners shall meet and agree on the final upgrades or improvements and the allocation of increased transmission capacity associated with such upgrades or improvements between the Owners, together with any amendments to Exhibit B and Exhibit C that may be required as a result of the agreed upon allocation of increased transmission capacity associated with such upgrades or improvements, including any changes to the applicable Transmission Capacity and the Owners' Component Capacity Shares, Component Shares, Transmission Facilities Capacity Shares and Ownership Interests. Agent shall design, permit, construct, install and commission such upgrades or improvements in accordance with Good Utility Practice and applicable Governmental Requirements and Governmental Authorizations. PacifiCorp and Black Hills Power shall be responsible, based upon their percentage allocation of the increased transmission capacity associated with such upgrades or improvements, for all of the costs and expenses incurred by or on behalf of Agent in connection with such upgrades or improvements. Effective as of the date of commissioning of such upgrades or improvements, written notice of which Agent shall provide to the Owners, the Transmission Capacity of any upgraded or improved Component shall automatically be adjusted and each of the Owner's Component Share and Component Capacity Share in such Components and each of the Owner's Ownership Interest and Transmission Facilities Capacity Share shall automatically be adjusted in accordance with Exhibit B and Exhibit C, respectively, and the Owners shall memorialize the revised Transmission Capacity of such Components and any revised Component Capacity Shares, Component Shares, Ownership Interests and Transmission Facilities Capacity Shares of the Owners in a revised Exhibit D which shall be effective as of the date of commissioning of such upgrades or improvements.

(c) Each Owner shall provide Agent prompt written notice of any request pursuant to its OATT from a third-party customer to provide additional transmission capacity

that will require one or more capital upgrades or improvements to the Transmission Facilities. If capital upgrades or improvements are required in accordance with such Owner's OATT, then Agent and Owners shall cooperate in connection with the design, permitting, construction, installation and commissioning of such upgrades or improvements and the Owners shall agree on the allocation of increased transmission capacity associated with such upgrades or improvements between the Owners, together with any amendments to Exhibit B and Exhibit C that may be required as a result of the agreed upon allocation of increased transmission capacity associated with such upgrades or improvements, including any changes to the applicable Transmission Capacity of the upgraded or improved Components and the Owners' Component Capacity Shares, Component Shares, Transmission Facilities Capacity Shares and Ownership Interests. Effective as of the date of commissioning of such upgrades or improvements, written notice of which Agent shall provide to the Owners, the Transmission Capacity of any upgraded or improved Component shall automatically be adjusted and each of the Owner's Component Share and Component Capacity Share in such Components and each of the Owner's Ownership Interest and Transmission Facilities Capacity Share shall be automatically adjusted in accordance with Exhibit B and Exhibit C, respectively, and the Owners shall memorialize the revised Transmission Capacity of such Components and any revised Component Capacity Shares, Component Shares, Ownership Interests and Transmission Facilities Capacity Shares in a revised Exhibit D which shall be effective as of the date of commissioning of such upgrades or improvements.

5.02 No Change in Capacity Share. Except as provided for in Sections 5.01(a), 5.01(b) and 5.01 (c), Black Hills Power shall not have a right to any increase in the transmission capacity rating or other benefits associated with the Transmission Facilities after the Execution Date, and Black Hills Power's Transmission Facilities Capacity Share shall not increase, if the transmission capacity rating of all or any portion of the Transmission Facilities increases as a result of any capital upgrades or improvements to the Transmission Facilities.

ARTICLE VI

PHYSICAL DAMAGE TO TRANSMISSION FACILITIES; CONDEMNATION

6.01 Rebuilding Damaged Facilities. If all or any part of the Transmission Facilities is damaged or destroyed (the "Damaged Facilities"), then, subject to obtaining any necessary Governmental Authorizations, Agent, in consultation with the Owners, will determine whether the Damaged Facilities will be repaired or rebuilt. Agent shall provide the Owners written notice of its determination whether to repair or rebuild the Damaged Facilities. If Agent determines to repair or rebuild the Damaged Facilities, the Owners will, upon receipt of any insurance proceeds paid in connection with such Damaged Facilities, apply such proceeds to the repair and reconstruction of the Damaged Facilities, and unless otherwise mutually agreed to by the Owners, Agent will cause such repairs or reconstruction to be made so that the Damaged Facilities will be repaired and restored to substantially the same general condition, character and use as existed prior to such damage or destruction. If the cost of such repairs or reconstruction exceeds the insurance proceeds received in connection with such damage or destruction, then the Owners shall pay, in accordance with their Ownership Interests, the shortfall amount.

6.02 Decision Not to Rebuild. If Agent, in consultation with the Owners, decides not to rebuild the Damaged Facilities, each Owner shall (a) receive its share of revenues from the salvage or sale of the Damaged Facilities and (b) pay, in accordance with its Ownership Interest, any costs of removal of parts and equipment from the Damaged Facilities.

6.03 Purchase of Ownership Interest. If one Owner desires to repair or rebuild the Damaged Facilities (the “Continuing Owner”) and the other Owner does not, then the Continuing Owner shall have the option to purchase all of the Ownership Interest (and corresponding Transmission Facilities Capacity Share) of the other Owner. In order to exercise its option to purchase all of the Ownership Interest (and corresponding Transmission Facilities Capacity Share) of the other Owner, the Continuing Owner must give written notice thereof to the other Owner within thirty (30) days of receipt of Agent’s notice of its determination not to repair or rebuild the Damaged Facilities pursuant to Section 6.01. The Owners shall enter into such documentation as the Continuing Owner shall reasonably request to document the purchase and sale of all of the Ownership Interest of the other Owner, provided that the purchase price of the Ownership Interest of the other Owner shall be equal to the other Owner’s pro rata share, based on its Ownership Interest, of: (a) the salvage value of the Damaged Facilities, and (b) the depreciated replacement cost for the Transmission Facilities which are not part of the Damaged Facilities.

6.04 Cooperation. If the Continuing Owner seeks to repair or rebuild the Transmission Facilities purchased from the other Owner pursuant to Section 6.03, then, at the Continuing Owner’s request and expense, the other Owner will, for a reasonable period of time, cooperate with and use commercially reasonable efforts to assist the Continuing Owner in the repair or rebuilding of the Damaged Facilities. This Section 6.04 shall survive the expiration or termination of this Agreement.

6.05 Condemnation. If there occurs a loss of title to, or ownership of, or use and possession of, all or any portion of the Transmission Facilities or any portion thereof, as the result of the exercise of the right of condemnation or eminent domain, Agent will promptly give notice thereof to the Owners, which notice shall generally describe the nature and extent of such proceedings or negotiations. Each Owner shall receive its pro rata share (based on its Ownership Interest) of all condemnation awards received by the other Owner in connection with any condemnation (less the actual cost, fees and expenses incurred by Agent in collection thereof). Agent shall, in consultation with the Owners, use its commercially reasonable efforts under Governmental Requirements to resist the loss of title to, or ownership of, or use and possession of, all or any portion of the Transmission Facilities or any portion thereof through condemnation or eminent domain.

ARTICLE VII RETIREMENT AND DECOMMISSIONING

7.01 Decision to Retire Transmission Facilities. Agent shall, in consultation with the Owners, determine when the Transmission Facilities are no longer useful for the transmission of electric power and should be retired and decommissioned, including where all of the Transmission Facilities are condemned or are damaged or destroyed and neither Agent nor any

Owner elects to repair or rebuild them pursuant to Article VI. Agent shall provide the Owners written notice when it determines that the Transmission Facilities should be retired and decommissioned.

7.02 Costs of Decommissioning. Each of the Owners shall be responsible for paying its pro rata share (based on its Ownership Interest) of the aggregate amount of all costs and expenses incurred by or on behalf of Agent to retire permanently the Transmission Facilities from service, including decommissioning, dismantling, demolishing and removal of equipment, facilities and structures, security, maintenance, disposing of debris, abandonment and all other costs and expenses incurred by or on behalf of Agent to retire permanently the Transmission Facilities from service, net of any amounts recovered in connection with the sale of any retired equipment, facilities and structures.

7.03 Purchase of Ownership Interest. If one Owner desires to continue the operation of the Transmission Facilities (the "Remaining Owner") and the other Owner does not, then the Remaining Owner shall have the option to purchase all of the Ownership Interest (and corresponding Transmission Facilities Capacity Share) of the other Owner. In order to exercise its option to purchase all of the Ownership Interest (and corresponding Transmission Facilities Capacity Share) of the other Owner, the Remaining Owner must give written notice thereof to the other Owner within thirty (30) days of receipt of Agent's notice of its determination to retire and decommission the Transmission Facilities pursuant to Section 7.01. The Owners shall enter into such documentation as the Remaining Owner shall reasonably request to document the purchase and sale of the Ownership Interest of the other Owner, provided that the purchase price of the Ownership Interest of the other Owner shall be equal to the other Owner's pro rata share, based on its Ownership Interest, of the depreciated replacement cost of the Transmission Facilities.

