

**BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON**

UM 2299

In the Matter of

PORTLAND GENERAL ELECTRIC
COMPANY; PACIFICORP dba
PACIFIC POWER; AND IDAHO
POWER COMPANY,

Joint Utilities Application for Approval of
Proposed Schedules and Standard Power
Purchase Agreement for Qualifying
Facilities up to 10 MW.

NEWSUN ENERGY LLC'S
MOTION TO REJECT JOINT
UTILITIES' PROPOSED
STANDARD PPA

I. INTRODUCTION

Pursuant to OAR 860-001-0420, NewSun Energy LLC (“NewSun”) respectfully moves the Public Utility Commission of Oregon (“Commission”) to reject the proposed new standard power purchase agreement (“Proposed Standard PPA”) jointly sponsored by Portland General Electric Company (“PGE”), PacifiCorp *dba* Pacific Power, and Idaho Power Company (collectively, the “Joint Utilities”). Rather than submitting revisions to one of the existing, proven standard contracts to implement AR 631, as specifically directed by the Commission in Order 23-251, the Joint Utilities submitted a sixty (60) page redraft of the entire document. The resulting Proposed Standard PPA has needlessly introduced dozens of new legal issues, additional complexity, risk, and delay into the AR 631 implementation process. The magnitude of the potential harm to the QF community is enormous. By trying to jettison proven, financeable standard contracts in their entirety, the Joint Utilities threaten to derail any future of QF development in

Oregon. Allowing the Joint Utilities to kill PURPA in Oregon through a rogue “compliance filing” would truly be a sad, unintended legacy of the years of work invested in AR 631.¹

The Joint Utilities’ actions in this docket have caused the implementation of AR 631 to stall. Not only does the Proposed Standard PPA fail to adhere to the applicable legal standard of encouraging QF development, it appears to be designed specifically to *discourage* QF development. QF stakeholders have worked diligently and in good faith to try to salvage the Proposed Standard PPA by bending it into compliance with the spirit and letter of the AR 631 rule changes. But, after months of negotiations and comments in this docket, the Joint Utilities continue to insist on a wholesale contract redraft that includes scores of terms and conditions that were never approved (or were outright rejected) in AR 631. The procedural motion filed in this docket on December 9, 2024, by the Oregon Solar + Storage Industries Association (“OSSIA”) seeking to pause and reset the procedural schedule confirms that the parties are at an impasse.² NewSun is filing this substantive motion to implore the Commission to break that impasse.

The Commission should now require the Joint Utilities to do precisely what the Commission directed in the first place—which is to implement the AR 631 rule changes through incremental revisions to one of the proven, Commission-approved standard contracts. The existing standard contracts, imperfect as they may be, have at least proven

¹ NewSun reserves all legal rights and arguments with respect to its appeal of the Commission’s final order and rules adopted in AR 631. Nothing in this Motion is intended to waiver of NewSun’s rights to challenge the overall legality of AR 631, or any specific rule adopted or amended therein.

² NewSun has been authorized by OSSIA to represent to the Commission that OSSIA supports this Motion.

themselves to be workable and financeable. The same cannot be said for any new contract—and in particular the Proposed Standard PPA. The starting point for discussions in this docket therefore should be a redline of one of the existing standard contracts to implement the AR 631 rule changes and nothing more.

In order to expedite the process, NewSun is attaching to this Motion the draft redline that NewSun prepared based on PGE’s existing standard agreement. NewSun previously submitted the attached redline in this docket together with its comments filed on October 3, 2023. NewSun prepared the attached redline to show that the approach of making incremental redline edits to an existing standard contract is not only feasible but would drastically reduce both the number and complexity of implementation issues to be resolved in this docket. With respect to each change shown in redline, the only salient question is whether it is consistent or inconsistent with AR 631. Anything inconsistent with or outside the scope of AR 631 would be rejected. While NewSun would welcome the use of its redline as a matter of convenience and efficiency, NewSun is not insistent upon it as the only possible starting point. NewSun would, for example, welcome a redline prepared by the Joint Utilities or other stakeholders based on PacifiCorp’s current standard agreement. The primary point of this Motion is that implementation of AR 631 can only be done, both legally and as a matter of practical reality, by starting with common-sense revisions to one of the existing standard contracts.

