BEFORE THE

PUBLIC UTILITY COMMISSION OF OREGON

In the Matter of PORTLAND GENERAL ELECTRIC Request for Proposals for Renewable Resources.	)	UM 1613
	)	NORTHWEST AND INTERMOUNTAIN POWER PRODUCERS COALITION'S COMMENTS

I. INTRODUCTION

Pursuant to the scheduling order in this case, the Northwest and Intermountain Power Producers Coalition ("NIPPC") hereby files these Comments on Portland General Electric's ("PGE's") Request for Proposals ("RFP") for Renewable Resources. NIPPC is a trade association whose members include independent power producers ("IPPs") active in the Pacific Northwest and Western energy markets. Although these Comments do not represent the views of any individual member company, NIPPC believes it is in a unique position to provide the Public Utility Commission of Oregon ("OPUC" or "Commission") with a valuable perspective.

NIPPC has collaboratively worked with PGE from the start of this RFP and appreciates the improvements that PGE has agreed to make to this particular RFP in advance of the filing date for these Comments. NIPPC supports the suggested changes provided by the Independent Evaluator's Report on the July 25th Draft RFP. However, NIPPC has several lingering concerns and suggestions itemized below that should be implemented by PGE, with the help of the Independent Evaluator ("IE"), to reduce the inherent bias that exists in an RFP with a utility-ownership option.

NIPPC is hopeful that PGE will agree to implement the suggested changes in its Reply

Comments on August 31, 2012, and in the filing of PGE's Revised Draft RFP documents on September 10, 2012, as called for by the procedural schedule.[1] To the extent that the items listed below are not resolved by PGE prior to the Public Meeting on September 27, 2012, NIPPC respectfully requests that the Commission condition approval of the final RFP upon PGE's implementation of NIPPC's suggestions in these Comments.

II. BACKGROUND

The Commission's RFP Guideline 7 calls for public comment and Commission review, as follows:

> The Commission will solicit public comment on the utility's final draft RFP, including the proposed minimum bidder requirements and bid scoring and evaluation criteria. Public comment and Commission review should focus on: (1) the alignment of the utility's RFP with its acknowledged [Integrated Resource Plan ("IRP")]; (2) whether the RFP satisfies the Commission's competitive bidding guidelines; and (3) the overall fairness of the utility's proposed bidding process. After reviewing the RFP and the public comments, the Commission may approve the RFP with any conditions and modifications deemed necessary.

PGE's Renewable RFP seeks to fill PGE's need for 101 average megawatts ("MW") of electric generation compliant with Oregon's Renewable Portfolio Standard ("RPS") in order for PGE to meet the year-end 2015 RPS target. As identified in PGE's acknowledged IRP, PGE has included a utility-owned benchmark resource in this RFP.[2] Additionally, the RFP will include other options for utility-ownership. Thus, the RFP must be designed to accurately evaluate and compare bids for a utility-ownership option that are offered on a "cost-plus" basis with bids offered by IPPs on a fixed-price basis through a power purchase agreement ("PPA").

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[1] NIPPC notes that filing of revised RFP documents prior to the Public Meeting is a new and welcome procedural step not included in PGE's prior RFP. NIPPC appreciates this addition as a useful mechanism to resolve as many issues as possible prior to the Public Meeting where the Commission can address any remaining issues.

[2] PGE's acknowledged 2009 IRP identified a need for 122 aMW of RPS-compliant generation in this RFP. However, PGE subsequently explained in its IRP Update that its RPS need has decreased, and PGE has decreased the amount of generation sought in this RFP accordingly.

III. COMMENTS

NIPPC suggests that the IE and the Commission should vigilantly ensure that the RFP evaluation process does not unfairly disadvantage fixed-price IPP bidders who must compete against the "cost-plus" bids (including the benchmark). NIPPC suggests that PGE provide transparency to ensure all bidders that the "cost-plus" bids will be properly scored where reasonable cost increases for items such as transmission may be estimated.[3] Additionally, NIPPC hopes that PGE will agree to revise several of the terms in the RFP's template PPA. Penalizing IPP bidders who attempt to revise unreasonable contractual requirements and guarantees is unacceptable in an RFP with utility ownership options providing no ongoing contractual guarantees whatsoever. NIPPC also hopes that PGE will agree to implement the other changes listed below to improve fairness, clarity, and transparency of the RFP.

A. The RFP Would Benefit From More Clarity And Transparency On Transmission Components.

Because PGE's system is largely isolated from renewable resources, transmission will be an important component of this RFP. PGE is electrically connected to both Bonneville Power Administration ("BPA") and PacifiCorp. For Bidders with a project outside of PGE's System, the draft RFP states that it is the bidders' responsibility to provide as part of the bid submittal a plan to obtain firm transmission from the resource for delivery to PGE's System. *See PGE's Draft Request for Proposals* at 12-13, 19-20 (July 25, 2012) (*hereinafter* the "*July 25th Draft RFP*"). PGE will assume the cost from the edge of PGE's System to PGE's load under the PPA. *Id.* However, PGE proposes to increase each off-system bid's price and non-price scores for

[3] The need for some form of bid adder designed to level the playing field in an RFP comparing fixed-price bids for contracted power to "cost-plus" bids for a utility-owned project is a topic under investigation by the Commission in UM 1182. However, NIPPC does not anticipate that investigation will be resolved in time for use in this RFP.

incremental transmission upgrades PGE would incur to move the output from the edge of PGE's system to its load. *Id.* Likewise, for bidders directly interconnecting to PGE's system, the RFP proposes to increase the bidder's price and non-price scores to include all incremental costs to deliver energy from the resource to PGE's load. *Id.* PGE has proposed to include Cascade Crossing as a part of PGE's System for purposes of this analysis. *Id.* at 13 n.1. PGE stated at the RFP workshop that it intends to use BPA rates as a proxy for Cascade Crossing costs, as PGE proposed in its other RFP (UM 1535). NIPPC has two lingering concerns with this proposal in the July 25th Draft RFP.

1. PGE should provide off-system bidders with indicative prices for PGE's internal transmission upgrades at each potential point of delivery.

The typical arrangement under this RFP is that PGE will take title to electricity and responsibility for the transmission costs once the bidder/Seller delivers to a point of delivery on PGE's system. *See July 25th Draft RFP* at 12-13; *see also id.* at Exhibit C at § 3.4 (containing the RFP's Template PPA). NIPPC agrees that ideally the RFP should consider the costs from the edge of PGE's system to its load in scoring bids. However, NIPPC is concerned that off-system bidders have no way of determining the relative costs associated with different points of delivery to PGE's System. An off-system bidder will be a transmission customer of the third party transmission provider (BPA or PacifiCorp). Once the third-party delivers the electricity to PGE, PGE will be the transmission customer over its own system for the leg of the delivery from the edge of PGE's system to PGE's load. Barring some very unusual arrangement where a bidder would somehow have the right to deliver directly to PGE's retail customers, there is no reason an off-system bidder would have any dealings or arrangements with PGE's transmission personnel (other than to schedule the power to the edge of PGE's system once the plant is online). Thus,

the off-system bidders, in the normal course of preparing their projects, will not have any right to compel PGE's transmission function to determine the cost of delivering the output from the edge of PGE's system to PGE's load.[4]

This is a problem because bidders may have the option to choose to deliver to several alternative points, but currently lack access to the information necessary to select the most cost-effective location. A transparent RFP would provide bidders with the knowledge necessary to choose to deliver to the most cost-effective point of delivery.[5] In its most-recent RFP, PacifiCorp provided bidders with indicative costs for internal upgrades that would be needed at each point of delivery. *See PacifiCorp's Draft All Source Request for Proposals*, OPUC Docket No. UM 1540, at Attachment 20 (Oct. 5, 2011) (proposing to use these costs in the evaluation of bids and stating "indicative costs are based on assessments done by the PacifiCorp Transmission group for current and past Integrated Resource Plan and System Impact Studies.").

NIPPC has raised this issue with PGE, and appreciates that PGE has indicated that several of its BPA points of delivery are unlikely to result in internal system upgrades. However, NIPPC believes PGE should work with the IE to provide the potential cost of upgrades at other BPA points of delivery and at all of the PacifiCorp points of delivery. PGE should provide those costs within the RFP or an attachment thereto. Without doing so, NIPPC is left to wonder what costs PGE will use in evaluating the off-system bids. Transparency is needed here. PacifiCorp and PGE are both subject to the same restrictions and rules regarding development and

[4] This issue is mitigated for bidders directly interconnecting to PGE's system because such bidders are in fact interconnection customers of PGE's transmission function and should be allowed to compel the necessary studies for costs on PGE's system. NIPPC's critique in this section applies only for off-system bidders, and NIPPC trusts that PGE will work with directly interconnecting bidders to identify the expected costs as called for under PGE's Open Access Transmission Tariff.

[5] This would also serve the purpose of encouraging the most efficient use of the existing transmission system.

disclosure of such information, and there is no apparent reason why PGE cannot provide the same level of specificity that PacifiCorp provided in its RFP.

2. PGE should make the transmission cost estimates for its benchmark resource available for stakeholder comment.

NIPPC's second concern with transmission is that the benchmark resource's transmission cost assumptions should be shared with RFP stakeholders to ensure complete vetting of this critical issue in the RFP. There is no question that transmission rates will increase over the twenty-plus years the winning bid in this RFP will be in service. Bidders must assume the risk of potential third-party transmission cost increases when they develop their own pro formas and a bid price in this RFP because the RFP and the template PPA require the bidders to assume that risk if they are to win this RFP. The same is not true for PGE's benchmark. PGE's *customers* will assume the risk for future transmission rate increases.

PGE will presumably use BPA transmission costs to score the benchmark's transmission costs because, with Cascade Crossing's fate unknown, the Commission determined that PGE did not need to use the costs associated with Cascade Crossing in UM 1535. Thus, if PGE underestimates the cost of BPA transmission for its benchmark, PGE's benchmark will be advantaged, and PGE's customers will be disadvantaged. Furthermore, if PGE's benchmark can avail itself of the BPA transmission costs due to the uncertainty regarding Cascade Crossing's future, the benchmark should also be allocated the curtailment *risks* associated with BPA transmission, which should be a line item for non-price scoring deduction for bids relying on BPA transmission.

NIPPC does not object to this RFP structure per se. But for the RFP to be fair and to ensure bidders this critical element is properly scored, NIPPC suggests that PGE should share the

transmission cost estimates with stakeholders and provide a timely opportunity to comment on those estimates to ensure they are fair and reasonable.[6] To the extent stakeholders may disagree with the transmission estimates, the issue could be raised at the next phase of RFP when stakeholders have the opportunity to comment on the shortlist selections.

B. The Template Power Purchase Agreement Should Contain No Unreasonable Terms.

The Commission's RFP Guideline 6 states, "The final draft submitted to the Commission must also include standard form contracts. However, the utility must allow bidders to negotiate mutually agreeable final contract terms that are different from ones in the standard form contracts." The obvious purpose of this requirement is to ensure that the template contract – like all other aspects of the approved RFP – contains no unfair provisions bidders must somehow overcome during the RFP process or in final negotiations. Simply put, the RFP cannot be fair and unbiased if the standard contract attached thereto contains patently unfair terms that an independent bidder will be left to negotiate away if it makes the short list.

The template PPA is particularly important in this RFP. PGE has requested that bidders redline the template PPA with their bid submittal and, although the RFP itself does not state how PGE proposes to reflect bidders' redlines to the template PPA, PGE has acknowledged that it intends to adjust bidders' price and non-price scores downwards if a bidder redlines terms out of the contract. In response to a Q&A on the IE website, PGE stated:

> Redlines will be analyzed for impact to price and non-price scoring. Scoring will be adjusted as appropriate based on the elements of the contract bidders took exceptions to and *such exceptions could impact price scoring, or the non-price factors* included in Table 2. Evaluation Criteria for Renewable Energy Products

[6] In PGE's other RFP (UM 1535), PGE merely provided its interconnection costs. No BPA transmission cost estimates have yet been provided. Whether and when the transmission costs will be provided is not clear in that RFP. The Commission should make clear that stakeholders should have the opportunity to review and comment on these costs.

> on page 18 of the RFP. Bidders are invited to redline either Exhibit C [for a PPA], or Exhibit D [for an ownership option] depending on their bid. However, as stated in the RFP, PGE recognizes that terms may need to vary in material respects because of the many possible different ways that an ownership transaction can be structured. As such Bidders should also refer to Appendix A Energy Product, Firm Physical Energy Purchase and Appendix B Elements of a Renewable Resource Ownership Offer when preparing proposals.