7.04 Cooperation. If the Remaining Owner seeks to purchase and continue the operation of the Transmission Facilities, then, at the Remaining Owner's request and expense, the other Owner will, for a reasonable period of time, cooperate with and use commercially reasonable efforts to assist the Remaining Owner in the continued operation of the Transmission Facilities. This Section 7.04 shall survive the expiration or termination of this Agreement.

ARTICLE VIII FORCE MAJEURE

8.01 Force Majeure Defined. For purposes of this Agreement, "Force Majeure" shall mean an event or circumstance beyond the reasonable control of and without the fault or negligence of the Owner or Agent claiming Force Majeure ("Affected Party"), which, despite the exercise of reasonable diligence, cannot be or be caused to be prevented, avoided or removed by such Affected Party including, to the extent satisfying the above requirements, acts of God; earthquake; abnormal weather condition; hurricane; flood; lightning; high winds; drought; peril of the sea; explosion; fire; war (declared or undeclared); military action; sabotage; riot; insurrection; civil unrest or disturbance; acts of terrorism; economic sanction or embargo; civil strike, work stoppage, slow-down, or lock-out that are of an industry or sector-wide nature and that are not directed solely or specifically at the Affected Party; the binding order of any

Governmental Authority, provided that the Affected Party has in good faith reasonably contested such order; the failure to act on the part of any Governmental Authority, provided that such action has been timely requested and diligently pursued; unavailability of equipment, supplies or products, but only to the extent caused by Force Majeure; failure of equipment, provided that the equipment has been operated and maintained in accordance with Good Utility Practice; and transportation delays or accidents, but only to the extent otherwise caused by Force Majeure; provided, however, that neither insufficiency of funds, financial inability to perform nor changes in market conditions shall constitute Force Majeure.

8.02 Effect of Force Majeure.

(a) If an Affected Party is rendered wholly or partly unable to perform its obligations under this Agreement or its performance is delayed because of Force Majeure, such Affected Party shall be excused from, and shall not be liable for, whatever performance it is unable to perform or delayed in performing due to the Force Majeure to the extent so affected, provided that:

(i) The Affected Party, as soon as reasonably practical after the commencement of the Force Majeure, gives the other Owner(s) and/or Agent prompt written notice thereof, including a description of the particulars of the Force Majeure;

(ii) The suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure; and

(iii) The Affected Party uses commercially reasonable efforts to overcome and remedy its inability to perform as soon as reasonably practical after the commencement of the Force Majeure.

(b) Notwithstanding anything in this Article VIII to the contrary, no payment obligation arising under this Agreement prior to the date of an event of Force Majeure shall be excused by such event of Force Majeure.

(c) Whenever an Affected Party is required to commence or complete any action within a specified period and is prevented or delayed by Force Majeure from commencing or completing such action within the specified period, such period shall be extended by an amount equal to the duration of such event of Force Majeure occurring or continuing during such period.

ARTICLE IX EVENTS OF DEFAULT

9.01 Event of Default. Each of the following events shall constitute an event of default ("Event of Default") by the defaulting Owner (a "Defaulting Owner"):

(a) the failure to make, when due, any payment required pursuant to this Agreement, if such failure is not remedied within thirty (30) days after written notice thereof from the other Owner;

(b) any representation or warranty made by such Defaulting Owner herein is false or misleading in any material respect when made, unless (i) the fact, circumstance or condition that is the subject of such representation or warranty is made true within thirty (30) days after notice thereof from the other Owner, provided that if the fact, circumstance or condition that is the subject of such representation or warranty reasonably cannot be corrected within such thirty (30) day period, then the Defaulting Owner shall have an additional period of time (not to exceed sixty (60) days) in which to correct the fact, circumstance or condition that is the subject of such representation or warranty, and (ii) such cure removes any adverse effect on the other Owner of such fact, circumstance or condition being otherwise than as first represented, or such fact, circumstance or condition being otherwise than as first represented does not materially adversely affect the other;

(c) a transfer, assignment or other disposition of its interest in this Agreement, its Ownership Interest or its Transmission Facilities Capacity Share, in each case, in violation of Article XVI;

(d) the failure to perform or breach of its covenants and obligations in Section 2.06;

(e) the failure to be a Qualified Owner, if such failure is not remedied within thirty (30) days after written notice thereof from the other Owner;

(f) the failure to perform or breach of any material covenant or obligation set forth in this Agreement (other than provided for in Section 9.01(a), (b), (c), (d) or (e)), if such failure is not remedied within thirty (30) days after written notice thereof from the other Owner, provided that if such failure or breach cannot reasonably be cured within thirty (30) days, then the Defaulting Owner shall have an additional period of time (not to exceed ninety (90) days) in which to cure such failure or breach so long as the Defaulting Owner commences good faith activities to cure the failure or breach during the initial 30-day cure period and continues to utilize its commercially reasonable efforts to effect a cure; or

(g) such Defaulting Party becomes Bankrupt.

9.02 Cure by Non-Defaulting Owner. If a Defaulting Owner fails to cure an Event of Default, then the Non-Defaulting Owner may, in its sole discretion, attempt to cure the Event of Default, provided that the Defaulting Owner shall reimburse the Non-Defaulting Owner for all costs and expenses incurred by or on behalf of the Non-Defaulting Party pursuant to this Section 9.02.

9.03 Remedies. If an Event of Default occurs and is continuing, then the Non-Defaulting Owner shall be entitled to terminate this Agreement by delivering written notice thereof to the Defaulting Owner, to purchase the Defaulting Owner's Ownership Interest pursuant to Section 9.04, and/or to exercise any of its remedies at law or in equity, including recovery from the Defaulting Owner of any damages suffered as a result of the Event of Default. In addition, in case of an Event of Default pursuant to Section 9.01(a), (c), (d), (e) or (g), the Non-Defaulting Owner may, by written notice to the Defaulting Owner, suspend the Defaulting

Owner's right to its Transmission Facilities Capacity Share and entitlement to transmit energy on the Transmission Facilities until the Event of Default is cured, and the Non-Defaulting Owner shall be entitled to use the Defaulting Owner's Transmission Facilities Capacity Share, with responsibility for the payment of all O&M Costs associated therewith.

9.04 Right to Purchase Ownership Interest. In addition to its other remedies provided for in Section 9.03, the Non-Defaulting Owner may, upon written notice to the Defaulting Owner, elect to purchase the Defaulting Owner's Ownership Interest. The Defaulting Owners shall enter into such documentation as the Non-Defaulting Owner may reasonably request to document the purchase and sale of the Ownership Interest of the Defaulting Owner, provided that the purchase price of the Ownership Interest of the Defaulting Owner shall be equal to the Defaulting Owner's pro rata share, based on its Ownership Interest, of the lesser of the depreciated replacement cost or the depreciated book cost of the Transmission Facilities.

ARTICLE X REPRESENTATIONS AND WARRANTIES

10.01 Representations and Warranties of PacifiCorp. PacifiCorp represents and warrants to Black Hills Power as of the Execution Date as follows:

(a) It is duly formed, validly existing and in good standing under the laws of the jurisdiction of its formation.

(b) It has all requisite corporate power necessary to own its assets and carry on its business as now being conducted or as proposed to be conducted under this Agreement.

(c) It has all necessary corporate power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement, and the execution and delivery of this Agreement and the performance by it of this Agreement have been duly authorized by all necessary corporate action on its part.

(d) The execution and delivery of this Agreement and the performance by it of this Agreement do not: (i) violate its organizational documents; (ii) violate any Governmental Requirements applicable to it; or (iii) result in a breach of or constitute a default of any material agreement to which it is a party.

(e) This Agreement has been duly and validly executed and delivered by it and constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms, except as the same may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and by principles of equity regardless of whether such principles are considered in a proceeding at law or in equity.

(f) Except as disclosed in writing to the other Owner, all material Governmental Authorizations required by Governmental Requirements to have been obtained by it prior to the date hereof in connection with: (i) owning its assets and carrying on its business as now being conducted or as proposed to be conducted under this Agreement; and (ii) the due

execution and delivery of, and performance by it of its obligations under, this Agreement, have been duly obtained or made and are in full force and effect.

(g) It is a Qualified Owner.

10.02 Representations and Warranties of Black Hills Power. Black Hills Power represents and warrants to PacifiCorp as of the Execution Date as follows:

(a) It is duly formed, validly existing and in good standing under the laws of the jurisdiction of its formation.

(b) It has all requisite corporate power necessary to own its assets and carry on its business as now being conducted or as proposed to be conducted under this Agreement.