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II. ARGUMENT

A. **The Joint Utilities' Proposed Standard PPA is Outside the Scope of the Commission's Order**

The Joint Utilities Proposed Standard PPA should be rejected because it strays beyond the Commission's clear directive in Order 23-152. In Order 23-152, the Commission ordered that the "Public utilities subject to these rules will initiate a proceeding before the Commission in which they file *a revised standard form contract* no later than 90 days from the date of this order" (Emphasis added).³ The text and context of the Commission's directive is clear—to take an existing standard form contract as approved by the Commission and to *revise* it to reflect the rule changes adopted in AR 631. The Commission did not say to "replace" the existing standard contract with one that is entirely new and twice as long. The plain meaning of the word "revise" means to take something currently in existence and to make changes to it. Further, the Commission did not issue Order 23-152 in a vacuum, or in the context of a global standard contract review docket. It did so specifically at the conclusion of the AR 631 rulemaking. Thus, the "revisions" specifically contemplated by the Commission were those needed to bring existing standard contracts into compliance with the rules just adopted in AR 631.

Given an inch, the Joint Utilities took a mile. Instead of filing a "revised standard form contract" that implements the AR 631 rule changes, the Joint Utilities secreted themselves from the other stakeholders and unilaterally crafted an entirely new, and decidedly pro-utility standard form contract. The Proposed Standard PPA filed by the

³ *Id.*

Joint Utilities goes well beyond the rule changes adopted in AR 631. In fact, as explained further below, the Proposed Standard PPA actually *conflicts* with the Commission PURPA rules in many respects. In other words, the Joint Utilities are attempting to use this “compliance filing” as an end-run around things that were specifically approved—and things that were most definitely *not approved*—by the Commission in AR 631.

Staff’s comments in this docket underscore why the Commission should reject the Joint Utilities’ filing. Over the objections of NewSun and other stakeholders, Commission Staff endorsed the Joint Utilities’ Proposed PPA as the appropriate starting point for this docket. Staff wrote:

Staff disagrees with the stakeholders’ overarching concern the PPA is too long and complicated to serve as the standard PPA or that the proposed changes are out of scope. In Staff’s opinion, the current PPAs are not sufficiently detailed, and the proposed PPA rectifies that concern. Staff also disagrees that the draft PPA should be rejected because it is out of scope. Staff agrees with the Joint Utilities that the current versions of PPAs are outdated and should be updated. Accordingly, Staff does not oppose the Joint Utilities’ effort to expeditiously incorporate AR 631 decisions and update outdated contract in this one proceeding.

But the Commission’s directive of Order 23-152 was not to “rectify” general concerns that the current PPAs are “not sufficiently detailed.” The purpose of Order 23-152 was to make sure that the years and years of work, cooperation, compromise, and balancing of interests that were put into AR 631 would be properly reflected in the standard contracts going forward.

The Commission should be wary of the Joint Utilities taking license with “compliance filings” in order to drive home unilateral policy changes that were not authorized by the Commission. If, for example, the Commission directed a utility to make a compliance filing to incorporate a specific residential rate increase, that would not

constitute an open invitation for the utility to rewrite all of the terms and conditions applicable to residential service. The Commission should guard against the utilities' abuse of compliance filings to frustrate or to circumvent proper Commission rule-makings, rate-makings, or other administrative proceedings made on the record, with stakeholder participation, with Commission oversight, and subject to judicial review.