See IE Website Q&A # 74 (emphasis added).

Under these circumstances the template PPA in Appendix C should contain transparent requirements and no unfair terms. PGE's benchmark and other utility-ownership bids will not provide the same guarantees to PGE's customers as *any* fixed-price PPA, and there is no mechanism to penalize price or non-price scores for those utility-ownership options' failure to provide such guarantees. Unfortunately, the July 25th Draft RFP contains a template PPA that is lacking in transparency in some respects while also containing unfair terms that bidders will undoubtedly need to redline out of the PPA when they submit their bids.

NIPPC has attached a redlined version of the RFP's template contract to suggest removal or correction of some unreasonable and unclear elements of the contract, the most significant of which are discussed below. NIPPC does not intend to cast any terms in stone, and agrees there should be flexibility in negotiating final contract terms – hopefully subject to close oversight by the IE. The items addressed herein are intended merely to remove terms that it is simply unfair to include in a template PPA.

1. PGE should remove onerous transmission curtailment penalties that would require IPPs to provide guarantees PGE's own benchmark cannot provide.

Article 3.4.3 requires the Seller to provide "make-up" energy in the event of transmission curtailment. Article 4.1 only allows for transmission curtailment to amount to an excusable event of "force majeure" if it would be so in the transmission agreement. The Seller is therefore

excused for curtailments resulting from major weather events or other "force majeure" or "Act of God" type events. However, read together as currently written, these PPA clauses may well require the Seller to provide make-up energy for events like BPA's Environmental Re-dispatch or unplanned maintenance curtailments wholly outside of the Seller's control, which are unlikely to qualify as a force majeure. Thus, PGE has drafted a template PPA that places almost all risk for transmission curtailment on the bidders.

This might be fair if no utility-ownership options were included in this RFP or if there were any way PGE could guarantee to insulate its customers against such risk in the event that PGE owns the winning plant in this RFP. But that is not the case. Just like most bidders, PGE will likely be relying upon BPA transmission highly susceptible to curtailments. PGE cannot use BPA costs to score transmission and then ignore that its benchmark must absorb the very same risks associated with BPA transmission. These contract terms would unfairly penalize IPP bidders for the same risks PGE's customers will be exposed to if PGE's benchmark wins the RFP.[7] NIPPC has provided a suggested edit by which PGE should correct this unfair provision.

2. PGE should provide for a reasonable opportunity to cure a default.

Article 5 on Defaults is very problematic. Once almost any default occurs, no matter how minor, Article 5.2.1 allows the non-defaulting party to terminate the agreement. For the vast majority of defaults, the template PPA provides ***no express cure provisions***. Additionally, Article 5.1.4, which exempts certain types of failures to perform from becoming a default, fails

[7] NIPPC does not object to including a non-price scoring deduction for bids that will rely upon BPA transmission to account for this curtailment risk, so long as that scoring deduction applies equally to any bid (including the benchmark) that will use BPA transmission or be assumed to use BPA transmission as a proxy for Cascade Crossing costs. The IPP bidders subject to BPA curtailment will receive a scoring deduction, and would receive no payment under the PPA for energy they cannot deliver during a curtailment. It is unfair to also insist on a contract term requiring the IPP to provide for make-up energy in the event of a curtailment.

to properly cross-reference the mechanical availability guarantee requirement to ensure that failure to achieve the mechanical availability guarantee will result in a reduced energy payment in the form of liquidated damages rather than termination of the agreement.[8] A PPA with these provisions is not financeable and bidders should not be penalized for redlining it or suggesting its revision in final negotiations. NIPPC has provided what it considers to be the absolute bare minimum default and cure provisions that should be included in a template PPA.

3. PGE should revise the Delay Default provisions to provide a cure period and to provide *reasonable and legal* delay liquidated damages.

The Delay Default provision of a PPA should protect the utility and its customers from the reasonable increased power supply costs the utility may incur if the IPP fails to achieve commercial operation by the date specified in the agreement. PGE's Delay Default Clause in Exhibit C is too vague and provides *no cure* provision. PGE can terminate the agreement with a 10-day notice after the Seller misses the online date. The only excuse is force majeure. In other words, even if the IPP is keeping PGE whole by paying delay liquidated damages reasonably calculated to cover PGE's increased power supply (and renewable energy credit) costs, PGE can walk away from the project for any delay caused by anything other than an event of force majeure. No IPP is going to agree to these provisions or secure financing unless their plant is already online, and the template PPA should provide for a reasonable cure of a delay default.

PGE's delay liquidated damages clause also suffers from a lack of specificity with respect to liquidated damages. A liquidated damages clause is enforceable only if it is a *reasonable approximation of the non-breaching party's actual damages.* "Damages for breach

[8] NIPPC recognizes that not all bids will be for a wind plant, but regardless of the resource type the PPA will likely contain some form of availability guarantee. Failure to meet such guarantee – which no utility-owned plant provides – should be addressed by liquidated damages or some other form of reduced energy payments.

by either party may be liquidated in the agreement but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the breach, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy. A term fixing unreasonably large liquidated damages is void as a penalty." *Illingworth v. Bushong*, 297 Or. 675, 692, 688 P.2d 379, 389-90 (Or. 1984); *see also Kesterson v. Juhl*, 157 Or.App. 544, 549, 970 P.2d 681, 684 (Or. App. 1998) (reversing enforcement of liquidated damages clause because record contained no evidence that the amount set was a reasonable approximation of actual damages).

PGE's template PPA merely contains blank spaces for bidders to fill in the delay liquidated damages amounts to which they are willing to agree. It provides a separate line item for damages to be assessed for ten separate milestones. In response to a Question on the IE website, PGE stated it intends to score bids based upon the following basis – "Any amounts proposed should strike a balance between providing a sufficient incentive for the Bidder to complete its projects in a timely fashion and keeping PGE reasonably secure regarding the resource bid. Final delay damages amounts will be the subject of negotiations." *IE Website Q&A # 73.* Bidders are to make a proposal by redlining the PPA and including it with their bid submittal.

This approach sets the stage for bidders to propose to "agree" to excessive and illegal delay liquidated damages rather than an amount that would reasonably approximate PGE's likely actual damages. The current template PPA in effect requires bidders to negotiate against themselves. PGE is the party that would most likely be able to determine, with the IE's oversight, a reasonable approximation of PGE's damages in the event of a delay. PGE should

propose a specific amount or metric, or at least provide guidance and a reasonable basis for an amount that will not result in a scoring penalty to bidders. A liquidated damages clause should not be determined by a blind bidding process to determine who is willing to agree to the biggest illegal penalty in the event of a breach. Furthermore, it is difficult to imagine how PGE would incur any actual damages for some of the ten milestones for which PGE proposes to require bidders to determine damages, which include items as ill-defined as "Equipment Shipped." NIPPC suggests that PGE should provide a standard liquidated damages clause that is tied to the cost of actual replacement power costs or perhaps statutory penalty payments for non-compliance with the RPS should the project fail to come online as scheduled.

While punitive liquidated damages clauses are always illegal, the problem of an unfair liquidated damages clause is even more acute in this RFP context because PGE will provide no ratepayer assurances for performance of its benchmark. Although this once again highlights the problem of comparing a "cost-plus" utility-owned resource to contracted IPP projects, the problem can at least be partially mitigated by ensuring that the amount of liquidated damages assurance to which IPPs alone must agree to provide PGE's customers is not unreasonably or illegally high. NIPPC has provided suggested edits to the template PPA.

4. PGE should remove the requirement that IPPs provide PGE with a right of first refusal if the IPP sells the plant.

Article 2.5 of the template PPA requires that the Seller grant PGE a right of first refusal if the Seller sells the facility. While Oregon utilities' insistence that they get to assume ownership of renewable plants at the termination of a PPA is well documented, this is *not* a standard contract term in the industry. If certain bidders wish to provide PGE with this benefit, they may provide such an offer in their bid term sheet. But those bidders who do not wish to grant PGE a

right of first refusal should not be penalized for removing this extraordinary term from the template PPA.

This element is particularly problematic when viewed in context with the default and termination provisions of the PPA – which, again, provide no express right to cure a default. *See July 25th Draft RFP*, at Exhibit C §§ 5.2.1, 5.2.2 (allowing non-defaulting party to declare a termination date after an Event of Default and to use its own internal price curve to determine damages owed). If PGE controls the price curve and thus the level of settlement amount in the event of default and also possesses a right of first refusal, PGE could essentially force a sale of the facility once the Seller commits any minor default on the agreement by overstating the forward market price. While NIPPC does not intend to suggest that PGE might intentionally act in such an unfair manner, this is not a situation the PPA should enable under any circumstances. The consequence of such requirements will be to scare off potential investors and underwriters required for project financing.

C. The RFP Should Provide Further Clarity With Regard to PGE's Preferred Online Date.

As noted above, this RFP should be designed to help PGE meet its upcoming 2015 RPS target. PGE states that its preferred online date is 2015, but it will accept bids providing output as early as January 1, 2013, and as late as a 2017 start date. *July 25th Draft RFP* at 11. The RFP also states that "PGE prefers RFP resources and bids that offer flexibility with regard to generation COD or contract start dates." *Id.* This element is confusing. There are existing renewable plants in the region that may be able to start delivering sooner than 2015. Additionally, although PGE does not need renewable generation for RPS compliance until 2015, Oregon's RPS law allows PGE to bank RECs for an unlimited time. NIPPC suggests the RFP

document needs further clarity on this item and how it will be scored to enable bidders to appropriately structure their bids to best meet PGE's needs.

D. The RFP Document Needs More Specificity With Regard to Wind Integration.

The RFP states that PGE will impute its costs of wind integration on its system to the price component of any bid that does not include firming and shaping. *July 25th Draft RFP* at pp. 11-12, 22. Although PGE has stated it will accept a dynamic transfer on the IE website and at workshops, the RFP Document still insists bidders must provide firm energy. It states, "Firm energy includes reserves and ancillary services to ensure that energy schedules are certain and delivered intact throughout the hour." *Id.* at 13. The document should be clarified to demonstrate that PGE will accept bids utilizing a dynamic transfer. For a bidder proposing a direct connect or a dynamic transfer triggering assignment of PGE's integration costs to the bid score, the RFP should unambiguously define the deliverable "Product" to be as-generated, intermittent energy and environmental attributes. PGE should expressly allow for revisions to the template PPA to accommodate such bids because the PPA is written for bidders proposing to provide a firmed delivery.

Additionally, there is some remaining ambiguity with regard to treatment of bids utilizing PGE's wind integration services. PGE proposes to increase the bid price for such bids to account for PGE's wind integration costs from its most-recent IRP. *Id.* at 22. In response to a question of how PGE will treat projects providing some but not all components of wind integration, PGE stated:

> PGE has identified certain cost components within the overall integration cost of Variable Energy Resources [specifically, wind]. Within the $9.15/MWh that was included in our recent IRP Update, is a component that covers the costs incurred for the impact of the Day-Ahead [DA] to Hour-Ahead [HA] forecast error for

> wind. We have determined this cost to be $3.61 MWh. If an RFP Bidder proposes to provide PGE with a DA schedule for their wind generation with an intent of updating the schedule prior to the hour of flow, this DA Optimization cost will be imputed to the price component of their bid. If the Bidder has secured the necessary balancing or shaping and firming services to ensure that the DA schedule will not change through actual flow, this DA cost will be waived. *However PGE will only pay contract prices for power actually generated by the resource. Undifferentiated energy used to firm the DA schedule will not receive PPA pricing. . . .*
>
> *See IE Website Q&A # 69* (emphasis added).