(c) It has all necessary corporate power and authority to execute and deliver this Agreement and to perform its obligations under this Agreement, and the execution and delivery of this Agreement and the performance by it of this Agreement have been duly authorized by all necessary corporate action on its part.

(d) The execution and delivery of this Agreement and the performance by it of this Agreement do not: (i) violate its organizational documents; (ii) violate any Governmental Requirements applicable to it; or (iii) result in a breach of or constitute a default of any material agreement to which it is a party.

(e) This Agreement has been duly and validly executed and delivered by it and constitutes its legal, valid and binding obligation enforceable against it in accordance with its terms, except as the same may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally and by principles of equity regardless of whether such principles are considered in a proceeding at law or in equity.

(f) Except as disclosed in writing to the other Owner, all material Governmental Authorizations required by Governmental Requirements to have been obtained by it prior to the date hereof in connection with: (i) owning its assets and carrying on its business as now being conducted or as proposed to be conducted under this Agreement; and (ii) the due execution and delivery of, and performance by it of its obligations under, this Agreement, have been duly obtained or made and are in full force and effect.

(g) It is a Qualified Owner.

ARTICLE XI INDEMNIFICATION

11.01 Indemnities.

(a) Subject to the provisions of Section 11.03, each Owner (the "Indemnifying Party") shall indemnify, defend and hold harmless the other Owner (the "Indemnified Party") and its Representatives, from and against any and all third-party suits, actions, liabilities, legal

proceedings, claims, demands, losses, costs and expenses of whatsoever kind or character, including reasonable attorneys' fees and expenses (collectively, "Claims") for injury or death of persons or physical loss of or damage to property of Persons (other than the Indemnified Party and its Representatives) arising from the Indemnifying Party's or its Representatives': (i) gross negligence or willful misconduct in connection with the performance of this Agreement; or (ii) failure to perform a material obligation under this Agreement.

(b) In addition to and not in limitation of the indemnity provided in Section 11.01(a), each Owner, as Indemnifying Party, shall severally and not jointly, in accordance with its Ownership Interest, indemnify, defend and hold harmless Agent, as Indemnified Party, and its Representatives from and against any and all third-party Claims for injury or death of persons or physical loss of or damage to property of Persons (other than the Indemnified Party and its Representatives), or fines levied by Governmental Authorities, in each case, arising under or in connection with this Agreement, including in connection with the performance by Agent of its obligations under this Agreement, except for such Claims arising from Agent's or its Representatives': (i) gross negligence or willful misconduct in connection with the performance of this Agreement; or (ii) failure to perform a material obligation under this Agreement.

(c) Subject to the provisions of Section 11.03, Agent, as Indemnifying Party, shall indemnify, defend and hold harmless each Owner, as Indemnified Party, and its Representatives from and against any and all third-party Claims for injury or death of persons or physical loss of or damage to property of Persons (other than the Indemnified Party and its Representatives) or fines levied by Governmental Authorities, in each case, arising from Agent's or its Representatives': (i) gross negligence or willful misconduct in connection with the performance of this Agreement; or (ii) failure to perform a material obligation under this Agreement; provided, however, in no event shall Agent be obligated to indemnify, defend or hold harmless an Owner and its Representatives from and against any such third-party Claims or fines to the extent arising from such Owner's or its Representatives': (i) gross negligence or willful misconduct in connection with the performance of this Agreement; or (ii) failure to perform any material obligation under this Agreement.

(d) Each Owner shall, in accordance with its Ownership Interest, be responsible for and reimburse the other Owner for any third-party Claims for injury or death of persons or physical loss of or damage to property of Persons (other than the Owners and the Agent and their Representatives) which are not covered by Sections 11.01(a), 11.01(b) or 11.01(c), which arise under or in connection with the Transmission Facilities or this Agreement, including in connection with the performance by Agent of its obligations under this Agreement, and which do not arise from the other Owner's or its Representatives' gross negligence or willful misconduct in connection with the performance of this Agreement.

11.02 Notice and Participation.

(a) If an Indemnified Party intends to seek indemnification under this Article XI with respect to any Claims, the Indemnified Party shall give the Indemnifying Party prompt written notice of such Claims upon the receipt of actual knowledge or information by the Indemnified Party of any possible Claims or of the commencement of such Claims. The Indemnifying Party shall have no liability under this Article XI for any Claim for which such

notice is not provided, but only to the extent that the failure to give such notice materially impairs the ability of the Indemnifying Party to respond to or to defend the Claim.

(b) The Indemnifying Party shall have the right to assume the defense of any Claim, at its sole cost and expense, with counsel designated by the Indemnifying Party and reasonably satisfactory to the Indemnified Party; provided, however, that if the defendants in any such proceeding include both the Indemnified Party and the Indemnifying Party, and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are in conflict with those available to the Indemnifying Party and that such conflict materially prejudices the ability of the counsel selected by the Indemnifying Party to represent both parties, the Indemnified Party shall have the right to select separate counsel reasonably satisfactory to the Indemnifying Party, at the Indemnifying Party's expense, to assert such legal defenses and to otherwise participate in the defense of such Claim on behalf of such Indemnified Party, and the Indemnifying Party shall be responsible for the reasonable fees and expenses of such separate counsel.

(c) Should any Indemnified Party be entitled to indemnification under this Article XI as a result of a Claim by a third party, and should the Indemnifying Party fail to assume the defense of such Claim within a reasonable period of time after the Indemnified Party has provided the Indemnifying Party written notice of such Claim, the Indemnified Party may, at the expense of the Indemnifying Party, contest (or, with or without the prior consent of the Indemnifying Party), settle such Claim.

(d) Except to the extent expressly provided herein, no Indemnified Party shall settle any Claim with respect to which it has sought or is entitled to seek indemnification pursuant to this Article XI unless (i) it has obtained the prior written consent of the Indemnifying Party, or (ii) the Indemnifying Party has failed to assume the defense of such Claim within a reasonable period of time after the Indemnified Party has provided the Indemnifying Party written notice of such Claim.

(e) Except to the extent expressly provided otherwise herein, no Indemnifying Party shall settle any Claim with respect to which it may be liable to provide indemnification pursuant to this Article XI without the prior written consent of the Indemnified Party; provided, however, that if the Indemnifying Party has reached a bona fide settlement agreement with the plaintiff(s) in any such proceeding, which settlement includes a full release of the Indemnified Party for any and all liability with respect to such Claim, and the Indemnified Party does not consent to such settlement agreement, then the dollar amount specified in the settlement agreement, plus the Indemnified Party's reasonable legal fees and other costs related to the defense of the Claim paid or incurred prior to the date of such settlement agreement, shall act as an absolute maximum limit on the indemnification obligation of the Indemnifying Party with respect to the Claim, or portion thereof, that is the subject of such settlement agreement.

11.03 Net Amount. In the event that an Indemnifying Party is obligated to indemnify and hold any Indemnified Party harmless under this Article XI, the amount owing to the Indemnified Party shall be the amount of such Indemnified Party's actual Claims, net of any insurance or other recovery actually received by the Indemnified Party.

11.04 No Release of Insurers. The provisions of this Article XI shall not be deemed or construed to release any insurer from its obligation to pay any insurance proceeds in accordance with the terms and conditions of valid and collectible insurance policies.

11.05 Mitigation. Each Indemnified Party entitled to indemnification hereunder shall take all reasonable steps to mitigate all Claims after becoming aware of any event which could reasonably be expected to give rise to any Claims that are indemnifiable or recoverable hereunder or in connection herewith.

11.06 Assertion of Claims. No Claim of any kind shall be asserted against any Owner or Agent, whether arising out of contract, tort (including negligence), strict liability, or any other cause of or form of action, unless it is filed in a court of competent jurisdiction, or a demand for arbitration is made, within the applicable statute of limitations period for such Claim.

11.07 Survival of Obligation. The duty to indemnify under this Article XI shall continue in full force and effect notwithstanding the expiration or termination of this Agreement, with respect to any Claim arising out of an event or condition which occurred or existed prior to such expiration or termination.

11.08 Limitation on Liability. Notwithstanding any provision in this Agreement to the contrary, neither Owner nor Agent shall be liable under this Agreement in any action at law or in equity, whether based on contract, tort or strict liability or otherwise, for any special, incidental, indirect, exemplary, punitive or consequential damages or losses, including any loss of revenue, income, profits or investment opportunities.