B. The Joint Utilities' Proposed Standard PPA Is Inconsistent with the Spirit and Letter of AR 631

Not only does the Proposed Standard PPA differ from what the Commission requested, it does so in a way that is contrary to spirit of cooperation and coordination that went into the AR 631 rules. As the Commission noted in Order 23-152, the rules adopted in AR 631 “are the culmination of significant work and coordination between Commission Staff and stakeholders, including public utilities, QF developers, and industry groups representing QF developers.”⁴ Indeed, the Joint Utilities' approach of drafting an entirely new standard form PPA was actually considered and rejected by stakeholders in the context of AR 631. The Joint Utilities therefore consulted with none of the other AR 631 stakeholders on its surreptitious plans to replace rather than revise its standard contracts. No input was sought. No coordination undertaken. This was for good reason. Indeed, the Joint Utilities correctly understood that other stakeholders would have objected outright to the whole endeavor. So, the Joint Utilities plotted in private and then attempted to cram down on the other stakeholders a “finished product.”

⁴ *In the Matter of Rulemaking to Address Procedures, Terms, and Conditions Associated with Qualifying Facilities (QF) Standard Contracts*, Docket No. AR-631, Order 23-152.

Predictably, the Proposed Standard PPA unilaterally drafted by the Joint Utilities under the cover of darkness includes numerous new terms and conditions that were never approved in AR 631, that are inconsistent with the Commission’s PURPA rules, and that fail to balance the Commission’s statutory obligation to promote QF development. Several other stakeholders in AR 631 and this docket, including the Community Renewable Energy Association (“CREA”), the Northwest & Intermountain Power Producers Coalition (“NIPPC”), and the Renewable Energy Coalition (collectively the “QF Trade Groups”), together with OSSIA, have vigorously opposed the Proposed Standard PPA for that reason. In their Comments on Remaining Disputed Issues filed in this docket on December 12, 2023, the QF Trade Groups have catalogued in painstaking detail numerous discrepancies between the Proposed Standard PPA and the Commission’s PURPA rules as revised by AR 631.⁵ Rather than duplicate their work, NewSun points to those comments and objections to illustrate how far the Joint Utilities have strayed from the Commission’s directive in AR 631.

C. It Will Be Very Time Consuming to Resolve All of The Issues With The Proposed Standard PPA.

The Joint Utilities’ rogue filing is needlessly wasting the time and resources of the Commission and stakeholders in this docket. As of the date of this Motion, and after months of negotiations and multiple rounds of comments in this docket, the QF Trade Groups have identified more than fifty (50) substantive issues that remain unresolved.⁶ Notwithstanding diligent efforts by the QF Trade Groups to try to resolve the issues with

⁵ Docket UM 2299, The Community Renewable Energy Association, Northwest & Intermountain Power Producers Coalition, And Renewable Energy Coalition’s Comments On Remaining Disputed Issues (December 12, 2023).

⁶ *Id.*

the Proposed Standard PPA, the Joint Utilities have insisted on clinging to provisions that are outside of the scope of the AR 631 rule changes and contrary to Oregon's PURPA rules. As the Commission is aware, the AR 631 docket took about four (4) years. Other efforts to redraft the standard PPAs have also taken several years and have resulted in failure. Given the trajectory of this docket to date, it does not appear feasible to resolve all of the outstanding issues within the time that has been scheduled (or any reasonable time). By contrast, if the Joint Utilities were to start from a redline of an existing standard contract and simply incorporate the Commission-approved rule changes made in AR 631, then most of the outstanding issues in this docket would go away.

D. The Proposed Standard PPA raises serious questions about Financing QF Projects.

The Proposed Standard PPA would impose a significant burden on QF lenders. Because the PPA is the revenue document that ensures repayment of the loan, potential lenders would have to undertake (at the small QF's expense) a detailed review of the Proposed Standard PPA as part of their underwriting process. The sheer length and complexity of the Proposed Standard PPA would burden lenders with significant additional review time and costs. Lenders typically require borrowers to reimburse their out-of-pocket legal review fees. A small QF therefore faces significant added legal fees both for their own review and for their lender's review.