This level of detail regarding the treatment of day-ahead uncertainty should be spelled out in the RFP document itself, so bidders purchasing the standard balancing services from BPA will know how their bids will be scored. Additionally, the emphasized language appears to present the problem that PGE does not want to agree to pay PPA prices for energy that may be delivered to it without the RECs.[9] While this may be a legitimate concern, the RFP itself should spell out what price PGE proposes to pay for such balancing energy that may carry no RECs. Although this energy may not be as valuable as energy with RECs, it is surely worth something. It is also important not to overlook the flip side of the problem identified by PGE. Specifically, when an IPP plant pre-schedules *less* electricity in any hour than the actual generation, the plant will generate RECs associated with the excess electrical generation absorbed by the balancing authority even though the excess energy would not be delivered to PGE. In that circumstance, PGE could receive RECs without any payment. The template PPA, as currently written, transfers RECs as they are created at the meter but only compensates the IPP when it delivers electricity. *See July 25th Draft RFP* at Exhibit C § 14. Any detriment caused by an IPP plant's inevitable instances of over-scheduling should be addressed only in light of the benefit PGE may receive

[9] PGE is concerned that because the RECs must be measured by generation at the meter at the plant, the project will deliver energy without RECs whenever the transmission provider uses energy imbalance service to make up the difference between and an over-schedule in any hour and the plant's actual generation in that hour.

when the IPP provides RECs without electricity. Transparency is needed with regard to this product because, as with the other wind and solar integration elements, the information will help bidders decide whether to use PGE's wind or solar integration services or secure them elsewhere.

E. The RFP Needs Further Clarity With Regard to PGE's Preferred Availability Guarantee.

The July 25th Draft RFP contains a vague requirement for a guaranteed availability factor that needs clarification. *July 25th Draft RFP* at 22, 43. PGE and the IE will need to develop a realistic expectation for a mechanical availability guarantee in order to evaluate bids. The RFP requires bidders to provide a mechanical availability percentage and a proposed damages mechanism, and then PGE will score them. PGE provided limited clarity in response to a question on the IE website – stating that PGE expects wind plants to provide at least 85% availability. *See IE Website Q&A # 70.* However, the RFP provides no benchmark expectation and too few details on how this will be scored, particularly in light of the fact that *the benchmark will provide no mechanical availability guarantee.*

F. NIPPC Does Not Support Any Scoring Benefit for Projects Located in Oregon.

PGE proposes to include a scoring benefit for projects located within Oregon. *July 25th Draft RFP* at 21. NIPPC does not support discriminating against out-of-state plants, regardless of how slight the scoring benefit may be. The RFP should select the best qualified resource that will provide PGE's customers with the most value at the best price. NIPPC suggests that the in-state benefit should be removed.

G. PGE Should Remove the Request That IPP Bidders Provide PGE With Managerial Control Over the IPP Plant.

The current RFP's term sheet requests that bidders explain whether PGE would have the

opportunity to be involved in capital and operation and maintenance decisions, as well as the right to require replacement of the plant operator. *July 25th Draft RFP* at 42-43. The request for this information is perplexing. PGE will not be the party responsible under the PPA for any failings with regard to the capital and operation and maintenance decisions, or failings of the plant operator. Indeed, the PPA will obviously contain terms that will compensate PGE for any damages such failings may cause to PGE. Bidders have expressed difficulty in meeting the very detailed information PGE has requested in its thermal RFP (UM 1535), and NIPPC is concerned that PGE's requests exceed the industry norm. NIPPC suggests that this element should be removed from the term sheet.

H. NIPPC Agrees That the Detailed Scoring Criteria Should Be Included in the RFP Document.

The July 25th Draft RFP contains a limited set of general scoring criteria without the detailed scoring criteria. PGE initially proposed to make the detailed scoring criteria available only to non-bidding stakeholders who had executed the protective agreement. *See ALJ Procedural Order*, p. 1 & n.2 (July 31, 2012). On August 3, 2012, PGE made the initial detailed scorecard available to stakeholders subject to protective agreement, but PGE then posted an announcement on the IE website as follows:

> PGE is developing detailed scoring criteria for the Renewable RFP. When PGE releases the final RFP, after the final terms are approved by the OPUC, it will post the scoring criteria and include it in the final Renewable RFP.

NIPPC supports making the detailed scorecard available to all bidders as a part of the final RFP document, and appreciates PGE's willingness to do so. This treatment is consistent with the Commission's recent RFP order in PGE's Capacity and Energy RFP in UM 1535 requiring PGE to make the detailed scorecard available. *In Re PGE's Request for Capacity and*

Energy Resources, OPUC Docket No. UM 1535, Order No. 12-215, 3 (2012). Including the detailed scorecard in the RFP document itself will limit confusion for bidders. NIPPC has reviewed the scoring allocations in the detailed scorecard provided by PGE on August 3, 2012, and is confident that the IE will work with PGE to make appropriate revisions which will incorporate any changes made between now and release of the final RFP.

IV. CONCLUSION

NIPPC is hopeful that PGE will agree to implement the changes suggested herein. To the extent that the items listed below are not resolved by PGE prior to the Public Meeting on September 27, 2012, NIPPC respectfully requests that the Commission condition approval of the final RFP upon PGE's implementation of NIPPC's suggestions.

RESPECTFULLY SUBMITTED this 20th day of August, 2012.

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FORM WHOLESALE RENEWABLE POWER PURCHASE AGREEMENT

Between

Portland General Electric Company

And

[*Counterparty*]

This WHOLESALE RENEWABLE POWER PURCHASE AGREEMENT for Energy ("Agreement") is entered into effective as of the _____ day of _____, 201_ ("Effective Date"), by and between [*Counterparty*], a [*STATE*] corporation ("Counterparty"), and Portland General Electric Company, an Oregon corporation ("PGE"). PGE and Counterparty are also referred to herein individually as a "Party" and collectively as the "Parties."

ARTICLE 1
DEFINITIONS AND INTERPRETATION

1.1 Definitions.

As used in this Agreement, the following terms, when initially capitalized, shall have the meanings specified in this Section 1.1.

1.1.1 "Affiliate" means, with respect to a Party, any Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Party. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.1.2 "Agreement" means this Wholesale Renewable Power Purchase Agreement for Energy entered into between Counterparty and PGE and all incorporated appendices, exhibits, schedules and attachments hereto, as may be amended by the Parties from time to time.

1.1.3 "Ancillary Services" means all ancillary products associated, in accordance with Prudent Electric Industry Practice, with the generation of electrical Energy, including, without limitation, spinning reserves, non-spinning reserves, reactive power and voltage control.

1.1.4 "Balancing Authority" means an electric power system or combination of electric power systems under the control of an operator who acts to (i) match, at all times, the power output of the electric generators within the electric power system(s) and the capacity and energy purchased from entities outside the electric power system(s), with the load within the electric power system(s), (ii) maintain scheduled interchange with other control areas, within the limits of Prudent Electric Utility Practice, (iii) maintain the frequency of the electric power system(s) within reasonable limits in accordance with Prudent Electric Utility Practice and (iv) provide sufficient generating capacity to maintain operating reserves in accordance with Prudent Electric Utility Practice.

1.1.5 "Bankrupt" means with respect to any entity, such entity (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 and such petition filed or commenced against it is not dismissed after one hundred and eighty (180) days, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii)

otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is generally unable to pay its debts as they fall due.

1.1.5 "Beneficiary Party" means the Party to whom Performance Assurance is delivered pursuant to this Agreement.

1.1.6 "Business Day" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party's principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party by whom the notice or payment or delivery is to be received.

1.1.7 "Capacity" means __ MW.

1.1.8 "Claiming Party" has the meaning set forth in Section 4.2.

1.1.9 "Collateral Threshold" means, with respect to PGE, $_____ in USD, and with respect to Counterparty $_____ in USD (or its equivalent in another currency), provided, however, that a Party's Collateral Threshold shall be zero ($0) upon the occurrence and during the continuance of an Event of Default, or Material Adverse Change with respect to such Party.

1.1.10 "Contract Price" means the United States Dollars to be paid per MWh for Energy delivered pursuant to this Agreement and for the Environmental Attributes produced by the Facility [*to be provided by Bidder] calculated as provided in Exhibit B.* The Contract Price includes payment for all Environment Attributes.

1.1.11 "Contract Quantity" means __MWh of Firm Energy that Counterparty agrees to make available or sell and deliver, or cause to be delivered, to PGE, and that PGE agrees to purchase and receive, or cause to be received, from Counterparty during each hour of each day of the Contract Term, except during periods of scheduled maintenance of the Facility as provided in Exhibit--.

1.1.12 "Contract Term" means the period of time referenced in Section 2.1.

1.1.13 "Costs" means, with respect to a Party, brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party in entering into new arrangements which replace this Agreement and all reasonable attorneys' fees and expenses incurred by a Party in connection with enforcing its rights under this Agreement. Costs shall not include any expenses incurred by such Party in either entering or terminating any arrangement pursuant to which it has hedged its obligations.

1.1.14 "Counterparty" means _____, the Party to this Agreement that is obligated to sell and deliver and, or cause to be delivered, the Product, as specified in this Agreement.

1.1.15 "Credit Rating" means (i) with respect to any entity other than a financial institution, the (a) current ratings issued or maintained by S&P or Moody's with respect to such entity's long-term senior, unsecured, unsubordinated debt obligations (not supported by third party credit enhancements) or (b) corporate credit rating or long-term issuer rating issued or maintained with respect to such entity by S&P or Moody's, or (ii) if such entity is a financial institution, the ratings issued or maintained by S&P or Moody's with respect to such entity's long-term, unsecured, unsubordinated deposits.

1.1.16 "Cross Default Amount" means with respect to PGE, $_____ in USD, and with respect to Counterparty, or its Guarantor, if applicable, $_____ in USD (or its equivalent in another currency).

1.1.17 "Daily" means any 24-Hour period commencing at 0000 Hours.

1.1.18 "Defaulting Party" has the meaning set forth in Section 5.1.

1.1.19 "Delivery Period" has the meaning set forth in Section 2.2.

1.1.20 "Delivery Point" means the PGE system.

1.1.21 "Determination Period" means each calendar Month during the Contract Term; provided that if the remaining term of this Agreement is less than one calendar Month, the Determination Period shall be the remaining term of this Agreement.

1.1.22 "Early Termination Date" has the meaning set forth in Section 5.2.1.

1.1.23 "Effective Date" has the meaning set forth in the first paragraph of this Agreement.

1.1.24 "Energy" means electric energy, expressed in megawatt hours ("MWh"), delivered pursuant to this Agreement.

1.1.25 "Environmental Attributes" means the aggregate amount of environmental offsets or other environmental benefits related to the Energy generated by the Facility and the aggregate amount of credits, offsets or other environmental or renewable energy credit trading program derived from the use, purchase or distribution of Energy from the Project or any similar program pursuant to any federal, state or local legislation or regulation. Environmental Attributes include all environmental attributes, described as such at any time during the Contract Term, arising as a result of the generation of electricity from the Project, whether or not such environmental attributes have been verified or certified, and whether or not creditable under any applicable legislative or regulatory program. Notwithstanding any other provision of this Agreement, "Environmental Attributes" do not include: (i) the PTCs, (ii) any investment

tax credits, and any other tax credits, deductions, or tax benefits associated with the Project, or (iii) any state, federal, local, or private cash payments or grants relating in any way to the Project, the electric power or steam generation output of the Project or any payments from the ETO to Counterparty.

1.1.26 "ETO" means the Energy Trust of Oregon, Inc., an Oregon non-profit corporation established to develop and implement energy efficiency and conservation programs and stimulate the development of new renewable energy resources consistent with Oregon law and its Grant Agreement with the Oregon Public Utilities Commission dated March 1, 2002.

1.1.27 "Equitable Defenses" means any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

1.1.28 "Event of Default" has the meaning set forth in Section 5.1.

1.1.29 "FERC" means the Federal Energy Regulatory Commission or any successor government agency.

1.1.30 "Final Completion" means The Facility shall have achieved ___ MW of generation and Counterparty shall have delivered to PGE a certificate signed by an officer of Counterparty (1) certifying that all of the Project's licenses, permits, and approvals necessary for Counterparty's construction of the Project, and the production and delivery of electric power to PGE have been obtained from applicable federal, state or local authorities, and (2) listing all such Project-related licenses, permits and approvals; (3) certifying there has been passage of control of the Project from the Project's construction contractor to Counterparty; (iii) certifying there has been commencement of Daily or regular Project operations; and (iv) certifying there has been synchronization of the Project into the Balancing Authority Area power grid for generating electricity and Counterparty shall have (at its sole cost) obtained any requisite electric transmission services, as deemed necessary by Counterparty to meet its obligations under this Agreement, and Counterparty's Transmission Provider shall have delivered a fully executed copy of the Interconnection Agreement to PGE.

1.1.31 "Firm" used in the context of "Firm Energy" means the only excuse for the interruption of delivery of the Product is if the interruption is excused by Force Majeure, and that all scheduled energy includes the provisions by Counterparty of reserves as required by the WECC.

1.1.32 "Force Majeure" is defined in Section 4.1.