ARTICLE XII PROPRIETARY INFORMATION

12.01 Disclosure of Proprietary Information Prohibited. Any Proprietary Information of an Owner (the "Transferor") which is disclosed to or otherwise received or obtained by the other Owner (the "Transferee") incident to this Agreement shall be held in confidence and the Transferee shall not (subject to Sections 12.02 and 12.05) knowingly publish or otherwise disclose any Proprietary Information of the Transferor to any Person for any reason or purpose whatsoever, without the prior written approval of the Transferor, subject to any exclusions set forth in Section 10.03, which approval may be granted or withheld by the Transferor in its sole discretion. Without limiting the generality of the foregoing, each Owner shall observe at a minimum the same safeguards and precautions with regard to the other Owner's Proprietary Information which such Owner observes with respect to its own information of the same or similar kind.

12.02 Disclosure by Representatives. Each Owner agrees that it will make available Proprietary Information received from the other Owner to its own representatives (including other joint owners of the Common Use System) only on a need-to-know basis, and that all Persons to whom such Proprietary Information is made available will be made aware of the confidential nature of such Proprietary Information, and will be required to hold such Proprietary Information in confidence in accordance with the terms hereof.

12.03 Permitted Disclosures. Notwithstanding anything to the contrary contained in this Article XII:

(a) A Transferee may provide any Proprietary Information to any Governmental Authority having jurisdiction over or asserting a right to obtain such information, provided that (i) such Governmental Authority orders that such Proprietary Information be provided, and (ii) unless prohibited from so doing by applicable Governmental Requirements, the Transferee promptly advises the Transferor of any request for such information by such Governmental Authority and cooperates in giving the Transferor an opportunity to present objections, requests for limitation, and/or requests for confidentiality or other restrictions on disclosure or access, to such Governmental Authority.

(b) Either Owner may, to the extent required, disclose Proprietary Information to any Governmental Authority in connection with the application for any Governmental Authorization, provided that unless prohibited from so doing by applicable Governmental Requirements, the Owner shall provide the other Owner prior written advance notice of such disclosure and the Proprietary Information that is to be disclosed.

(c) Either Owner may disclose such Proprietary Information regarding the terms of this Agreement as such Owner deems necessary to enable it to comply with the Securities Exchange Act of 1934, or the rules, regulations and forms of the Securities and Exchange Commission, issued thereunder or the applicable rules of any stock exchange.

12.04 Injunctive Relief. In the event of a breach or threatened breach of the provisions of this Article XII by any Transferee, the Transferor shall be entitled to an injunction restraining the Transferee from such breach or threatened breach. Nothing contained herein shall be construed as prohibiting the Transferor from pursuing any other remedies available at law or equity for such breach or threatened breach of this Agreement.

12.05 Publicity. Any public relations matters, including public announcements and press releases or similar publicity, arising out of or in connection with the terms of this Agreement, shall be coordinated and agreed to among the Owners.

12.06 Proprietary Information Defined. For purposes of this Agreement, "Proprietary Information" means all information, written or oral, which has been or is disclosed by the Transferor, or by any Representative of the Transferor, or which otherwise becomes known to the Transferee, or to any Representative of such Transferee, or any other party in a confidential relationship with, the Transferee, and which (a) relates to matters such as patents, trade secrets, research and development activities, draft or final contracts or other business arrangements, books and records, budgets, cost estimates, pro forma calculations, engineering work product, environmental compliance, vendor lists, suppliers, manufacturing processes, energy consumption, pricing information, private processes, and other similar information, as they may exist from time to time, (b) relates to the existence or the terms, including pricing and other commercial terms, of this Agreement, or (c) the Transferor expressly designates in writing to be confidential, provided that "Proprietary Information" shall exclude information falling into any of the following categories:

- (i) Information that, at the time of disclosure hereunder, is in the public domain, other than information that entered the public domain by breach of this Agreement by Transferee;
- (ii) Information that, after disclosure hereunder, enters the public domain, other than information that enters the public domain by breach of this Agreement by Transferee;
- (iii) Information, other than that obtained from third-parties, that prior to disclosure hereunder, was already in Transferee's possession, either without limitation on disclosure to others or subsequently becoming free of such limitation;
- (iv) Information obtained by Transferee from a third-party having an independent right to disclose the information; or
- (v) Information that is available through independent research without use of or access to the Proprietary Information.

12.07 Survival. The provisions of this Article XII shall continue in full force and effect during the term of this Agreement and for a period of two (2) years thereafter, notwithstanding the expiration or termination of this Agreement, with respect to any Proprietary Information obtained by any Owner prior to such expiration or termination.

ARTICLE XIII TERM; TERMINATION

13.01 Term. The term of this Agreement (the "Term") will commence on the Execution Date and shall continue in full force and effect, provided that the terms and conditions of this Agreement shall be binding upon the Owners when approved or accepted for filing by the FERC and by any other Governmental Authority having jurisdiction over this Agreement and, as to the execution hereof by Black Hills Power and PacifiCorp.

13.02 Termination. Except as to those provisions that are expressly intended to survive termination, this Agreement shall terminate if one or more of the following events occur:

- (a) the Transmission Facilities are retired and decommissioned in accordance with Article VII; or
- (b) one hundred percent (100%) of the Ownership Interests are owned by only one Owner; or
- (c) this Agreement is terminated pursuant to Section 9.03.

ARTICLE XIV
TAXES

14.01 No Partnership. Nothing in this Agreement shall be deemed to create or constitute a partnership, joint venture or association among the Owners or any of them, the sole purpose of this Agreement being limited to the allocation of Ownership Interests in the Transmission Facilities and provision for the orderly and efficient construction, repair, modification, rehabilitation, operation and maintenance of the Owners' respective separate undivided Ownership Interests in the Transmission Facilities. Each Owner agrees and covenants that it shall not take or omit to take any action or reporting position with any Governmental Authority contrary to this Section 14.01.

14.02 761 Election. The Owners intend that, as tenants in common and owners of undivided Ownership Interests, for United States income tax purposes the Owners shall elect in accordance with the provisions of section 761 of the Internal Revenue Code of 1986, as amended ("Code"), and the applicable income tax regulations thereunder ("Regulations") to be excluded from all of the provisions of Subchapter K of the Code upon the first occasion in which such election may be filed under these regulations and that, if such election is not filed, this Agreement shall constitute an election under Regulations section 1.761-2(b)(2)(ii) to be excluded from all of the provisions of Subchapter K of the Code and the applicable Regulations, beginning with the first year of the creation of the tenancy in common as contemplated by this Agreement and that no Owner shall object to any such election.

14.03 Responsibility for Taxes. It is the intent of the Owners that so far as possible, each Owner shall separately report, promptly and timely file returns with respect to, be responsible for and pay all property, income, franchise, business, or other taxes or fees ("Taxes"), arising out of its Ownership Interest and the matters contemplated by this Agreement, that such Taxes shall be separately levied and assessed against each Owner severally and that each Owner shall be solely responsible for and shall pay all such Taxes so levied and assessed against it without any responsibility of the other Owner with respect thereto and without the amounts thereof being paid and apportioned between the Owners under this Agreement. To the extent that Taxes (such as property, payroll, sales and use Taxes) may be levied or assessed against the Transmission Facilities, their operation or the Owners in such a manner as to make impossible the carrying out of the foregoing provisions of this Section 14.03, Agent shall report, file returns with respect to and pay such Taxes and each other Owner shall immediately reimburse Agent for each such Owner's respective Component Share for the specific Component to which the Taxes relate and, if the Taxes do not relate to a specific Component, each such Owner's respective Ownership Interest percentage of such Taxes. Agent shall have no obligation to contest or to seek refund of such Taxes; provided, however, that Agent may, by its personnel or counsel of its selection, pursue such administrative or court proceedings as Agent may determine. Each Owner shall on request pay Agent such Owner's respective Ownership Interest percentage of the costs of such proceedings and shall share in any savings resulting from such proceedings in the same proportion. Each Owner agrees to cooperate with the other Owner with respect to reasonable requests for information or other matters with respect to Taxes.

14.04 Indemnification. Each Owner (the “Tax Indemnifying Party”) shall indemnify and hold harmless each other Owner (the “Tax Indemnitee Party”), on an after-tax basis, from and against any Taxes (including any interest or penalties) imposed on such Tax Indemnitee Party or the Transmission Facilities or any part thereof, to the extent such Taxes are the responsibility of the Tax Indemnifying Party pursuant to this Article XIV.

14.05 Determination of Depreciation and Other Matters. Each Owner shall determine the basis and method it will use for purposes of depreciation and other matters where investment of the Transmission Facilities is relevant.

ARTICLE XV DISPUTES

15.01 Exclusive Procedure. Any dispute, controversy or claim arising out of or relating to this Agreement or the breach, interpretation, termination, performance or validity of this Agreement (each, a “Dispute”) shall be resolved pursuant to the procedures of this Article XV.

15.02 Dispute Notices. If a Dispute arises between the Owners or between Agent and the Owners, then any party to such Dispute (each, a “Disputing Party”) may provide written notice thereof to the other Disputing Parties, including a detailed description of the subject matter of the Dispute (the “Dispute Notice”).