By contrast, the existing standard contracts have already been used to finance projects and are therefore proven to be acceptable to the financial community. While any changes to the existing standard contract may be disfavored by the financial community, at least then they would understand the structure and platform of the

contract and be able to analyze the financial risks associated with specific, discreet changes. The unknown new risks of default and termination associated with an entirely new contract structure and form, however, could cause lenders to reject the QF project in its entirety. Any added risk identified or perceived by a lender could result in added collateral obligations or higher finance charges for the small QF. Potential lenders may reasonably conclude that both known and unknown risks associated with the Proposed Standard PPA make it unfinanceable altogether.

E. Why Have a Standard Contract That Is Longer Than The Non-Standard Contract?

Even if the Commission were to require the parties to work through all of the outstanding issues raised by the QF Trade Groups, the end result would be a standard contract that is longer, more complicated, and more expensive to implement than non-standard contracts. The Proposed Standard PPA is more than fifty (50) pages long. By comparison, the existing standard contracts are about twenty pages long. In fact, PacifiCorp recently filed in Docket RE 142 an executed, *non-standard* PPA for a 55 MW QF that is only 42 pages long.⁷ In practice, this means that a three (3) MW QF would be required to read, review, understand, and comply with a “Standard PPA” that is considerably longer than the “non-standard” PPA executed by a 55 MW QF. It is clear that the Joint Utilities’ approach to drafting the Proposed Standard PPA was to start with a non-standard contract and make it longer, more complicated, riskier to lenders, and

⁷ In the Matter of PACIFICORP, *dba* Pacific Power Information Filing of Qualifying Facility Contracts or Summaries per OAR 860-029-0020(1), Docket No. RE 142, PacifiCorp’s Supplemental Application (April 24, 2020). Available at <https://edocs.puc.state.or.us/efdocs/HAQ/re142haq13018.pdf>

generally more one-sided in favor of the purchasing utility. This raises the fundamental question of why the Commission would bother having such a “standard” PPA at all?

Indeed, the Proposed Standard PPA undermines the Commission’s long-standard rationale for having a standard contract for small QFs. In Order 05-584, the Commission explained that the purpose of the standard contract is to overcome “market barriers” that “pose obstacles” to QF’s negotiation of a power purchase agreement:

We continue to adhere to the policy, as articulated in Order 91-1605, that *standard contract rates, terms and conditions are intended to be used as a means to remove transaction costs* associated with QF contract negotiation, when such costs act as a market barrier to QF development. Standard contracts are designed to eliminate negotiations and to thereby remove transactions costs. In implementing PURPA, FERC recognized that some QF projects would be too small and have projected revenues too minimal to justify investing the upfront costs necessary to engage an attorney on an hourly basis to negotiate a QF power purchase contract.⁸

Aside from transaction costs associated with legal review of contracts, other “market barriers” specifically identified by the Commission include the utilities’ access to asymmetrical information and greater bargaining power,⁹ and the need to have contract terms that support QF project finance.¹⁰

In its support of the Joint Utilities’ “more detailed” standard PPA, Commission Staff fails to consider that the fundamental purpose of the standard contract is to remove market barriers for small QFs. Staff may not fully appreciate the sheer magnitude of time, effort, and expense that the Joint Utilities’ Proposed PPA would require of small QFs. The stakeholders in this docket that actually have experience negotiating and

⁸ Staff’s Investigation Relating to Electric Utility Purchases from Qualifying Facilities. Docket UM 1129, Order 05-584 at 16 (May 13, 2005).

⁹ *Id.*

¹⁰ *Id.* at 19.

executing PPAs are universally telling the Commission, in no uncertain terms, that the Joint Utilities' Proposed PPA is too long, too complicated, and will be too expensive for a small QF. And for all that time and expense, the QF still would not be allowed to negotiate, change, improve, modify, or reject any of the standard terms and conditions. This is the very definition of a sunk transaction cost—and is exactly what the Commission sought to avoid in adopting Standard PPAs.