1.1.33 "Gains" means, with respect to a Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of its obligations with respect to this Agreement determined in a commercially reasonable manner.

1.1.34 "Governmental Authority" means any national, state, provincial or local government, any political subdivision thereof or any other governmental, regulatory, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law; provided, however, that "Governmental Authority" shall not in any event include either Party.

1.1.35 "Governmental Charges" means any charges or costs that are assessed or levied by any entity, including local, state or federal regulatory or taxing authorities or any Transmission Provider that would affect sale and purchase of a Product contemplated by this Agreement, either directly or indirectly.

1.1.36 "Guarantor" means, with respect to Counterparty, _____.

1.1.37 "Guaranty" means an instrument or agreement pursuant to which the Guarantor guarantees the performance of each and all of the obligations of Counterparty, which instrument or agreement is reasonably acceptable in form and substance to PGE.

1.1.38 "Guaranty Default" means with respect to a Guaranty or the Guarantor thereunder, the occurrence of any of the following events: (i) any representation or warranty made or deemed to be made or repeated by such Guarantor in connection with such Guaranty shall be false or misleading in any material respect when made or when deemed made or repeated; (ii) such Guarantor fails to pay, when due, any amount required pursuant to such Guaranty; (iii) the failure of such Guarantor to comply with or timely perform any other material covenant or obligation set forth in such Guaranty if such failure is not capable of remedy or shall not be remedied in accordance with the terms and conditions of such Guaranty; (iv) a Merger Event occurs with respect to such Guarantor; (v) such Guaranty shall expire or terminate, or shall fail or cease to be in full force and effect and enforceable in accordance with its terms against such Guarantor, prior to the satisfaction of all obligations of the guaranteed Party under this Agreement, in any such case without replacement; (vi) such Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of, its Guaranty, or (vii) such Guarantor becomes Bankrupt; provided, however, that no Guaranty Default shall occur or be continuing in any event with respect to a Guaranty after the time such Guaranty is required to be canceled or returned to Counterparty in accordance with the terms of this Agreement.

1.1.39 "Indemnitee" has the meaning set forth in Section 12.2.

1.1.40 "Indemnitor" has the meaning set forth in Section 12.2.

1.1.41 "Indemnity Claims" means all third party claims or actions, threatened or filed, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys' fees and court costs, whether resulting from a settlement or

otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement.

1.1.42 "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%), and (b) the maximum rate permitted by applicable law.

1.1.43 "Law" means any law, rule, regulation, order, writ, judgment, rulings or orders by or before any court or any governmental authority.

1.1.44 "Letter(s) of Credit" means one or more irrevocable, transferable, standby letters of credit issued by a major U.S. commercial bank or a U.S. branch office of a major foreign commercial bank with such bank having shareholders' equity of at least $10 billion USD and a Credit Rating of at least A1 from Moody's or A+ from S&P, in a form and substance reasonably acceptable to the Beneficiary Party. The costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

1.1.45 "Letter of Credit Default" means with respect to a Letter of Credit, the occurrence of any of the following events: (i) the issuer of such Letter of Credit shall fail to be a major U.S. commercial bank or a U.S. branch office of a major foreign commercial bank with such bank having shareholders' equity of at least $10 billion USD and a Credit Rating of at least A1 from Moody's or A+ from S&P; (ii) the issuer of the Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit; (iii) the issuer of such Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit; (iv) such Letter of Credit shall be within 15 Business Days of expiration or terminate, or shall fail or cease to be in full force and effect at any time during the Contract Term, in any such case without replacement; (v) the issuer of such Letter of Credit shall become Bankrupt; or (vi) a Merger Event occurs with respect to the issuer of such Letter of Credit; provided, however, that no Letter of Credit Default shall occur or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned in accordance with the terms of this Agreement.

1.1.46 "Losses" means, with respect to a Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of its obligations with respect to this Agreement determined in a commercially reasonable manner.

1.1.47 "Material Adverse Change" means (i) with respect to PGE, PGE shall have a Credit Rating below BBB- by S&P and below Baa3 by Moody's or both ratings are withdrawn or terminated on a voluntary basis by the rating agencies, (ii) with respect to Counterparty, Counterparty or Counterparty's Guarantor, if applicable, shall have a Credit Rating below BBB- by S&P and below Baa3 by Moody's or both ratings are withdrawn or terminated on a voluntary basis by the rating agencies, if rated by both services. If Counterparty or Counterparty's Guarantor is rated by only one service, a

Material Adverse Change shall occur if the rating falls below the pertinent level specified above or if such rating is withdrawn or terminated on a voluntary basis by the rating agency.

1.1.48 "Merger Event" means, with respect to a Party or other entity, that such Party or other entity consolidates or amalgamates with, or merges into or with, or transfers all or substantially all of its assets to another entity, and (i) the resulting, surviving or transferee entity fails, at the time of such consolidation, amalgamation, merger or transfer, to assume each and all of the obligations of such Party or other entity hereunder or under any Guaranty or Letter of Credit or other performance assurance, either by operation of law or pursuant to an agreement reasonably satisfactory to the other Party, or (ii) the benefits of any Guaranty, Letter of Credit, or other performance assurance or credit support provided pursuant to this Agreement fail, at any time following such consolidation, amalgamation, merger or transfer, to extend to the performance by such Party or such resulting, surviving or transferee entity of its obligations hereunder, or (iii) the Credit Rating (from any of S&P or Moody's) of the resulting, surviving or transferee entity is not equal to or higher than that of such Party or other entity immediately prior to such consolidation, amalgamation, merger, or transfer.

1.1.49 "Mid-Columbia" means an area which includes points at any of the switchyards associated with the following four hydro projects: Rocky Reach, Rock Island, Wanapum and Priest Rapids. These switchyards include: Rocky Reach, Rock Island, Wanapum, McKenzie, Valhalla, Columbia, Midway and Vantage. Mid-Columbia shall also include points in the "Northwest Hub," as defined by BPA. For scheduling purposes, the footprint described above shall dictate the delivery point name for the then current WECC scheduling protocols. If the footprint changes during the Contract Term, a mutually agreed upon footprint that describes an area containing the most liquidity for trading purposes shall apply.

1.1.50 "Month" means a calendar month commencing at HE 0100 PPT on the first day of such month through HE 2400 PPT on the last day of such month.

1.1.51 "Moody's" means Moody's Investor Services, Inc. or its successor.

1.1.52 "MW" means megawatt.

1.1.53 "MWh" means megawatt hour.

1.1.54 "Non-Defaulting Party" has the meaning set forth in Section 5.2.1.

1.1.55 "Off-Peak Hours" shall mean all hours ending 01:00:00 through 06:00:00 and hours ending 23:00:00 through 24:00:00, PPT, Monday through Saturday and hours ending 01:00:00 through 24:00:00, PPT, on Sundays and NERC designated holidays.

1.1.56 "On-Peak Hours" shall mean all hours ending 07:00:00 through 22:00:00 PPT, Monday through Saturday, excluding NERC designated holidays.

1.1.57 "Performance Assurance" means collateral in the form of cash, Letter(s) of Credit, or other security acceptable to the Beneficiary Party.

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

1.1.59 "Pledgor" has the meaning given in Section 9.4.

1.1.60 "PPT" means Pacific Prevailing Time, that is, prevailing Standard Time or Daylight Savings Time in the Pacific Time Zone.

1.1.61 "Present Value" means a present value calculation derived by using a commercially reasonable discount rate for each remaining Month of the Contract Term.

1.1.62 "Price Source" means a nationally-recognized market price index for the [Hub Name] or recognized and independent brokers or dealers active in the [*Hub Name*] Next Day physical power market, containing (or reporting) the specified price (or prices from which the specified price is calculated) set forth in this Agreement.

1.1.63 "Product" means 1) the Contract Quantity of Firm Energy and electric capacity, all reserves required by the WECC for all Scheduled Energy or other product(s) related thereto as specified in this Agreement by the Parties, and 2) Environmental Attributes

1.1.64 "Prudent Electric Industry Practice" means those practices, methods, standards and acts engaged in or approved by a significant portion of the electric power generation industry in the Western Interconnection that at the relevant time period, in the exercise of reasonable judgment in light of the facts known or that should reasonably have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with good business practices, reliability, economy, safety and expedition, and which practices, methods, standards and acts reflect due regard for operation and maintenance standards recommended by the Facility's equipment suppliers and manufacturers, operational limits, and all applicable laws and regulations. Prudent Electric Industry Practice is not intended to be limited to the optimum practice, method, standard or act to the exclusion of all others, but rather to those practices, methods and acts generally acceptable or approved by a significant portion of the electric power generation industry in the Pacific Northwest region, during the relevant period, as described in the immediately preceding sentence.

1.1.65 "Replacement Price" is described in Section 6.1.2.

1.1.66 "Rounding Amount" means $250,000 in USD (or its equivalent in another currency).

1.1.67 "S&P" means the Standard & Poor's, a division of McGraw-Hill Companies, Inc., or any successor thereto.

1.1.68 "Sales Price" is described in Section 6.2.2.

1.1.69 "Schedule," "Scheduled" or "Scheduling" means the act of each Party or its designated representatives, including its Transmission Providers, if applicable, notifying, requesting and confirming to each other, on a weekly basis but no later than 10:00 AM the last business day of the Week, the Contract Quantity of Firm Energy to be delivered for the subsequent 168 hours from Sunday through Saturday and on a prescheduled, hourly schedule or real-time schedule the Contract Quantity of Firm Energy to be delivered to and at and from the Delivery Point according to customary WECC scheduling practices.

1.1.70 "Secured Party" shall have the meaning given in Section 9.4.

1.1.71 "Settlement Amount" means, with respect to this Agreement and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in USD, which such Party incurs as a result of the termination and liquidation of this Agreement pursuant to Article 5.

1.1.72 "Taxes" means all taxes, rates, levies, adders, assessments, surcharges, duties and other fees and charges of any nature, including but not limited to ad valorem, consumption, excise, franchise, gross receipts (including any [*State Name*] business and occupation tax and [*State Name*] public utility tax and any successor tax thereto), import, export, license, property, sales, stamp, storage, transfer, turnover, use, or value-added taxes, and any and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto.

1.1.73 "Termination Payment" has the meaning set forth in Section 5.3

1.1.74 "The Facility" means _____.

1.1.75 "Trading Day" means a day in respect of which the relevant Price Source reported, published or announced the Floating Price.

1.1.76 "Transmission Provider(s)" means any entity (including any FERC-authorized regional transmission organization) transmitting Energy on behalf of Counterparty to and at the Delivery Point; or on behalf of PGE at and from the Delivery Point.

1.1.77 "Transmission Services" means any and all services (including but not limited to Ancillary Services and control area services) required for the transmission and delivery of Energy to the Delivery Point or at and from the Energy Delivery Point.

1.1.78 "Transmission System(s)" means the transmission system(s) of the Transmission Provider(s) to be used by Counterparty for the purpose of transmitting Energy to and at, the Delivery Point; or by PGE for the purpose of transmitting Energy at and from, the Delivery Point.

1.1.79 "USD" means United States Dollars.

1.1.80 "WECC" means the Western Electricity Coordinating Council or any successor thereto.

1.1.74 "Western Interconnection" means network of subsystems of generators, transmission lines, transformers, switching stations, and substations owned or operated by members of the WECC and including 14 western states, British Columbia, Alberta and parts of Baja, Mexico

1.2 Interpretations.

Unless the context otherwise requires:

1.2.1 Words singular and plural in number shall be deemed to include the other and pronouns having masculine or feminine gender shall be deemed to include the other.

1.2.2 Subject to Article 15, any reference in this Agreement to any Person includes its successors and assigns and, in the case of any Governmental Authority, any Person succeeding to its functions and capacities.

1.2.3 Any reference in this Agreement to any Section, Exhibit or Appendix means and refers to the Section contained in, or Exhibit or Appendix attached to, this Agreement.

1.2.4 Other grammatical forms of defined words or phrases have corresponding meanings.

1.2.5 A reference to writing includes typewriting, printing, lithography, photography and any other mode of representing or reproducing words, figures or symbols in a lasting and visible form.

1.2.6 Unless otherwise expressly provided in this Agreement, a reference to a specific time for the performance of an obligation is a reference to that time in the place where that obligation is to be performed.

1.2.7 A reference to a Party to this Agreement includes that Party's successors and permitted assigns.

1.2.8 Unless otherwise expressly provided in this Agreement, a reference to a document or agreement, including this Agreement, includes a reference to that document or agreement as modified, amended, supplemented or restated from time to time.