15.03 Informal Dispute Resolution. The Disputing Parties shall make a good faith effort to settle amicably any Dispute within thirty (30) days after the delivery of the Dispute Notice.

15.04 Submission of Dispute to Approved Courts. If a Dispute cannot be settled amicably between the Disputing Parties within thirty (30) days after the delivery of the Dispute Notice, then the Disputing Parties agree to submit such Dispute (a) to FERC, to the extent that the Dispute is subject to the jurisdiction of FERC, and (b) to the jurisdiction of the state courts situated in Wyoming or the United States District Court for the District of Wyoming (the “Approved Courts”), to the extent FERC jurisdiction does not apply. Each Owner consents to and accepts for itself and in respect of its property, generally and unconditionally, but subject to Section 15.04(a), the exclusive jurisdiction of the Approved Courts and appellate courts from any appeal thereof, and irrevocably waives any objection which it may now or hereafter have to the jurisdiction of the Approved Courts. Each Owner further irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of venue of any suit, proceeding or other action brought pursuant to this Article XV in any of the Approved Courts, and irrevocably waives, to the fullest extent permitted by law, and agrees not to plead or claim in any such Approved Court that any suit, proceeding or other action brought therein has been brought in an inconvenient forum.

15.05 Continued Performance. During the pendency of any Dispute, each Owner and Agent shall continue to perform all of its respective obligations under this Agreement.

**ARTICLE XVI
ASSIGNMENT**

16.01 Prohibited Transfers and Assignments. Neither Owner shall have the right to transfer, assign or otherwise dispose of, in whole or in part, its interest in this Agreement, including its rights, duties and obligations hereunder, nor to transfer, assign or otherwise dispose of, in whole or in part, its Ownership Interest or Transmission Facilities Capacity Share , except as permitted under this Article XVI.

16.02 Permitted Assignments and Transfers. The restrictions set for in Section 16.01 shall not restrict:

- (a) dispositions and sales by either Owner incident to renewals or replacements of the Transmission Facilities;
- (b) the right of an Owner to subject its Ownership Interest to the lien of any mortgage upon all or a portion of its own physical electric utility property;
- (c) the right of an Owner to transfer voluntarily its Ownership Interest (and Transmission Facilities Capacity Share) in connection with any sale, merger or other transfer of all or a substantial part of such Owner's electric transmission facilities as an operating entity; provided, however, that the effectiveness of such assignment shall be conditioned upon assignee (i) agreeing in writing, in form and substance reasonably satisfactory to the other Owner, to assume all of the rights and obligations of the assignor as of the assignment date and (ii) qualifying as Qualified Owner on the assignment date;
- (d) the right of an Owner to transfer voluntarily its Ownership Interest (and Transmission Facilities Capacity Share) to an Affiliate of the Owner which owns all or substantially all of the generating and/or transmission facilities of such Owner or to any subsidiary that is jointly owned by the Owner; provided, however, that the effectiveness of such assignment shall be conditioned upon assignee (i) agreeing in writing, in form and substance reasonably satisfactory to the other Owner, to assume all of the rights and obligations of the assignor as of the assignment date and (ii) qualifying as a Qualified Owner on the assignment date;
- (e) the right of any Owner to transfer voluntarily its Ownership Interest (and Transmission Facilities Capacity Share) to a third-party if approved by the other Owner and so long as the other Owner is offered the right of first refusal to purchase such Ownership Interest (and Transmission Facilities Capacity Share), in whole or in part, on terms not less favorable than those offered to such proposed third-party purchaser; provided, however, that the effectiveness of such assignment shall be conditioned upon assignee (i) agreeing in writing, in form and substance reasonably satisfactory to the other Owner, to assume all of the rights and obligations of the assignor as of the assignment date and (ii) qualifying as Qualified Owner on the assignment date; or
- (f) the right of PacifiCorp to schedule and provide transmission service over the Transmission Facilities to the extent of its Transmission Facilities Capacity Share in

accordance with PacifiCorp's OATT and to schedule and transmit an amount of energy commensurate with PacifiCorp's Transmission Facilities Capacity Share over the Transmission Facilities on its own behalf or on behalf of PacifiCorp's transmission customers with interconnection at either the Dave Johnston Substation or Windstar Substation; provided, however, that at no time shall PacifiCorp be entitled to post, sell, schedule or transmit more than its Transmission Facilities Capacity Share of transmission capacity (and a commensurate amount of energy) on the Transmission Facilities, unless otherwise mutually agreed to by Black Hills Power;

(g) the right of Black Hills Power (in its own capacity or as Tariff Administrator for the Common Use System Joint Tariff) to schedule and provide transmission service over the Transmission Facilities to the extent of its Transmission Facilities Capacity Share in accordance with the Common Use System Joint Tariff and to schedule and transmit an amount of energy commensurate with Black Hills Power's Transmission Facilities Capacity Share over the Transmission Facilities on its own behalf or on behalf of Black Hills Power's transmission customers (or, in its capacity as Tariff Administrator, on behalf of the Common Use System's transmission customers with interconnection at either the Dave Johnston Substation or Windstar Substation; provided, however, that at no time shall Black Hills Power (in its own capacity or as Tariff Administrator) be entitled to post, sell, schedule or transmit more than its Transmission Facilities Capacity Share of transmission capacity (and a commensurate amount of energy) on the Transmission Facilities, unless otherwise mutually agreed to by PacifiCorp.

ARTICLE XVII MISCELLANEOUS

17.01 Notices.

(a) Any notice, demand, request or other communication required or permitted to be given pursuant to this Agreement shall be in writing and signed by the Owner or Agent giving such notice, demand, request or other communication and shall be hand delivered or sent by registered letter, overnight courier or facsimile to the other Owner or Agent at the address set forth below:

If to Buyer:	Black Hills Power, Inc. 409 Deadwood Avenue Rapid City, SD 57701 Attn: Director of Transmission Services Facsimile: 605-721-2735 Telephone: 605-721-2226
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With a copy to:	Black Hills Power 625 Ninth Street P.O. Box 1400 Rapid City, SD 57701 Attn: General Counsel Facsimile: 605-719-9960 Telephone: 605-721-2303
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If to PacifiCorp: PacifiCorp
825 NE Multnomah Street, Suite 1600
Portland, OR 97232
Attn: Transmission Department
Facsimile: 503-813-6893
Telephone: 503-813-7090

With a copy to: Rocky Mountain Power
201 South Main, Suite 2300
Salt Lake City, UT 84111
Attn: Legal Department
Facsimile: 801-220-3299
Telephone: 801-220-4568

If to Agent: PacifiCorp
825 NE Multnomah Street, Suite 1600
Portland, OR 97232
Attn: Transmission Department
Facsimile: 503-813-6893
Telephone: 503-813-7090

With a copy to: Rocky Mountain Power
201 South Main, Suite 2300
Salt Lake City, UT 84111
Attn: Legal Department
Facsimile: 801-220-3299
Telephone: 801-220-4568

(b) Each Owner and Agent shall have the right to change the place to which any notice, demand, request or other communication shall be sent or delivered by similar notice sent in like manner to the other Owner(s) and/or Agent. The effective date of any notice, demand, request or other communication issued pursuant to this Agreement shall be when: (i) delivered to the address of the other Owner(s) and/or Agent personally, by messenger, by a nationally or internationally recognized overnight delivery service or otherwise; (ii) sent to the other Owner(s) and/or Agent by facsimile, with confirmation of transmission by the transmitting equipment; or (iii) received or rejected by the other Owner(s) and/or Agent, if sent by certified mail, return receipt requested, in each case, addressed to the other Owner(s) and/or Agent at its address or facsimile number and marked to the attention of the person designated below (or to such other address or facsimile number or person as an Owner and/or Agent may designate by notice to the other Owner(s) and/or Agent effective as of the date of receipt by such other Owner(s) and/or Agent).

17.02 Entire Agreement. This Agreement and the Exhibits attached hereto, and the other documents between the Owners referenced herein constitute the entire agreement between

the Owners and supersede all prior agreements and understandings, whether oral and written, between the Owners with respect to the subject matter hereof. There are no oral understandings, terms or conditions and neither Owner has relied upon any representation or warranty, expressed or implied, not contained in this Agreement.

17.03 Parties Bound. This Agreement shall be binding upon each of the Owners and its respective successors and permitted assigns.

17.04 Amendments. This Agreement may not be amended, supplemented or otherwise modified, other than pursuant to an instrument in writing executed by the Owners.