Instead of acting to remove market barriers for small QFs, the Proposed Standard PPA would *create* a market barrier. And, indeed, that seems to be its intended purpose. It's unnecessary length and complexity would very likely *increase* transaction costs, both in the form of legal fees and otherwise. The fact that the document was unilaterally drafted by the Joint Utilities without benefit of a redline reflects asymmetrical utility information and bargaining power. And the Joint Utilities' Proposed Standard PPA would also require lenders to manage additional review burdens and finance risks—both known and unknown—all at the expense of the small QF. The Joint Utilities' Proposed Standard PPA would undue decades of careful balancing by the Commission with respect to its standard PPAs.

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III. CONCLUSION

NewSun respectfully requests that the Commission reject the Proposed Standard PPA as outside the scope of Order 23-152 and inconsistent with AR 631. NewSun further moves the Commission to direct the Joint Utilities to make sensible redline edits to one of the current standard contracts that strictly and diligently conform to the Commissions' final orders in AR 631. In an effort to expedite the process, NewSun invites the stakeholders to work from the redline of PGE's existing standard contract attached as an exhibit to this Motion. Alternatively, the Commission could direct the Joint Utilities to file their own redline of an existing standard contract. In either case, the purpose of this Motion is break the impasse in this docket by using a redline of one of the existing standard agreements as the appropriate starting point for discussions rather than slogging through an entirely new document.

Dated this 10th day of January 2024.

Respectfully submitted,

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Of Attorneys for NewSun Energy, LLC

**STANDARD RENEWABLE IN-SYSTEM VARIABLE
POWER PURCHASE AGREEMENT**

THIS AGREEMENT is between _____ (“Seller”) and ~~Portland General Electric Company~~ _____ (“~~PGE~~Purchasing Utility”) (hereinafter each a “Party” or collectively, “Parties”) and is effective upon execution by both Parties (“Effective Date”). The Parties agree this Agreement is a [choose one]:

- Option A:** Standard Renewable Price Agreement [generally available to solar or solar-plus-storage qualifying facilities with nameplate capacity no greater than 3 MW and other qualifying facilities with nameplate capacity no greater than 10 MW; if this option is selected then Option A will apply under Section 1.6, Section 3.1.14, and Section 4.3, and there will be no Exhibit E]; or
- Option B:** Solar or Solar-Plus-Storage Standard Terms and Negotiated Price Agreement [generally available to solar and solar-plus-storage qualifying facilities with nameplate capacity above 3 MW but no greater than 10 MW; if this option is selected then Option B will apply under Section 1.6, Section 3.1.14, and Section 4.3, and there will be an Exhibit E containing the negotiated prices agreed to by the Parties].

Eligibility for a Standard Renewable Price Agreement (Option A) or a Solar or Solar-Plus-Storage Standard Terms and Negotiated Price Agreement (Option B) is governed by the Schedule and applicable Commission ~~orders~~Rules.

RECITALS

WHEREAS, Seller intends to construct, own, operate and maintain a -facility for the generation of electric power located in County, ___ with a Nameplate Capacity Rating of kilowatt (“kW”), as further described in Exhibit A (“Facility”); and

WHEREAS, Seller intends to operate the Facility as a “Qualifying Facility,” as such term is defined ~~in Section 3.1.3, below~~herein.

WHEREAS, Seller shall sell and ~~PGE~~Purchasing Utility shall purchase the entire Net Output, as such term is defined ~~herein in Section 1.21, below~~, from the Facility in accordance with the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, the Parties mutually agree as follows:

SECTION 1: DEFINITIONS

When used in this Agreement, the following terms shall have the following meanings. Any capitalized terms not expressly defined herein shall have the definition given in OAR 860-029-0010.:

1.1. “As-built Supplement” means the supplement to Exhibit A provided by Seller in accordance with Section 4.3 following completion of construction of the Facility, describing the Facility as actually built.