1.2.9 References in this Agreement to "or" shall be deemed to be disjunctive but not necessarily exclusive (i.e., unless the context dictates otherwise, "or" shall be interpreted to mean "and/or" rather than "either/or").

1.2.10 If any payment, act, matter or thing hereunder would occur on a day that is not a Business Day, then such payment, act, matter or thing shall, unless otherwise expressly provided for herein, occur on the next Business Day.

1.3 Technical Meanings.

Words not otherwise defined herein that have well known and generally accepted technical or trade meanings are used herein in accordance with such recognized meanings.

ARTICLE 2
CONTRACT TERM; DELIVERY PERIOD; PRICE; RIGHT OF FIRST REFUSAL

2.1 Contract Term.

The Contract Term shall begin on the Effective Date and shall continue through _____[*Date*] (the "Contract Term"), unless otherwise terminated in accordance with its terms; provided, however, that such termination shall not affect or excuse the performance of either Party under any provision of this Agreement that by its terms survives any such termination and; provided further, that this Agreement and any other documents executed and delivered hereunder shall remain in effect until both Parties have fulfilled all of their obligations with respect to this Agreement.

2.2 Delivery Period.

The Contract Quantity of Firm Energy shall be made available by Counterparty to PGE at the Delivery Point starting on ___ for the Contract Term ("Delivery Period"). .

2.3 Price.

PGE shall pay to Counterparty the Contract Price For Firm Energy during the Delivery Period as provided in Exhibit B.

2.4 Delivery Point.

Commencing on the first day of the Delivery Period and continuing throughout the Contract Term, Counterparty shall sell and deliver and PGE shall buy and receive at the Delivery Point Firm Energy as scheduled by PGE in accordance with Article 3.

~~2.5 Right of First Refusal~~

~~If at any time during the Contract Term, Counterparty desires to sell the Facility or is required to divest itself of the Facility, Counterparty shall give PGE the first right to purchase the Facility at a negotiated price.~~

ARTICLE 3
COVENANTS

3.1 Counterparty and PGE's Obligations.

3.1.1 Construction of Facility [Applicable Yes___;No___]

If applicable, shall be on the schedule set forth in Exhibit C___, and subject to liquidated damages payments for failure to meet agreed upon milestones as set forth therein.

3.1.2 Operations

Operations of the Facility shall be as provided in Exhibit D.

3.1.3 Delivery of Firm Energy and Environmental Attributes.

Counterparty shall sell and deliver, and PGE shall purchase and receive the Product as provided in Exhibit B. Counterparty will deliver, or cause to be delivered, and PGE will receive, or cause to be received, the Firm Energy portion of the Product at the Delivery Point in accordance with this Agreement. Title to Energy shall pass to PGE at the Delivery Point. Environmental Attributes shall be measured at the Facility busbar. Title to such Environmental Attributes shall pass to PGE when generated, as metered at the Facility busbar. PGE shall own or be entitled to claim all Environmental Attributes during the Contract Term (including any value in the ownership, use or allocation of Environmental Attributes created by legislation or regulation after the Effective Date).

3.1.3.1 Counterparty's obligation to deliver the amount of Product purchased by PGE shall be absolute and the only excuse for failure of Counterparty to deliver the Contract Quantity of Product as Scheduled shall be a Force Majeure or PGE's failure to receive.

3.2 Delivery Point.

The Delivery Point for Product delivered by Counterparty to PGE will be at PGE's system or any other alternate Delivery Point as mutually agreed to by the Parties.

3.3 Metering.

Metering of Environmental Attributes. Environmental Attributes shall be deemed sold and delivered under this Agreement as they are produced and measured by the Project meter at the Measuring Point. The Project Metering Equipment shall serve as the record source for purposes of calculating, certifying, and auditing Environmental Attributes. Counterparty shall provide, install, and maintain at its sole cost all Metering Equipment for recording and measuring Environmental Attributes delivered to PGE under this Agreement. Counterparty shall deliver to PGE by the 10th day of the current Month a certificate in the form of Appendix _ for the Environmental Attributes generated

during the preceding Month, and Seller shall cause delivery and transfer to be perfected in accordance with the rules of WREGIS of the Environmental Attributes to PGE's account with WREGIS, and prior to such delivery and transfer, Seller shall hold the Environmental Attributes in trust for PGE until the delivery and transfer occurs.

3.4 Transmission and Scheduling.

3.4.1 Responsibility for Transmission and Scheduling. Counterparty shall arrange for, pay all costs, and be responsible for transmission service, including but not limited to Balancing Authority Area services, Ancillary Services, reserves, imbalance or inadvertent energy flows, and transmission losses and loss charges relating to the transmission of the Product, to the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Provider(s), in accordance with the practice of the Transmission Provider(s), to deliver the Product to the Delivery Point. PGE shall arrange for, pay all costs, and be responsible for transmission service, including but not limited to Balancing Authority Area services, spinning and supplemental reserves, imbalance or inadvertent energy flows, and transmission losses and loss charges relating to the transmission of the Product, at and from the Delivery Point and shall Schedule or arrange for Scheduling services with its Transmission Provider(s) to receive the Firm Energy at the Delivery Point. Each Party shall designate authorized representatives responsible for Scheduling. Notwithstanding the foregoing and for the avoidance of doubt, Counterparty is responsible for providing all reserves required by the WECC for all Scheduled Energy.

3.4.2 Preschedules. Counterparty shall provide preschedules for all deliveries of Energy hereunder, including identification of receiving and generating Balancing Authority Areas, by 10:00:00 PPT on the last Business Day prior to each Sunday to Saturday period for the weekly amount and each Business Day for each Scheduled date of delivery for hourly amounts. The Parties' respective representatives shall also maintain daily hourly real-time Schedule coordination; provided, however, that in the absence of such coordination, the hourly schedule established by the exchange of preschedules shall be considered final. Counterparty shall notify PGE's dispatch schedulers ("PGE's Real Time Desk") of any curtailments of greater than 5 MW from the submitted Daily preschedule as soon as possible. All Schedules hereunder shall be accounted for on the basis of Scheduled hourly quantities of Firm Energy at the Delivery Point, except that when deliveries are interrupted for any reason, Schedules shall be reduced thereafter to reflect such interruptions. In case the Scheduled deliveries and receipt of Firm Energy are not maintained for an entire hour, deliveries shall be pro-rated on a mutually agreed-upon basis. Counterparty and PGE shall maintain records of hourly energy Schedules for accounting and operating purposes. The final E-Tag shall be the controlling evidence of the Parties' Schedule. All energy shall be prescheduled according to customary WECC Scheduling practices.

3.4.3 Interruptions and Curtailments. In the event of interruptions or curtailments, except as may be caused by a Force Majeure event, a transmission curtailment beyond Seller's control, or PGE's failure to receive, Counterparty shall use commercially reasonable efforts to Schedule make-up Energy to the Delivery Point on a

real-time basis in order to maintain the Scheduled weekly amount of Energy for affected hours; provided, however, that in the event of any failure by Counterparty to Schedule any such make-up Energy to the Delivery Point, PGE may exercise any rights and remedies provided under this Agreement or by law.

3.4.4 Maximum Delivery Amounts. Counterparty shall sell and deliver, and PGE shall buy and receive, all Firm Energy Scheduled and delivered pursuant to this Agreement, up to a maximum of ___ MW. This Agreement does not create, nor should it be construed to include any obligation on PGE to buy from Counterparty, or for Counterparty to sell to PGE, the Energy that the Project may be able to produce in excess of the ___ MW addressed in this Agreement.

ARTICLE 4
FORCE MAJEURE

4.1 Definition.

Force Majeure means an event or circumstance which prevents one Party from performing its obligations to deliver or receive the Product under this Agreement, which event or circumstance was not anticipated as of the Effective Date, which is not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on; (i) the loss of PGE's markets; (ii) PGE's inability economically to use or resell the Product purchased hereunder; (iii) the loss or failure of Counterparty's supply or equipment; or; (iv) Counterparty's ability to sell the Product at a price greater than the Contract Price. Neither Party may raise a claim of Force Majeure based in whole or in part on curtailment by a Transmission Provider unless; (i) such Party has contracted for firm transmission with a Transmission Provider for the Product to be delivered to or received at the Delivery Point and, (ii) such curtailment is due to "force majeure" or "uncontrollable force" or a similar term as defined under the Transmission Provider's tariff; provided, however, that existence of the foregoing factors shall not be sufficient to conclusively or presumptively prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate with such factors establish that a Force Majeure as defined in the first sentence hereof has occurred.

4.2 Occurrence and Notice.

To the extent either Party is prevented by Force Majeure from carrying out, in whole or part, its obligations under this Agreement and such Party (the "Claiming Party") gives notice and details of the Force Majeure to the other Party as soon as practicable, then, unless the terms of this Agreement specify otherwise, the Claiming Party shall be excused from the performance of its obligations related thereto. The Claiming Party shall remedy the Force Majeure with all reasonable dispatch. The non-Claiming Party shall not be required to perform or resume performance of its obligations

to the Claiming Party corresponding to the obligations of the Claiming Party excused by Force Majeure.

4.3 Obligations.

No Party shall be relieved by operation of this Article 4 of any liability to pay for Products delivered hereunder or to make payments then due or which the Party is obligated to make with respect to performance which occurred prior to the Force Majeure.

ARTICLE 5
EVENTS OF DEFAULT; REMEDIES

5.1 Events of Default.

An "Event of Default" shall mean, with respect to a Party (a "Defaulting Party"), the occurrence of any of the following:

5.1.1 the occurrence of a Material Adverse Change with respect to the Defaulting Party; provided, such Material Adverse Change shall not be considered an Event of Default if the Defaulting Party establishes and maintains, within fifteen (15) Business Days and for so long as the Material Adverse Change is continuing, Performance Assurance to the Non-Defaulting Party in an amount equivalent to the Termination Payment as determined under Section 5.3 and in accordance with Section 9.3;

5.1.2 the failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within tentwo (210) Business Days after written notice;

5.1.3 any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, if such failure or breach is not cured within thirty (30) Days following written notice;

5.1.4 the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default of such Party's obligations to deliver or receive the Product, the exclusive remedy for which is provided in Article 6, or any other material covenant or obligation for which another Article or Exhibit contains liquidated damages as a remedy), if such failure or breach is not cured within the lesser of the cure period set forth in this Article 5 for the particular breach or thirty (30) Days following written notice;

5.1.5 such Party becomes Bankrupt;

5.1.6 the failure of such Party to establish, maintain, extend or increase Performance Assurance when required pursuant to this Agreement, if such failure is not cured within ten (10) Days following written notice;

5.1.7 the occurrence of a Merger Event with respect to such Party or its Guarantor, if such occurrence is not cured within ten (10) Days following written notice;

5.1.8 the occurrence and continuation of (i) a default, event of default or other similar condition or event in respect of such Party or any other party specified for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount specified for such Party in Section 1.1.16, if such occurrence is not cured within the cure period specified in such agreements or instruments and which results in such indebtedness becoming immediately due and payable or (ii) a default by such Party or any other party specified for such Party in making on the due date therefor one or more payments, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount as specified herein, if such occurrence is not cured within ten (10) Days following written notice;

5.1.9 the occurrence of a Letter of Credit Default, if such occurrence is not cured within ten (10) Days following written notice;

5.1.10 with respect to such Party's Guarantor, if any, the occurrence of a Guaranty Default, if such occurrence is not cured within ten (10) Days following written notice.

In the event of any default hereunder, the non-defaulting Party must notify the defaulting Party in writing of the circumstances indicating the default and outlining the requirements to cure the default. If the default has not been cured within the prescribed time, above, the non-defaulting Party may Declare Early Termination as set forth in Section 5.2.

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5.2 Declaration of an Early Termination Date and Calculation of Settlement Amounts.

5.2.1 Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred at any time during the Contract Term and be continuing, the other Party (the "Non-Defaulting Party") shall have the right to (i) designate a day, no earlier than the day such notice is effective and no later than 20 days after such notice is effective, as an early termination date ("Early Termination Date") on which to liquidate, terminate, and accelerate all amounts owing between the Parties, (ii) withhold any payments due to the Defaulting Party under this Agreement and (iii) suspend performance. If an Early Termination Date has been designated, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, its Gains or Losses and Costs resulting from the termination of this Agreement as of the Early Termination Date and the Termination Payment (hereinafter defined) payable hereunder shall be calculated in accordance with Section 5.2.2 below.