17.05 Waivers. No waiver by a Owner of any one or more defaults by the other Owner in the performance of any of the provisions of this Agreement shall be construed as a waiver of any other default or defaults whether of a like kind or different nature. Any delay, less than any applicable statutory period of limitations, in asserting or enforcing any rights under this Agreement shall not be deemed a waiver of such rights. Failure of any Owner to enforce any provisions hereof shall not be construed to waive such provision, or to affect the validity of this Agreement or any part thereof, or the right of any Owner thereafter to enforce each and every provision thereof.

17.06 Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Wyoming, without giving effect to conflicts of laws principles.

17.07 Headings. Article and Section headings used in this Agreement (including headings used in any Exhibits attached hereto) are for convenience of reference only and shall not affect the construction of this Agreement.

17.08 Relationship of Parties. The covenants, obligations, and liabilities of the Owners are intended to be several and not joint or collective, and nothing herein contained shall ever be construed to create an association, joint venture, trust or partnership, or to impose a trust or partnership covenant, obligation or liability on or with regard to any of the Owners. Each Owner shall be individually responsible for its own covenants, obligations and liabilities as herein provided. No Owner shall be under the control of, or shall be deemed to control, the other Owner. Neither Owner shall have a right nor power to bind the other Owner without its express written consent, except as otherwise provided in this Agreement.

17.09 Severability. In the event that any provision of this Agreement or the application thereof becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect and the application of such provision to other persons or circumstances will be interpreted so as reasonably to effect the intent of the Owners. The Owners further agree to replace such illegal, void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such illegal, void or unenforceable provision.

17.10 No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to nor shall be construed to confer upon or give to any Person (other than the Owners and Agent) any rights or remedies under or by reason of this Agreement or any transaction contemplated herein.

17.11 Further Assurances. Each Owner agrees to execute and deliver from time to time such additional documents, and take such additional actions, as may be reasonably required by the other Owner to give effect to the purposes and intent hereof.

17.12 Conflict of Interest. Nothing in the Agreement shall prohibit any Owner from engaging in or possessing any interest in other projects or business ventures of any nature and description, independently or with others.

17.13 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be original, and all of which together shall constitute one agreement. Facsimile transmission of any signed original document, and retransmission of any signed facsimile transmission, shall be the same as delivery of an original. At the request of either Owner, the other Owner will confirm facsimile transmitted signatures by signing an original document.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each of the Owners has caused its duly authorized representative to execute this Joint Ownership, Operating and Maintenance Agreement as of the date first above written.

BLACK HILLS POWER:

BLACK HILLS POWER, INC.

By: _____
Name: _____
Title: _____

PACIFICORP:

**PACIFICORP, IN ITS CAPACITY AS BOTH
OWNER AND AGENT**

By: _____
Name: _____
Title: _____

EXHIBIT A

Description of Transmission FacilitiesI. Description of Windstar Substation.

The Windstar Substation consists of all of the facilities and equipment making up Seller's 230 kV Windstar substation located in Converse County, Wyoming, including (i) the 230kV bus, five breakers, switches, foundations, substation fences, grounding grid, control houses, communication and SCADA facilities, 230kV metering, and protection and control equipment, and (ii) network upgrades required to support the Black Hills Power's proposed interconnection of the Buyer Planned Transmission Line (as defined in the Purchase and Sale Agreement) comprised of six additional 230 kV breakers, bus work, foundations, protection and control equipment and other related upgrades, but excluding proposed direct assigned interconnection facilities contemplated and required to connect to the Buyer Planned Transmission Line.

Equipment and facilities included in the Windstar Substation is indicated as the shaded area in Drawing 1 to this Exhibit A.

III. Description of Dave Johnston Substation.

The Dave Johnston Substation consists of all of the facilities and equipment making up PacifiCorp's 230 kV Dave Johnston substation located in Converse County, Wyoming, including the 230kV breakers, fourteen circuit breakers and appurtenant 230 kV bus and switches, substation fences, grounding grid, control houses, communication and SCADA facilities, 230kV metering, foundations and protection and control equipment, but excluding the 69 kV and 115 kV portions of the substation.

Equipment and facilities included in the Dave Johnston Substation is indicated as the shaded area in Drawing 1 to this Exhibit A.

III. Description of Transmission Line.

The Transmission Line consists of all of the facilities and equipment making up PacifiCorp's Casper #1 230kV transmission line between the Windstar Substation and the Dave Johnston Substations located in Converse County, Wyoming, including poles and structures, conductors, lightning protection and grounding appurtenances, and any communication fiber optics attached to the Transmission Line.

Equipment and facilities included in the Transmission Line is indicated as the shaded area in Drawing 1 to this Exhibit A.

DRAWING 1

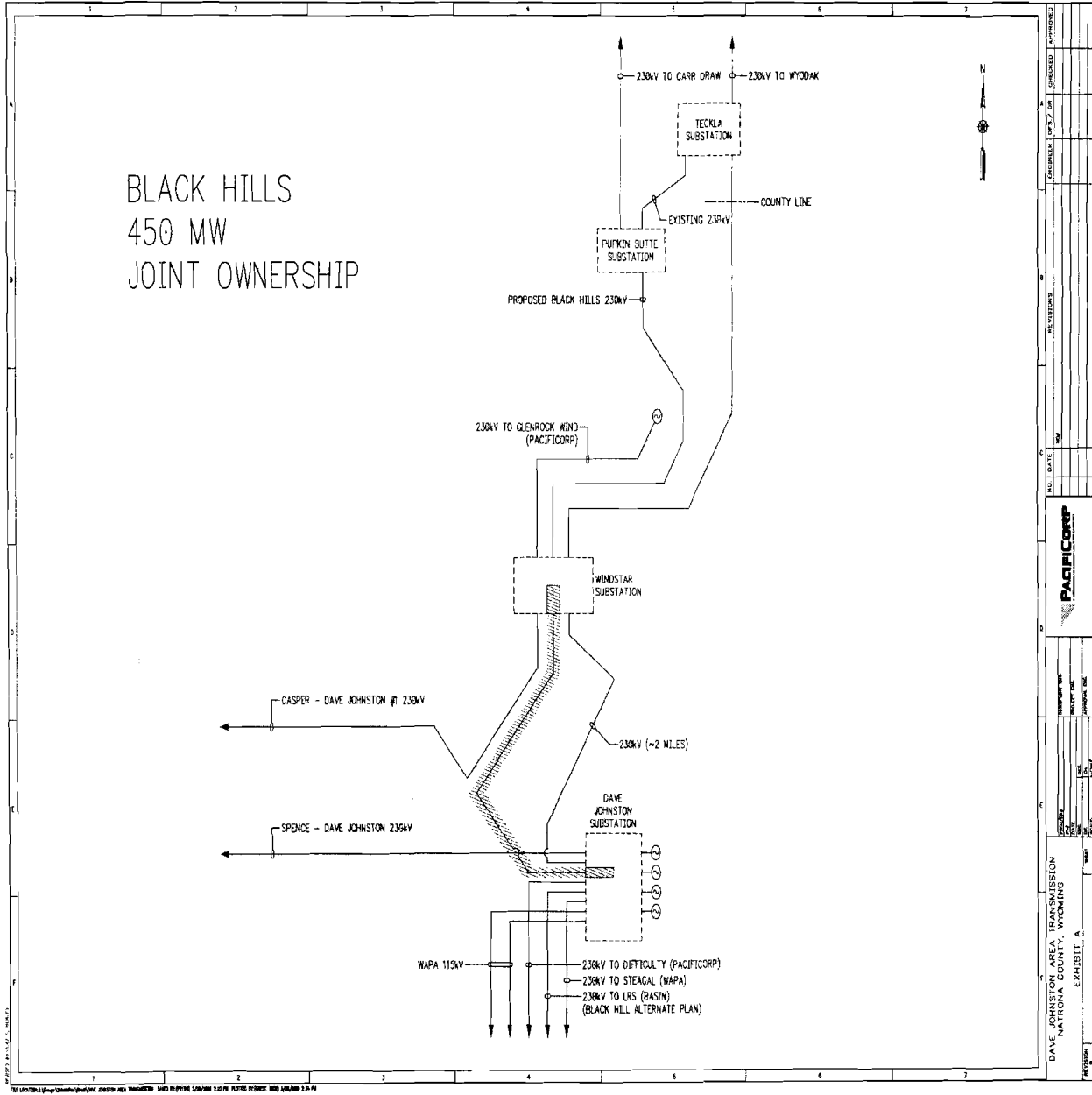


EXHIBIT B

Calculation of Ownership Interests

Each Owner's Ownership Interest in the Transmission Facilities shall be calculated at any time based on the average of the Owner's imputed ownership percentage share ("Component Share") of the Transmission Capacity of each Component, as reasonably determined by Agent at the time, where:

(a) each Owner's Component Share of each Component shall be equal to the quotient of (i) the Owner's Component Capacity Share of such Component at the time, divided by (ii) the Transmission Capacity of such Component at the time; and

(b) each Owner's share (in MW) of the Transmission Capacity of each Component ("Component Capacity Share") shall be equal to:

(i) in the case of Black Hills Power, the lesser of (A) Black Hills Power's Transmission Facilities Capacity Share calculated in accordance with Exhibit C at the time and (B) Black Hills Power's Component Capacity Share of each Component at the time, as determined pursuant to Section 2.01 or Section 5.01; and

(ii) in the case of PacifiCorp, the Transmission Capacity of each Component at the time, less Black Hills Power's Component Capacity Share of each Component at the time.