1.2. “Base Hours” is defined as the total number of hours in each Contract Year (8,760 or 8,784 for leap year).

1.3. “Billing Period” means a period between PGE Purchasing Utility’s readings of its power purchase billing meter at the Facility in the normal course of PGE Purchasing Utility’s business. Such periods may vary and may not coincide with calendar months; however, PGE Purchasing Utility shall use best efforts to read the power purchase billing meter in 12 equally spaced periods per year.

~~1.4. “Cash Escrow” means an agreement by two parties to place money into the custody of a third party for delivery to a grantee only after the fulfillment of the conditions specified.~~

~~1.45. “Commercial Operation Date” means the date after start-up testing is complete on which the total Nameplate Capacity Rating of the Facility is fully interconnected, fully integrated, and synchronized with System, and that the Facility ~~is deemed by PGE to be fully operational and reliable. PGE may, at its discretion, require, among other things, that all of the following events have occurred~~has satisfied the following criteria:~~

~~1.45.1. (facilities with nameplate under 500 kW exempt from following requirement) PGE Purchasing Utility has received a certificate addressed to PGE Purchasing Utility from a Licensed Professional Engineer (“LPE”) acceptable to PGE Purchasing Utility in its reasonable judgment stating that the Facility is able to generate electric power reliably in accordance with the terms and conditions of this Agreement (certifications required under this Section 1.5 can be provided by one or more LPEs);~~

~~1.45.2. Start-Up Testing of the Facility has been completed in accordance Section 1. 36;~~

~~1.45.3. (facilities with nameplate under 500 kW exempt from following requirement) After PGE Purchasing Utility has received notice of completion of Start-Up Testing, PGE Purchasing Utility has received a certificate addressed to PGE Purchasing Utility from an LPE stating that the Facility has operated for testing purposes under this Agreement and was continuously mechanically available for operation for a minimum of 120 hours. The Facility must provide ten (10) working days written notice to PGE Purchasing Utility prior to the start of the initial testing period. If the mechanical availability of the Facility is interrupted during this initial testing period or any subsequent testing period, the Facility shall promptly start a new Test Period and provide PGE Purchasing Utility fortyeight (48) hours written notice prior to the start of such testing period;~~

~~1.45.4. (facilities with nameplate under 500 kW exempt from following requirement) PGE Purchasing Utility has received a certificate addressed to PGE Purchasing Utility from an LPE stating that in accordance with the Generation Interconnection Agreement, all required interconnection facilities have been constructed all required interconnection tests have been completed; and the Facility is physically interconnected with PGE Purchasing Utility’s electric system.~~

~~1.45.5. (facilities with nameplate under 500kW exempt from following requirement) PGE Purchasing Utility has received a certificate addressed to PGE Purchasing Utility from an LPE stating that Seller has obtained all Required Facility Documents and, if requested by PGE Purchasing Utility in writing, has provided copies of any or all such requested Required Facility Documents;~~

~~1.56. “Contract Price” means during the fixed price term, the applicable fixed price for On-Peak and Off-peak Hours specified in Exhibit ____, and during the subsequent non-fixed price term, the Mid C Intex Price. (see the selection made in the first paragraph of this Agreement to determine whether Option A or Option B applies—only one option applies):~~

~~**Option A:** “Contract Price” means the applicable price, including on peak and off peak prices, as specified in the Schedule. For the first 15 years measured from the date in Section 2.2.2, the Contract Price will be the Renewable Fixed Price Option under the Schedule; thereafter and for the remainder of the Term, the Contract Price will be equal to the Mid-C Index Price.~~

~~**Option B:** “Contract Price” means: (i) the negotiated price, including on peak and off peak prices, as specified in Exhibit E; or (ii) the Mid-C Index Price. For the first 15 years measured from the date in Section 2.2.2, the Contract Price will be the negotiated price specified in Exhibit E; thereafter and for the remainder of the Term, the Contract Price will be equal to the Mid-C Index Price. The negotiated price established in Exhibit E is not necessarily the same as the Standard Fixed Price Option or the Renewable Fixed Price Option established in the Schedule.~~