5.2.2 Calculation of Settlement Amounts. The Gains or Losses resulting from the termination of this Agreement shall be determined by calculating the amount

that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of this Agreement. The Gains or Losses shall be calculated for a period equal to the lesser of the remaining Contract Term or 60 months ("Settlement Period"). The quantity of Energy in each month of the Settlement Period shall be equal to the hours in such month (or portion thereof) multiplied by __ MW ("Settlement Energy"). The Non-Defaulting Party (or its agent) may determine its Gains and Losses by reference to information ~~either available to it internally or~~ supplied by one or more independent third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. However, it is expressly agreed that (i) a Party shall not be required to enter into a replacement agreement in order to determine the Termination Payment (as hereafter defined) and (ii) a Party's Gains, Losses or Costs will in no event include any penalties, ratcheted demand or similar charges. At the time for payment of any amount due under this Section 5.2, each Party shall pay to the other Party all additional amounts payable by it pursuant to this Agreement, but all such amounts shall be netted and aggregated with any Termination Payment payable hereunder.

5.3 Net Out of Settlement Amounts.

The Non-Defaulting Party shall aggregate all Settlement Amounts into a single amount by: netting out (i) all Settlement Amounts that are due to the Defaulting Party, plus any cash or other form of security then available to the Non-Defaulting Party pursuant to Article 9, plus any or all other amounts due to the Defaulting Party under this Agreement against (ii) all Settlement Amounts that are due to the Non-Defaulting Party, plus any cash or other form of security then available to the Defaulting Party pursuant to Article 9, plus any or all other amounts due to the Non-Defaulting Party under this Agreement, so that all such amounts shall be netted out to a single liquidated amount (the "Termination Payment") payable by one Party to the other. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.

5.4 Notice of Payment of Termination Payment.

As soon as practicable after calculating the Termination payment, the Non-Defaulting Party shall give notice to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. If the Termination Payment is due from the Defaulting Party, the Termination Payment shall be made by the Defaulting Party within two (2) Business Days after such notice is effective. Notwithstanding any provision to the contrary contained in this Agreement, the Non-Defaulting Party shall not be required to pay to the Defaulting Party any amount under this Article 5 until the earlier of (i) the date the Non-Defaulting Party receives confirmation satisfactory to it in its reasonable discretion (which may include an opinion of its counsel) that all other obligations of any kind whatsoever of the Defaulting Party to make any payments to the

Non-Defaulting Party under this Agreement or otherwise which are due and payable as of the Early Termination Date have been fully and finally performed, or (ii) 180 days after the Early Termination Date.

5.5 Disputes with Respect to Termination Payment.

If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment in whole or in part, the Defaulting Party shall, within two (2) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall pay the non-disputed amount of the Termination Payment as provided in Section 5.4 and transfer, within two (2) Business Days, Performance Assurance to the Non-Defaulting Party in an amount equal to the disputed amount of the Termination Payment.

5.6 Closeout Setoffs.

After calculation of a Termination Payment in accordance with Section 5.3, if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to set off against such Termination Payment any amounts due and owing by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party. The remedy provided for in this Section 5.6 shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which the Non-Defaulting Party is at any time otherwise entitled (whether by operation of law, contract or otherwise).

5.7 Suspension of Performance.

Notwithstanding any other provision of this Agreement, if an Event of Default shall have occurred and be continuing, the Non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under this Agreement; provided, however, in no event shall any such suspension continue for longer than ten (10) Business Days with respect to any single Scheduled Product unless an early Termination Date shall have been declared and notice thereof pursuant to Section 5.2 given, and (ii) to the extent an Event of Default shall have occurred and be continuing to exercise any remedy available at law or in equity.

ARTICLE 6
REMEDIES FOR FAILURE TO DELIVER/RECEIVE

6.1 Remedy for Counterparty's Failure to Deliver.

6.1.1 Liquidated Damages Due to PGE. If Counterparty fails to Schedule and/or deliver all or part of the Product pursuant to this Agreement, and such failure is not excused under the terms of this Agreement or by PGE's failure to perform, then Counterparty shall pay PGE within five (5) Business Days of invoice receipt, an amount

for such deficiency equal to the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

6.1.2 Calculation of Replacement Price. The Replacement Price in regard to any Product Scheduled but not delivered to PGE by Counterparty shall be the price at which PGE either:

(i) purchased a replacement for any such Product in a commercially reasonable manner, adding any:

(a) costs reasonably incurred by PGE in replacing such Product; and

(b) additional transmission charges, if any, reasonably incurred by PGE in delivering such Product to the Delivery Point;

(ii) or, absent a purchase, then the market price at the Mid-Columbia, for such Product not delivered, as determined by PGE in a commercially reasonable manner.

However, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall PGE be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize Counterparty's liability.

6.2 PGE's Failure to Receive.

6.2.1 Liquidated Damages Due to Counterparty. If PGE fails to receive all or part of the Product Scheduled pursuant to this Agreement and such failure is not excused under the terms of this Agreement or by Counterparty's failure to perform, then PGE shall pay Counterparty, on the date payment would otherwise be due in respect of the month in which the failure occurred or within five (5) Business Days of invoice receipt, an amount for such deficiency equal to the positive difference, if any, obtained by subtracting the Sales Price from the Contract Price associated with the amount of Product Scheduled by Counterparty but not received by PGE. The invoice for such amount shall include a written statement explaining in reasonable detail the calculation of such amount.

6.2.2 Calculation of Sales Price. The Sales Price in regard to any Product Scheduled but not received by PGE shall be the price at which Counterparty:

(i) resells for delivery any such Product in a commercially reasonable manner, deducting from such proceeds any:

(a) costs reasonably incurred by Counterparty in reselling such Product; and

(b) additional transmission charges, if any, reasonably incurred by Counterparty in delivering such Product to third party purchasers at the Mid-Columbia.

(ii) or, absent a sale, the market price at the Delivery Point for such Product not received as determined by Counterparty in a commercially reasonable manner.

However, in no event shall such price include any penalties, ratcheted demand or similar charges, nor shall Counterparty be required to utilize or change its utilization of its owned or controlled assets, including contractual assets, or market positions to minimize PGE's liability.

6.3 Duty to Mitigate.

Subject to Sections 6.1.2 and 6.2.2, each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement.

6.4 Acknowledgement of the Parties.

The Parties stipulate that the payment obligations set forth in this Article 6 are reasonable in light of the anticipated harm and the difficulty of estimation or calculation of actual damages and waive the right to contest such payments as an unreasonable penalty. If either Party fails to pay undisputed amounts in accordance with this Article 6 when due, the other Party shall have the right to: (i) suspend performance until such amounts plus interest at the Interest Rate have been paid, and/or (ii) exercise any remedy available at Law or in equity to enforce payment of such amount plus interest at the Interest Rate. With respect to the amount of such damages only, the remedy set forth in this Article 6 shall be the sole and exclusive remedy of the Parties for the failure of Counterparty to sell and deliver, and PGE to purchase and receive the Product and all other damages and remedies are hereby waived. Disagreements with respect to the calculation of damages pursuant to this Article 6 may be submitted by either Party for resolution in accordance with applicable law.

6.5 Survival.

The provisions of this Article 6 shall survive the expiration or termination of this Agreement for any reason.

ARTICLE 7
PAYMENT AND NETTING

7.1 Billing Period.

Unless otherwise specifically agreed upon by the Parties, the Month shall be the standard period for all payments under this Agreement (other than for Counterparty or PGE failure under Sections 6.1 and 6.2 respectively and for termination

under Section 5.4). On or before the tenth (10th) day of each Month, each Party will render to the other Party an invoice for the payment obligations, if any, incurred hereunder during the preceding Month.

7.2 Timeliness of Payment.

Unless otherwise agreed by the Parties, all invoices under this Agreement shall be due and payable in accordance with each Party's invoice instructions on or before the later of the twentieth (20th) day of each Month, or the tenth (10th) day after receipt of the invoice or, if such day is not a Business Day, then on the next Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full.

7.3 Disputes and Adjustments of Invoices.

A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twenty-four (24) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 7.3 within twenty-four (24) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of this Agreement occurred, the right to payment for such performance is waived.

7.4 Netting of Payments.

The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by one Party to the other Party during the monthly billing period under this Agreement, including any related damages calculated pursuant to Article 5 (unless one of the Parties elects to accelerate payment of such amounts as

permitted by Article 6), interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

7.5 Payment Obligation Absent Netting.

If no mutual debts or payment obligations exist and only one Party owes a debt or obligation to the other during the monthly billing period, including, but not limited to, any related damage amounts calculated pursuant to Article 6, interest, and payments or credits, that Party shall pay such sum in full when due.

ARTICLE 8
LIMITATIONS

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE 9
CREDIT AND COLLATERAL REQUIREMENTS

The applicable credit and collateral requirements shall be as follows:

9.1 Financial Information.

Unless otherwise available on Edgar or on a Party's website on the world wide web (for PGE at portlandgeneral.com, and for Counterparty at ___.com, upon request of a Party, the other Party shall deliver (i) within 120 days following the end of each fiscal year, a copy of such Party's, or where applicable the Guarantor's, annual report containing audited consolidated financial statements for such fiscal year and (ii) within 60 days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles, consistently applied; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as the other Party diligently pursues the preparation, certification and delivery of the statements.

9.2 Collateral and Security.

The Parties agree that, in order to secure their respective obligations hereunder, subject to Section 9.3 below:

Counterparty shall cause its Guarantor to execute and deliver to PGE a Guaranty agreement in a form and amount reasonably acceptable to PGE. Such Guaranty shall be delivered prior to the execution and delivery of this Agreement; or, Counterparty, shall provide Performance Assurance in the form of cash or Letter of Credit in an amount reasonably acceptable to PGE. If applicable, such Performance Assurance shall be delivered prior to the execution and delivery of this Agreement.

9.3 Provision of Performance Assurance.

If at any time and from time to time during the term of this Agreement (and notwithstanding whether an Event of Default has occurred), the Termination Payment that would be owed to a Party exceeds such Party's Collateral Threshold, then the other Party, on any Business Day, may request the first party to provide Performance Assurance for the period equal to the lesser of (i) the remaining period of the Contract Term or (ii) for a period of twenty-four (24) months commencing from the date of notice of such required Performance Assurance, (rounding upwards for any fractional amount to the next Rounding Amount), less any Performance Assurance already posted with the requesting Party. Such Performance Assurance shall be delivered to the requesting Party within two (2) Business Days of the date of such request. On any Business Day (but no more frequently than weekly with respect to Letters of Credit and daily with respect to cash), the posting Party, at its sole cost, may request that such Performance Assurance be reduced correspondingly to the amount of such excess Termination Payment (rounding downwards for any fractional amount to the next Rounding Amount). In the event that a Party fails to provide Performance Assurance pursuant to the terms of this Article 9 within two (2) Business Days, then an Event of Default under Article 5 shall be deemed to have occurred and the other Party will be entitled to the remedies set forth in Article 5

of this Agreement. For purposes of this Section 9.3, the calculation of the Termination Payment shall be calculated pursuant to Section 5.3 by the Non-Defaulting Party as if this Agreement had been liquidated, and in addition thereto, shall include all amounts owed but not yet paid by Defaulting Party to the Non-Defaulting Party.

9.4 Grant of Security Interest/Remedies.

To secure its obligations under this Agreement and to the extent a Party delivers Performance Assurance hereunder, such Party (the "Pledgor") hereby grants to the other Party (the "Secured Party") a present and continuing security interest in, and lien on (and right of setoff against), and assignment of, all cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Secured Party, and Pledgor agrees to take such action as the Secured Party reasonably requires in order to perfect the Secured Party's first-priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or at any time after the occurrence and during the continuation of an Event of Default or an Early Termination Date affecting the Pledgor, the Secured Party may do any one or more of the following: (i) exercise any of the rights and remedies of a Secured Party with respect to all Performance Assurance, including any such rights and remedies under law then in effect; (ii) exercise its rights of setoff against any and all property of the Pledgor in the possession of the Secured Party or its agent; (iii) draw on any outstanding Letter of Credit issued for its benefit; and (iv) liquidate all Performance Assurance then held by or for the benefit of the Secured Party free from any claim or right of any nature whatsoever of Pledgor, including any equity or right of purchase or redemption by Pledgor. The Secured Party shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce the Pledgor's obligations under this Agreement (the Pledgor remaining liable for any amounts owing to the Secured Party after such application), subject to the Secured Party's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

9.5 Holding Performance Assurance.

The Secured Party will be entitled to hold Performance Assurance in the form of cash provided that the following conditions are satisfied: (i) the Secured Party is not a Defaulting Party and a Material Adverse Change has not occurred and is continuing with respect to such Party and (ii) Performance Assurance is held only in a jurisdiction within the United States.