As of the Execution Date, assuming the Transmission Capacity of each Component set forth below, each of the Owner's Component Capacity Shares, Component Shares and Ownership Interest are as follows:

Transmission Facilities	Transmission Capacity	PacifiCorp's Component Capacity Share	Black Hills Power Component Capacity Share	PacifiCorp's Component Shares	Black Hill's Power's Component Shares	PacifiCorp's Ownership Interest	Black Hills Power's Ownership Interest
Windstar Substation	2000 MW	1550 MW	450 MW	77.5%	22.5%		
Dave Johnston Substation	3000 MW	2550 MW	450 MW	85.0%	15.0%		
Transmission Line	800 MW	350 MW	450 MW	43.75%	56.25%		
Transmission Facilities						68.75%	31.25%

EXHIBIT C

Calculation of Transmission Facilities Capacity Shares

Each of the Owners shall have a Transmission Facilities Capacity Share (in MW) which shall be calculated as follows:

(i) Subject at all times to paragraph (iii) below, Black Hills Power shall have a Transmission Facilities Capacity Share equal to 450 MW¹, provided that if at any time Black Hills Power's Component Capacity Share of any Component should decrease below 450 MW², then Black Hills Power's Transmission Facilities Capacity Share shall automatically decrease to be equal to such lower Component Capacity Share. Notwithstanding any provision to the contrary contained in this Agreement, the Owners acknowledge and agree that (x) at all times during the Term Black Hills Power's Transmission Facilities Capacity Share shall, subject at all times to paragraph (iii) below, be equal to, and not higher than, Black Hills Power's lowest Component Capacity Share calculated in accordance with Exhibit B and (y) except as provided for in Sections 5.01(a), 5.01(b) and 5.01(c), in no event shall Black Hills Power's Transmission Facilities Capacity Share increase above 450 MW, regardless of any increase in the Transmission Capacity of any Component after the Execution Date as a result of any capital upgrades or improvements or otherwise; and

(ii) Subject at all times to paragraph (iii) below, PacifiCorp shall have a Transmission Facilities Capacity Share equal to all transmission capacity of the Transmission Facilities (in MW) which is not part of Black Hills Power's Transmission Facilities Capacity Share.

(iii) Notwithstanding any provision to the contrary contained in this Agreement, in the case of a Reduction Event (including an emergency condition or a rating study to meet compliance with regulatory or reliability standards) at any time during the Term, each Owner's Transmission Facilities Capacity Share shall automatically be reduced consistent with any curtailment pursuant to Section 4.05 and each Owner's OATT, NERC, WECC and FERC rules and regulations.

¹ This assumes that the Transmission Capacity of each of the Components and the Component Capacity Shares, Component Shares and Ownership Interests of each of the Owners is as set forth in the table on Exhibit B.

² This assumes that the Transmission Capacity of each of the Components and the Component Capacity Shares, Component Shares and Ownership Interests of each of the Owners is as set forth in the table on Exhibit B.

EXHIBIT D

Transmission Capacity of the Components and Component Capacity Shares, Component Shares, Ownership Interests and Transmission Facilities Capacity Shares of the Owners

As of the Execution Date, the Transmission Capacity of each of the Components and the Owners' Component Capacity Shares and Component Shares in each of the Components and Ownership Interest (calculated in accordance with Exhibit B) and Transmission Facilities Capacity Share (calculated in accordance with Exhibit C) are as follows³:

Transmission Facilities	Transmission Capacity	PacifiCorp's Component Capacity Share	Black Hills Power's Component Capacity Share	PacifiCorp's Component Shares and Ownership Interest	Black Hills Power's Component Shares and Ownership Interest	PacifiCorp's Transmission Facilities Capacity Share ⁴	Black Hills Power's Transmission Facilities Capacity Share
Windstar Substation	2000 MW	1550 MW	450 MW	77.5%	22.5%		
Dave Johnston Substation	3000 MW	2550 MW	450 MW	85.0%	15.0%		
Transmission Line	800 MW	350 MW	450 MW	43.75%	56.25%		
Transmission Facilities				68.75%	31.25%	350-2550 MW	450 MW

³ Insert each Owner's Ownership Interest calculated in accordance with Exhibit B to the Purchase and Sale Agreement and each Owner's corresponding Transmission Facilities Capacity Share calculated in accordance with Exhibit C.

⁴ If higher, PacifiCorp's Transmission Facilities Capacity Share shall be equal to all available transmission capacity of the Transmission Facilities (in MW) which is not part of Black Hills Power's Transmission Facilities Capacity Share.

EXHIBIT G

Form of NERC Reliability Coordination Agreement

[To be attached pursuant to Section 5.09]

EXHIBIT H

Form of License

LICENSE AGREEMENT
BETWEEN
BLACK HILLS POWER, INC.
AND
PACIFICORP
[_____], [_____]

[NOT FOR RECORDATION]

LICENSE AGREEMENT

This License Agreement (this “Agreement”), dated this [] day of [], 20[], is between Black Hills Power, Inc., a South Dakota corporation (“Black Hills Power”), and PacifiCorp, an Oregon corporation (“PacifiCorp”). Black Hills Power and PacifiCorp are sometimes hereinafter referred to individually as “Party” and collectively as “Parties”.

RECITALS:

WHEREAS, PacifiCorp is a transmission provider which owns and operates certain facilities for the transmission of electric power and energy located in Wyoming;

WHEREAS, PacifiCorp has upgraded its Casper #1 230 kV transmission line (the “Transmission Line”) between the Windstar 230 kV substation (the “Windstar Substation”) and the Dave Johnston 230 kV substation (the “Dave Johnston Substation”). The Transmission Line, the Windstar Substation and the Dave Johnston Substation, collectively, are referred to herein as the “Transmission Facilities”;

WHEREAS, certain of the Transmission Facilities are located in an easement area (the “Easement Area”), as more particularly described in that certain Conveyance of Right of Way recorded June 24, 1958 in Book 318, Page 225, Register of Deeds of Converse County, Wyoming, as affected and confirmed by that certain Quitclaim Deed of Conveyance of Right of Way recorded October 3, 1975 at Book 598, Page 592, Register of Deeds of Converse County, Wyoming (the “Easement”);

WHEREAS, pursuant to that certain Purchase and Sale Agreement, dated as of January [], 2010 (the “Purchase and Sale Agreement”), between PacifiCorp and Black Hills Power, PacifiCorp has sold to Black Hills Power and Black Hills Power has purchased from PacifiCorp an undivided ownership in the Transmission Facilities;

WHEREAS, PacifiCorp and Black Hills Power have entered into that certain Joint Ownership, Operating and Maintenance Agreement of even date herewith (the “Joint Ownership, Operating and Maintenance Agreement”) setting forth the terms and conditions by which PacifiCorp and Black Hills Powers will jointly own, operate and maintain the Transmission Facilities; and

WHEREAS, as contemplated by the Purchase and Sale Agreement and in further support of the Joint Ownership, Operating and Maintenance Agreement, PacifiCorp has agreed to grant to Black Hills Power a non-exclusive license to use the Easement Area for the purpose of situating and maintaining its Ownership Interest in the Transmission Facilities, subject in all respects to compliance with the terms of the Joint Ownership, Operating and Maintenance Agreement, the Easement and this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, PacifiCorp and Black Hills Power agree as follows:

A. GRANT OF LICENSE

PacifiCorp hereby grants Black Hills Power a non-exclusive license to use the Easement Area for the purpose of situating and maintaining its Ownership Interest in the Transmission Facilities, subject in all respects to compliance with the terms of the Joint Ownership, Operating and Maintenance Agreement, the Easement and this Agreement.

B. TERM OF THIS AGREEMENT AND TERMINATION THEREOF

1. Unless sooner terminated as provided for herein, this Agreement shall begin on the date hereof and end on the date on which Black Hills Power no longer owns an Ownership Interest in the Transmission Facilities.

2. In the event that either Party breaches this Agreement, the non-breaching Party may send the breaching Party written notice describing such breach, and if the breach is not cured within five (5) Business Days from the date of such notice, then the non-breaching Party may cancel this Agreement effective immediately upon written notice to the breaching Party.