~~1.67. “Contract Year” means each twelve (12) month period commencing upon the Commercial Operation Date or its anniversary during the Term, except the final contract year will be the period from the last anniversary of the Commercial Operation Date during the Term until the end of the Term.~~

~~1.78. “Effective Date” has the meaning set forth in Section 2.1.~~

~~1.89. “Environmental Attributes” shall mean any and all claims, credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, resulting from the avoidance of the emission of any gas, chemical or other substance to the air, soil or water. Environmental Attributes include but are not limited to: (1) any avoided emissions of pollutants to the air, soil or water such as (subject to the foregoing) sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO), and other pollutants; and~~

~~(2) any avoided emissions of carbon dioxide (CO₂), methane (CH₄), and other greenhouse gasses (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere.~~

~~1.940. “Excused Delay” means the failure of Seller to achieve Commercial Operation on or before the Scheduled Commercial Operation Date, but only to the extent such failure is caused by an event of Force Majeure or an event of default by Utility, a default by Utility under the Generation Interconnection Agreement or related interconnection study agreement(s) for Seller’s Facility or any other agreement related to the interconnection of the qualifying facility, including a default resulting from any breach by Utility of any obligation to meet a material deadline included in such agreement(s), or Utility’s violation of applicable tariff provisions governing the interconnection of Seller’s Facility; provided that the duration of any Excused Delay shall not extend to any period of delay that could have been prevented had Seller taken mitigating actions using commercially reasonable efforts.~~

~~"Facility" has the meaning set forth in the Recitals.~~

1.104. "Generation Interconnection Agreement" means the generation interconnection agreement to be entered into separately between Seller and PGE Purchasing Utility, providing for the construction, operation, and maintenance of interconnection facilities required to accommodate deliveries of Seller's Net Output.

1.112. "Generation Unit" means each separate electrical generator or storage system that contributes towards Nameplate Capacity Rating included in Exhibit A. For solar facilities, a generating unit is a complete solar electrical generation system within the Facility that is able to generate and deliver energy to the Point of Delivery independent of other Generation Units within the same Facility.

1.123. "Letter of Credit" means an irrevocable, stand-by letter of credit issued by an institution, not subject to bail-in regulation, with a credit rating on its long-term senior unsecured debt of at least 'A' from S&P Global Ratings and 'A2' from Moody's Investor Services engagement by a bank or other person made at the request of a customer that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the letter of credit.

1.134. ~~"Licensed Professional Engineer"~~ or "LPE" means a person who is licensed to practice engineering in the state where the Facility is located, who has no economic relationship, association, or nexus with the Seller, and who is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Facility, or of a manufacturer or supplier of any equipment installed in the Facility. Such Licensed Professional Engineer shall be licensed in an appropriate engineering discipline for the required certification being made and be acceptable to PGE Purchasing Utility in its reasonable judgment.

~~1.15. "Lost Energy" means ((the Guarantee of Mechanical Availability as set forth in 3.1.10 /MAP) X Net Output for a Calendar Year) — Net Output for the Calendar Year. Lost Energy shall be zero unless the result of the calculation in this subsection results in a positive number.~~

~~1.16. "Lost Energy Value" means Lost Energy X the excess of the annual time-weighted average Mid-C Index Price for On Peak and Off Peak Hours over the time-weighted average Contract Price for On Peak and Off Peak Hours for the corresponding time period (provided that such excess shall not exceed the Contract Price and further provided that Lost Energy is deemed to be zero prior to reaching the Commercial Operation Date) plus any reasonable costs incurred by PGE to purchase replacement power and/or transmission to deliver the replacement power to the Point of Delivery. (For Start-Up Lost Energy Value see Section 1.35).~~