9.6 Delivery of Performance Assurance.

Upon the occurrence and during the continuance of a Material Adverse Change or an Event of Default with respect to the Secured Party, the Secured Party shall deliver (or cause to be delivered) not later than two (2) Business Days after request by Pledgor, all Performance Assurance in its possession or held on its behalf by a financial

institution, to a segregated, safekeeping or custody account ("Collateral Account") within a financial institution that is a major U.S. commercial bank or a U.S. branch office of a major foreign commercial bank, with such bank having shareholder's equity of at least $10 billion USD and a Credit Rating of at least A1 from Moody's or A+ from S&P approved by Pledgor (which approval shall not be unreasonably withheld). The title of the Collateral Account shall indicate that the property contained therein is being held as Performance Assurance for the Secured Party. The financial institution shall serve as custodian with respect to the Performance Assurance in the Collateral Account and shall hold such Performance Assurance for the security interest of the Secured Party and, subject to the security interest, for the ownership of Pledgor.

9.7 Performance Assurance Event of Default.

Failure by the Secured Party to comply with any of the obligations under Section 9.6 will constitute an Event of Default with respect to the Secured Party if the failure continues for two (2) Business Days after notice of the failure is given to the Secured Party.

9.8 Interest Rate on Cash Collateral.

Performance Assurance in the form of cash shall bear interest at the Interest Rate on Cash Collateral and shall be paid to the Pledgor on the third Business Day of each calendar month. "Interest Rate on Cash Collateral" means the lesser of (i) the maximum amount allowed by applicable law and (ii) the Federal Funds Rate for the holding period. The "Federal Funds Rate" means the effective Federal Funds Rate as published daily by the Federal Reserves Bank H.15 Statistical Release website for each day of the holding period. Such interest shall be calculated on the basis of the actual number of days elapsed over a year of 360 days.

ARTICLE 10
GOVERNMENTAL CHARGES

10.1 Cooperation.

Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

10.2 Non-Sale Related Governmental Charges and Taxes.

Counterparty shall pay or cause to be paid all charges or taxes imposed by any government authority ("Governmental Charges") on or with respect to the Product arising prior to the Delivery Point. PGE shall pay or cause to be paid all Governmental Charges on or with respect to the Product at and from the Delivery Point (other than those related to the sale of the Product and are, therefore, the responsibility of Counterparty). In the event Counterparty is required by law or regulation to remit or pay Governmental Charges which are PGE's responsibility hereunder, PGE shall promptly reimburse Counterparty for such Governmental Charges. If PGE is required by law or regulation to

remit or pay Governmental Charges which are Counterparty's responsibility hereunder, PGE may deduct the amount of any such Governmental Charges from the sums due to Counterparty under Article 7 of this Agreement. Nothing herein shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the law.

10.3 Sale-related Governmental Charges and Taxes.

In addition to all other payments required under this Agreement, Counterparty shall be solely responsible for all existing and any new sales, use, excise, ad valorem, and any other similar taxes imposed or levied by any federal, state or local governmental agency on the Product sold and delivered hereunder (including any taxes imposed or levied with respect to the transmission of such energy) up to the delivery of such Product to the Delivery Point.

10.4 Indemnification.

Each Party shall indemnify, release, defend and hold harmless the other Party from and against any and all liability for taxes imposed or assessed by any taxing authority with respect to the Product sold, delivered and received hereunder that are the responsibility of such Party pursuant to this Article 10.

ARTICLE 11
RATES AND TERMS BINDING; FERC STANDARD OF REVIEW

11.1 Mobile-Sierra Doctrine.

Absent the agreement of all Parties to the proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, proposed by a Party (to the extent that any waiver in subsection (2) below is unenforceable or ineffective as to such Party), or FERC acting *sua sponte*, shall solely be the "public interest" application of the "just and reasonable" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish 554 U.S. __ (2008) (the "Mobile-Sierra" doctrine).

11.2 In addition, and notwithstanding the foregoing subsection (1), to the fullest extent permitted by applicable law, each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under §§ 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the

rate, charge, classification, or other term or condition agreed to by the Parties, it being the express intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. In the event it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this subsection (2) shall not apply, provided that, consistent with the foregoing subsection (1), neither Party shall seek any such changes except solely under the "public interest" application of the "just and reasonable" standard of review and otherwise as set forth in the foregoing subsection (1).

ARTICLE 12
REPRESENTATIONS AND WARRANTIES; INDEMNITY

12.1 Representations and Warranties.

On the Effective Date and throughout the Contract Term, each Party represents and warrants to the other Party that:

12.1.1 it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;

12.1.2 it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement;

12.1.3 the execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or the like applicable to it;

12.1.4 this Agreement, and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject only to any Equitable Defenses;

12.1.5 it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

12.1.6 there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

12.1.7 no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

12.1.8 it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement;

12.1.9 it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code;

12.1.10 it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all Products referred to in this Agreement;

12.1.11 with respect to this Agreement; involving the purchase or sale of a Product, it is a producer, processor, commercial user or merchant handling the Product, and it is entering into this Agreement for purposes related to its business as such; and

12.1.12 the material economic terms of this Agreement were subject to individual negotiation by the Parties.

12.2 Indemnity.

To the fullest extent permitted by law, each Party (the "Indemnitor") hereby indemnifies and agrees to defend and hold harmless the other Party (the "Indemnitee") from and against any Indemnity Claims caused by, resulting from, relating to or arising out of any act or incident involving or related to the Product, Energy or capacity and occurring at any time when such Product, Energy or capacity is under the Indemnitor's possession and control; provided, however, that the Indemnitor shall not have any obligation to indemnify the Indemnitee from or against any Indemnity Claims caused by, resulting from, relating to or arising out of the negligence or intentional misconduct of the Indemnitee.

12.3 Additional Representation and Warranty of Counterparty.

Counterparty hereby further represents and warrants to PGE that (i) Counterparty has the right to sell the Product, (ii) Counterparty has title to the Product sold under this Agreement, and (iii) no change has occurred in Counterparty's authorization to sell power at market-based rates pursuant to FERC Dockets Number ER_____.

ARTICLE 13 INSURANCE

13.1 Insurance. During the Contract Term, Counterparty shall secure and continuously carry the following insurance coverage:

13.2.1 Commercial general liability insurance with a minimum combined single limit of $1,000,000 per occurrence and in the annual aggregate, with coverage for

bodily injury, personal injury and broad form property damage, contractual liability, products and completed operations.

13.2.2 Workers' compensation insurance to cover statutory limits of the worker's compensation laws and employers liability insurance with a minimum limit of $1,000,000.

13.2.3 Business automobile liability insurance (including coverage for owned, non-owned, and hired automobiles) used in connection with the Project in an amount not less than $1,000,000 per accident for combined bodily injury, property damage or death. To the extent that the Counterparty does not own automobiles, coverage for non-owned and hired automobiles may be combined with commercial general liability.

13.2.4 Umbrella/excess insurance covering claims in excess of the underlying insurance described in Sections 13.2.1, 13.2.2 (employers liability only) and 13.2.3 with a $5,000,000 minimum per occurrence and annual aggregate.

13.2.5 All-risk property insurance including boiler & machinery coverage insuring Counterparty's property at replacement cost value.

13.3 Counterparty to Provide Certificate of Insurance. All policies required, with the exception of workers' compensation employers liability and business automobile liability, shall include (i) endorsement(s) naming PGE as an additional insured but only to the extent of Indemnitee's indemnifications as stated in Section 13.1, and (ii) a cross-liability and severability of interest clause. Said policies shall also contain provisions that such insurance is primary insurance without right of contribution of any other insurance carried by or on behalf of PGE with respect to its interests as additional insured. A certificate of insurance showing that the above-required insurance is in full force and effect (on Accord or similar form) shall be furnished to PGE. All policies shall be placed with companies with a minimum A.M. Best rating of A- IX. Counterparty shall deliver copies of all certificates of insurance to PGE within thirty (30) days of the Effective Date.

13.4 Counterparty to Notify PGE of Loss of Coverage. Counterparty or Counterparty's insurers will endeavor to provide PGE thirty (30) days notice (or ten (10) days in the case of cancellation due to non-payment of premiums) in the event of any material change to, cancellation or non-renewal of the required insurance.

ARTICLE 14
TITLE AND RISK OF LOSS

Title and risk of loss related to the Product shall transfer from Counterparty to PGE at the Delivery Point, except that title to Environmental Attributes shall transfer to PGE when generated and shall be measured at the Facility busbar. Counterparty warrants that it will deliver to PGE the Contract Quantity of the Product free and clear of all liens,

security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

ARTICLE 15
ASSIGNMENT; BINDING EFFECT

15.1 Assignment.

Neither Party shall assign this Agreement or its rights hereunder to any entity whose Credit Rating is not equal to or higher than that of such Party and is at least above BBB- by S&P and Baa3 by Moody's. No assignment may be made without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder), (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements, (ii) transfer or assign this Agreement to an Affiliate of such Party which Affiliate's Credit Rating is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of its assets whose Credit Rating is equal to or higher than that of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

15.2 Binding Effect.

This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. No assignment or transfer permitted hereunder shall relieve the assigning or transferring Party of any of its obligations under this Agreement.

ARTICLE 16
GOVERNING LAW

THIS AGREEMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OREGON, WITHOUT REGARD TO ITS PRINCIPLES OF CONFLICTS OF LAW.

ARTICLE 17
RECORDS AND AUDIT

17.1 Records.

Each Party shall keep proper books of records and account, in which full and correct entries shall be made of all dealings in relation to this Agreement in accordance with generally accepted accounting principles, consistently applied.

17.2 Audit Rights.

Each Party has the right, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If requested, a Party shall provide to the other Party statements evidencing the quantity of Product delivered at the Delivery Point. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twenty-four (24) months from the rendition thereof, and thereafter any objection shall be deemed waived.

ARTICLE 18
GENERAL PROVISIONS

18.1 General.

This Agreement (including the exhibits, schedules and any written supplements hereto), any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all transactions under this Agreement constitute the entire agreement between the Parties relating to the subject matter. There are no prior or contemporaneous agreements or representations affecting the same subject matter other than those herein expressed.

This Agreement shall be considered for all purposes as prepared through the joint efforts of both Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. Except to the extent herein provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties.

Each Party agrees if it seeks to amend any applicable wholesale power sales tariff during the term of this Agreement, such amendment will not in any way affect remaining transactions under this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) it being the intent of the Parties that this Agreement shall not be construed as a third party beneficiary contract.

18.2 Non-Waiver.

No waiver by any Party hereto 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 wavier of any other default or defaults whether of a like kind or different nature. No

failure or delay by either Party hereto in exercising any right, power, privilege, or remedy hereunder shall operate as a waiver thereof.

18.3 Severability.

Any provision of this Agreement declared or rendered invalid, unlawful, or unenforceable by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Agreement; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Agreement in order to give effect to the original intention of the Parties.

18.4 Survival.

All indemnity and audit rights shall survive the termination of this Agreement. All obligations provided in this Agreement shall remain in effect, after the expiration or termination for any reason of this Agreement, for the purpose of complying herewith.

18.5 Forward Contract.

The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the United States Bankruptcy Code.

18.6 Relationships of Parties.

The Parties shall not be deemed in a relationship of partners or joint venturers by virtue of this Agreement, nor shall either Party be deemed an agent, representative, trustee or fiduciary of the other. Neither Party shall have any authority to bind the other to any agreement. This Agreement is intended to secure and provide for the services of each Party as an independent contractor.

18.7 Headings and Exhibits.

The headings used for the Sections and Articles herein are for convenience and reference purposes only and shall in no way affect the meaning or interpretation of the provisions of this Agreement. Any and all Exhibits and Appendices referred to in this Agreement are, by such reference, incorporated herein and made a part hereof for all purposes.