C. CONTROL OF EASEMENT AREA AND ENFORCEMENT OF EASEMENT

1. Although Black Hills Power may utilize the Easement Area for the purposes described in paragraph A herein, the easement rights and rights of way granted under the Easement shall at all times be held solely by PacifiCorp, and nothing in this Agreement shall in any way limit or restrict PacifiCorp's use of the easement rights and rights of way granted under the Easement.

2. Both Parties agree that this Agreement is solely for a license and shall not be deemed to be a conveyance or assignment to Black Hills Power of any interest in real property, including the Easement, and this Agreement shall not be deemed an easement in favor of Black Hills Power.

3. PacifiCorp shall have the right to control the access of Black Hills Power, its employees, agents and invitees to the Easement Area. In addition, Black Hills Power shall not be permitted to make any improvement, alterations or modifications to the Easement Area or to any of the equipment in the Easement Area, including the Transmission Facilities, except to the extent expressly permitted by the Joint Ownership, Operating and Maintenance Agreement.

4. Black Hills Power shall not contact or enter into negotiations with the fee simple owner of the Easement Area and shall not assert any rights to enforce any terms of the Easement against the fee simple owner or any other party without the prior written consent of PacifiCorp.

D. INDEMNIFICATION AND INSURANCE; NO LIENS.

1. Without limiting the indemnification and other provisions in the Joint Ownership, Operating and Maintenance Agreement, Black Hills Power agrees to bear full responsibility for the acts and omissions of Black Hills Power, its employees, agents (other than PacifiCorp in its capacity as Agent under the Joint Ownership, Operating and Maintenance Agreement, which shall be subject to the indemnification provisions of the Joint Ownership, Operating and

Maintenance Agreement) and invitees at the Easement Area. Black Hills Power agrees to hold PacifiCorp and the fee simple owner of the Easement Area, and their respective directors, officers, trustees, employees, agents and representatives harmless from and indemnify them against all claims, damages, liabilities or expenses (including but not limited to attorneys' fees and court costs) arising from Black Hills Power's use of the Easement Area, including, but not limited to, such claims, damages, liabilities or expenses (including but not limited to attorneys' fees and court costs) arising from bodily injury or death to persons or damage to property caused by or resulting from the acts or omissions of Black Hills Power, or its officers, employees, agents, representatives or invitees. This hold harmless and indemnification obligation on the part of Black Hills Power shall survive the termination or expiration of this Agreement.

2. Black Hills Power shall not permit any liens or encumbrances of any kind to be made against the Easement or Easement Area as a result of Black Hills Power's activities, and upon request by PacifiCorp, Black Hills Power shall immediately bond-off or pay-off any such liens or encumbrances.

E. SUBORDINATION TO EASEMENT; NO ASSIGNMENT.

1. This Agreement and all rights of Black Hills Power hereunder are subject and subordinate to the Easement and to all modifications, amendments and extensions thereof, and Black Hills Power agrees to comply with all terms, conditions and provisions contained in the Easement. Any termination of the Easement shall result in a termination of this Agreement.

2. This Agreement and all rights of Black Hills Power hereunder are subject and subordinate to any deeds to secure debt, deeds of trust, mortgages or any other instruments of security that now or hereafter cover all or any part of the property of PacifiCorp, including the Easement. This provision shall be self operative and no further instruments shall be required to effect such subordination of this Agreement.

3. Black Hills Power may not assign this Agreement nor any of its rights or obligations hereunder, and any such assignment in violation of this clause shall be void *ab initio*, provided that Black Hills Power may assign all of its rights and obligations in this Agreement to an assignee of all of Black Hills Power's Ownership Interest pursuant to and in accordance with Section 16.02(c)-(e) of the Joint ownership, Operating and Maintenance Agreement.

F. MISCELLANEOUS

1. Capitalized terms used but not defined in this Agreement shall have the meanings given to them in the Joint Ownership, Operating and Maintenance Agreement.

2. Any notice, demand, request or other communication required or permitted to be given pursuant to this Agreement shall be in writing and signed by the Party giving such notice, demand, request or other communication and shall be hand delivered or sent by registered letter, overnight courier or facsimile to the other Party at the address set forth below:

If to Buyer: Black Hills Power, Inc.
409 Deadwood Avenue
Rapid City, SD 57701
Attn: Director of Transmission Services
Facsimile: 605-721-2735
Telephone: 605-721-2226

With a copy to: Black Hills Power
625 Ninth Street
P.O. Box 1400
Rapid City, SD 57701
Attn: General Counsel
Facsimile: 605-719-9960
Telephone: 605-721-2303

If to Seller: PacifiCorp
825 NE Multnomah Street, Suite 1600
Portland, OR 97232
Attn: Transmission Department
Facsimile: 503-813-6893
Telephone: 503-813-7090

With a copy to: Rocky Mountain Power
201 South Main, Suite 2300
Salt Lake City, UT 84111
Attn: Legal Department
Facsimile: 801-220-3299
Telephone: 801-220-4568

Each Party shall have the right to change the place to which any notice, demand, request or other communication shall be sent or delivered by similar notice sent in like manner to the other Party. The effective date of any notice, demand, request or other communication issued pursuant to this Agreement shall be when: (i) delivered to the address of the other Party personally, by messenger, by a nationally or internationally recognized overnight delivery service or otherwise; (ii) sent to the other Party by facsimile, with confirmation of transmission by the transmitting equipment; or (iii) received or rejected by the other Party, if sent by certified mail, return receipt requested, in each case, addressed to the other Party at its address or facsimile number and marked to the attention of the person designated below (or to such other address or facsimile number or person as a Party may designate by notice to the other Party effective as of the date of receipt by the other Party).

3. This Agreement shall be governed by and construed in accordance with the laws of the State of Wyoming, without giving effect to conflicts of laws principles.

4. This Agreement constitutes the complete agreement between the Parties with respect to the subject matter hereof, and it may not be amended, supplemented or otherwise modified, other than pursuant to an instrument in writing executed by both Parties.

5. Neither Party shall be deemed to have waived any of its rights hereunder unless such waiver is in writing and signed by the Party to be charged with such waiver.

6. No Party shall record this Agreement or a copy thereof in the real estate records of Converse County, Wyoming or any other jurisdiction.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each of the Parties has caused its duly authorized representative to execute this License Agreement as of the date first above written.

BLACK HILLS POWER:

BLACK HILLS POWER, INC.

By: _____
Name: _____
Title: _____

PACIFICORP:

PACIFICORP

By: _____
Name: _____
Title: _____

SCHEDULE 1.01

Permitted Encumbrances

None

SCHEDULE 3.03(b)

Governmental Authorizations

1. The Required Closing Governmental Authorizations listed as item 1-6 in Exhibit C.

SCHEDULE 3.05

Title

1. The Transmission Facilities are subject to an Encumbrance pursuant to the Mortgage and Deed of Trust.

SCHEDULE 4.03

Governmental Authorizations

1. The Required Closing Governmental Authorizations listed as item 6 in Exhibit C.

ATTACHMENT B
ACCOUNTING ENTRIES

Estimated Proposed Entry to Record the Sale of Windstar substation, DJ substation and transmission line

1. PacifiCorp proposes to sell to Black Hills Power an undivided joint ownership interest in PacifiCorp's transmission assets at Windstar substation, including certain interconnection upgrades at Windstar, 230 kV equipment at PacifiCorp's Dave Johnston substation, and the upgraded double bundled 230 kV transmission line connecting these substations. A regulatory liability is recorded for the state of Oregon to reflect 27.4857% SG allocation factor.

FERC Account	Description	Debit	Credit
131	Cash	\$ 6,220,172	
108.2	Salvage - Accumulated Provision for Depreciation of Utility Plant		\$ 5,129,710
254	Regulatory Liability - Oregon		371,189
107	Construction Work in Progress		719,273

2. Retire Black Hills Power's share of facilities from Electric Plant in Service.

FERC Account	Description	Debit	Credit
108.1	Accumulated Provision for Depreciation of Utility Plant	\$ 447,319	
108.1	Accumulated Provision for Depreciation of Utility Plant - Net Book Value	4,150,419	
101	Electric Plant in Service		\$ 4,597,738

3. Record estimated entries for deferred income tax.

FERC Account	Description	Debit	Credit
409.1	Income Taxes, Utility Operating Income	\$ 1,133,196	
236	Taxes Accrued		\$ 1,133,196
282.1	Accumulated Deferred Taxes	1,133,196	
411.1	Provision for Deferred Income Taxes - Credit, Utility Operating Income		1,133,196

4. Record estimated entry for sales tax at 5%.

FERC Account	Description	Debit	Credit
131	Cash	\$ 311,008	
241	Sales Tax Collections Payable		\$ 311,008