ARTICLE 19
CONFIDENTIALITY

Neither Party shall disclose the terms or conditions of this Agreement to a third party except (i) as may become generally available to the public, (ii) as may be required or appropriate in response to any summons, subpoena, or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, or

accounting disclosure rule or standard, (iii) as may be obtained from a non-confidential source that disclosed such information in a manner that did not violate its obligations to the non-disclosing Party or its Credit Support Provider in making such disclosure, (iv) to an index publisher or rating agency who has executed a confidentiality agreement with such Party, (v) in order to comply with any applicable law, regulation, or (vi) in connection with any court or regulatory proceeding; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

ARTICLE 20
NOTICES AND COUNTERPARTS

20.1 Notices.

20.1.1 All notices, requests, statements or payments shall be made to the addresses and persons specified in Exhibit A hereto. All notices, requests, statements or payments shall be made in writing except where this Agreement expressly provides that notice may be made orally. Notices required to be in writing shall be delivered by hand delivery, overnight delivery, facsimile, e-mail (so long as a copy of such e-mail notice is provided immediately thereafter by hand delivery, overnight delivery, or facsimile), or other documentary form. Notice by facsimile shall (where confirmation of successful transmission is received) be deemed to have been received on the day on which it was transmitted (unless transmitted after 5:00 p.m. at the place of receipt or on a day that is not a Business Day, in which case it shall be deemed received on the next Business Day); provided that Scheduling and Dispatch notifications and notifications of changes in availability of the Facility sent by facsimile shall be treated as received when confirmation of successful transmission is received. Notice by hand delivery or overnight delivery shall be deemed to have been received when delivered. Notice by e-mail shall be deemed to have been received when delivered, so long as a copy of such e-mail notice is provided immediately thereafter by hand delivery, overnight delivery, courier or facsimile. Notice by telephone shall be deemed to have been received at the time the call is received.

20.1.2 A Party may change its address by providing notice of the same in accordance with the provisions of Section 20.1.1.

20.2 Counterparts.

This Agreement may be executed in counterparts, each of which is an original and all of which constitute one and the same instrument.

IN WITNESS WHEREOF, the Parties have caused this Wholesale Renewable Energy Purchase and Sale Agreement to be duly executed as of the date first above written. This Agreement shall not become effective as to either Party unless and until executed by both Parties.

PORTLAND GENERAL ELECTRIC COMPANY		**[*Counterparty*]**	
Signature:	_____	Signature:	_____
Name:	_____	Name:	_____
Title:	_____	Title:	_____

EXHIBIT A

NOTICES

Portland General Electric Company ("PGE")	**Counterparty ("Counterparty" or "Name")**
All Notices:	**All Notices:**
Street: 121 SW Salmon Street	Street: _____
City: Portland, Oregon 97204	City: _____ Zip: _____
Attn: Power Contracts; 3WTCBR06 Phone: (503) 464-___ Facsimile: (503) 464-2605 Duns: 00-790-9054 Federal Tax ID Number: 93-0256820	Attn: Contract Administration Phone: _____ Facsimile: _____ Duns: _____ Federal Tax ID Number: _____
Invoices: Attn: Accounts Payable Phone: (503) 464-7126 Facsimile: 464-7006	**Invoices:** Attn: _____ Phone: _____ Facsimile: _____
Scheduling: Attn: Manager Power Coordination Phone: (503) 464-7241 Facsimile: (503) 464-2605	**Scheduling:** Attn: _____ Phone: _____ Facsimile: _____
Wire Transfer: BNK: United States National Bank of Oregon-Portland ABA: 123000220 ACCT: #153600063512 NAME: Portland General Electric Company	**Wire Transfer:** BNK: _____ ABA: _____ ACCT: _____
Credit and Collections: Attn: Credit Manager Phone: (503) 464-_____ Facsimile: (503) 464-2605	**Credit and Collections:** Attn: _____ Phone: _____ Facsimile: _____
With additional Notices of an Event of Default to: Attn: General Counsel Phone: (503) 464-7822 Facsimile: (503) 464-2200	With additional Notices of an Event of Default to: Attn: _____ Phone: _____ Facsimile: _____

EXHIBIT B

1. **Scheduling – PGE __Shall schedule for each day of the delivery period __ in an amount equal to the weekly amount for each Sunday through Saturday period.**

__ all output; __

during the delivery period in blocks of (no more than/no less than) ___ hours

Other as described:

_____

~~**(the following are 4 choices with respect to price for capacity or energy)**~~

2. **Pricing – PGE shall pay for scheduled and delivered Firm Energy @**

__ $/MWh;

Exhibit C

PERMITTING; FINANCING; CONSTRUCTION

1.1.1 Facility Permitting. Counterparty shall be responsible for obtaining all permits necessary for the construction and operation of the Facility configured substantially as set forth in **Exhibit ____**, together with such changes in configuration that Counterparty believes will maximize the output of the Facility and as allowed under the Facility permits.

1.1.2 Facility and Equipment Financing. Counterparty shall be responsible for obtaining all financing necessary to purchase the equipment to be used in the Facility and to construct and operate the Facility during the Delivery Period and the Contract Term on a schedule consistent with the requirements of this Agreement.

1.1.3 Facility Design. Counterparty shall be responsible for designing and building the Facility in compliance with all permits and according to Prudent Electric Industry Practice with respect to project design, engineering and selection and installation of primary equipment, including (as applicable) but not limited to: turbine nacelles, towers, blades, rotors, foundations, control systems, meters, transformers and collection and substation facilities. Counterparty shall provide PGE with copies of the site plan for the Facility and descriptions, reasonably requested by PGE and otherwise already in the possession of Counterparty, for the project design of the Facility. Any review by PGE of the design, construction, operation or maintenance of the Facility is solely for PGE's information, and PGE shall have no responsibility to Counterparty or any third party in connection therewith. Counterparty is solely responsible for the economic and technical feasibility, operational capacity and reliability of the Facility.

1.1.4 Construction and Testing. Counterparty shall be responsible, at its cost, for constructing and testing the Facility and obtaining all necessary transmission and interconnection rights, all in compliance with all permits, agreements with any Transmission Provider and Prudent Electric Industry Practice. During construction and testing, Counterparty shall provide PGE with monthly written updates regarding Counterparty's progress in completing the Facility.

1.1.5 Equipment Supply [if applicable]. Not later than _____ Counterparty shall provide PGE with written evidence of Counterparty's commitment from _____ for the supply of the Facility equipment in a timeframe which reasonably would allow Counterparty to complete construction of the Facility on or before _____.

1.2 Construction and Commercial Operation.

1.2.1 Commercial Operation/Final Completion. Counterparty shall cause the Facility to achieve Final Completion by _____ (Final Completion Date) unless otherwise excused under the terms of this Agreement. The Guaranteed Final Completion Date shall be the date 90 calendar days after the Final Completion Date

specified in this provision.~~, or~~ If Counterparty fails to cause the Facility to achieve Final Completion by the Guaranteed Final Completion Date, unless such failure is otherwise excused under the terms of this Agreement, PGE may ~~thereafter~~ terminate this Agreement after ten (10) Days notice to Counterparty, and Counterparty shall pay to PGE Contract Termination Damages, of $_____ in addition to all Delay Damages paid pursuant to Section 1.2.3. of this Exhibit C.

1.2.2 Notice of Final Completion. Counterparty shall notify PGE not less than five (5) Business Days in advance of the anticipated date of Final Completion and shall confirm to PGE in writing when Final Completion has been achieved.

1.2.3 Milestones

If the milestones below are not achieved before the Milestone Dates then Counterparty shall pay PGE the delay damages within three (3) days after each specified Milestone Date

Milestone	Milestone Date ~~(Not later than 60 days before Final Completion Date)~~	Delay Damages
Site Acquisition		
Permit Acquisition		
Design		
Financing Acquisition		
Equipment Purchase Order		
Equipment Shipped		
Equipment Delivery		
Construction		
Testing/Commissioning		
Capacity MW, i.e. Achievement of Final Completion Date		Replacement Price ($ per day for each day beyond the Milestone date)

1.3 Sole and Exclusive Remedies. PGE's sole remedy and Counterparty's sole liability for the failure to achieve Milestones and Final Completion by the applicable dates set forth in this Exhibit C shall be the payment by Counterparty of Contract Termination and Delay Damages as specified above. The Parties acknowledge that it is impractical and difficult to assess actual damages in the circumstances stated, and the Parties therefore agree that the damages provided for in this Exhibit C are a fair and reasonable calculation of actual damages to PGE in such event.

Exhibit D

Counterparty hereby commits one hundred percent (100%) of the Project's output net of station use (i.e., parasitic load) up to ___ MW to PGE as provided under this Agreement. Except during periods when Counterparty is otherwise excused from delivering the Product hereunder, Counterparty will use commercially reasonable efforts to operate the Project in a manner that will be expected to generate Energy consistent with Prudent Electric Industry Practice.

Operational Covenants.

1.1 Site Control. At all times during the Term, Counterparty shall control the Facility Site through ownership or lease and shall provide PGE with prompt notice of any change in its control.

1.2 Operation and Maintenance of the Facility.

1.2.1 Counterparty shall operate and maintain the Facility and its Meters and that portion of the Interconnection Facilities and related equipment and systems owned by Counterparty in a manner that is reasonably likely to: (i) maximize the output of Energy and Environmental Attributes from the Facility and (ii) result in an expected useful life for such facilities of not less than thirty (30) years, all in accordance with Prudent Electric Industry Practice.

1.2.2 Counterparty shall inspect, maintain and repair the Facility and the components thereof in order to maintain such equipment in accordance with Prudent Electric Industry Practice and shall keep records with respect to inspections, maintenance and repairs thereto consistent with Counterparty's reasonable business judgment. The records of such activities shall be available for inspection by PGE during Counterparty's regular business hours upon reasonable notice.

1.2.3 Counterparty shall notify PGE, on or before November 1 of each Contact Year, of Facility's Scheduled Maintenance, and shall use commercially reasonable efforts to plan Scheduled Maintenance (i) to maximize the productive output of the Facility and (ii) not to occur between July and September or between December and February.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of August, 2012, a true and correct copy of the within and foregoing **COMMENTS OF THE NORTHWEST AND INTERMOUNTAIN POWER PRODUCERS COALITION** was served as shown to:

Robert Jenks G Catriona McCracken CITIZENS' UTILITY BOARD OF OREGON 610 SW Broadway Ste 400 Portland OR 97205 dockets@oregoncub.org bob@oregoncub.org catriona@oregoncub.org	___ Hand Delivery ___ U.S. Mail, postage pre-paid __ Facsimile _X_ Electronic Mail
Irion A Sanger S Bradley Van Cleve DAVISON VAN CLEVE PC 333 SW Taylor Ste 400 Portland OR 97204 ias@dvclaw.com bvc@dvclaw.com	___ Hand Delivery ___ U.S. Mail, postage pre-paid __ Facsimile _X_ Electronic Mail
John W Stephens ESLER STEPHENS & BUCKLEY 888 SW Fifth Ave Ste 700 Portland OR 97204-2021 stephens@eslerstephens.com mec@eslerstephens.com	___ Hand Delivery ___ U.S. Mail, postage pre-paid __ Facsimile _X_ Electronic Mail
Teresa Hagins NORTHWEST PIPELINE GP 8907 NE 219th Street Battle Ground WA 98604 teresa.l.hagins@williams.com	___ Hand Delivery ___ U.S. Mail, postage pre-paid __ Facsimile _X_ Electronic Mail
Stewart Merrick NORTHWEST PIPELINE GP 295 Chipeta Way Salt Lake City UT 84108 stewart.merrick@williams.com	___ Hand Delivery ___ U.S. Mail, postage pre-paid __ Facsimile _X_ Electronic Mail
V Denise Saunders PORTLAND GENERAL ELECTRIC 121 SW Salmon St 1WTC1301 Portland OR 97204 denise.saunders@pgn.com	___ Hand Delivery ___ U.S. Mail, postage pre-paid __ Facsimile _X_ Electronic Mail

PGE Rates & Regulatory Affairs
PORTLAND GENERAL ELECTRIC CO
121 SW Salmon St 1WTC0702
Portland OR 97204
pge.opuc.filings@pgn.com

___ Hand Delivery
___ U.S. Mail, postage pre-paid
__ Facsimile
X Electronic Mail

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dws@r-c-s-inc.com

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___ U.S. Mail, postage pre-paid
__ Facsimile
X Electronic Mail

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dockets@rnp.org

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___ U.S. Mail, postage pre-paid
__ Facsimile
X Electronic Mail

By: Nina Curtis
Nina M. Curtis