1.147. "Mechanical Availability Percentage" or "MAP" shall mean that percentage for any Contract Year for the Facility calculated in accordance with the following formula: $MAP = 100 \times (\text{Operational Hours}) / (\text{Base Hours} \times \text{Number of Units})$

1.15. "Mid-C Index Price" means the Day Ahead Intercontinental Exchange ("ICE") index price for the bilateral OTC market for energy at the Mid-C Physical for Average On Peak Power and Average Off Peak Power found on the following website: <https://www.theice.com/products/OTC/Physical-Energy/Electricity>. In the event ICE no longer publishes this index, PGE Purchasing Utility and the Seller agree to select an alternative successor index representative of the Mid-C trading hub.

1.169. "Nameplate Capacity Rating" means the maximum installed instantaneous power production capacity of the completed Facility, expressed in MW (AC), and measured at the Point of

Interconnection, when operated in compliance with the Generation Interconnection Agreement and consistent with the recommended power factor and operating parameters provided by the manufacturer of the generator, inverters, and energy storage devices where relevant capacity of the Facility as stated by the manufacturer, expressed in kW, which shall not exceed 10,000 kW.

1.1720. “Net Dependable Capacity” means the maximum capacity the Facility can sustain over a specified period modified for seasonal limitations, if any, and reduced by the capacity required for station service or auxiliaries.

1.218. “Net Output” means all energy ~~and capacity expressed in kWhs~~ produced by the Facility, less station ~~service, and other onsite use and less transformation and transmission~~ losses, ~~and other adjustments, flowing through the Point of Interconnection~~. Net Output does not include ~~any E~~environmental ~~A~~attributes.

1.1292. “Number of Units” means the number of Generating Units in the Facility described in Exhibit A.

1.203. “Off-Peak Hours” has the meaning provided in the Schedule. For a solar-plus-storage QF, “Off-Peak Hours” means all hours that are not Premium Peak hours, as provided in the Schedule, and as may be updated with Commission approval from time-to-time.

1.214. “On-Peak Hours” has the meaning provided in the Schedule. For a solar-plus-storage QF, “On-Peak Hours” means Premium Peak hours, as provided in the Schedule, and as may be updated with Commission approval from time-to-time.

1.2522. “Operational Hours” for the Facility means the total across all Generating Units of the number of hours each of the Facility’s Generating Units are potentially capable of producing power at its Nameplate Capacity Rating regardless of actual weather, season and time of day or night, without any mechanical operating constraint or restriction, and potentially capable of delivering such power to the Point of Delivery in a Contract Year. During up to, but not more than, 200 hours of Planned Maintenance during a Contract Year for each Generation Unit and hours during which an event of Force Majeure exists, a Generation Unit shall be considered potentially capable of delivering such power to the Point of Delivery. For example, in the absence of any Planned Maintenance beyond 200 hours on any Generation Unit of Event of Force Majeure, the Operational Hours for a wind farm with five separate two MW turbines would be 43,800 for a Contract Year.

~~1.26. “Planned Maintenance” means outages scheduled 90 days in advance, with PGE’s prior written consent, which shall not be unreasonably withheld.~~

1.237. “Point of Delivery” means the high side of the generation step up transformer(s) located at the point of interconnection between the Facility and PGE Purchasing Utility’s distribution or transmission system, as specified in the Generation Interconnection Agreement.

1.248. “Pre-Commercial Operation Date Minimum Net Output” shall mean, unless such MWh is specifically set forth by Seller in Exhibit A, an amount in MWh equal to seventy-five percent (75%) of the Nameplate Capacity Rating X thirty percent (30%) for a wind or other renewable QF or fifty percent (50%) for a solar or solar-plus-storage QF X (whole months since the date selected in Section 2.2.1 / 12) X (8760 hours – 200 hours (assumed Planned Maintenance)) for each month. If Seller has provided specific expected monthly Net Output amounts for the Facility in

Exhibit A, “Pre-Commercial Operation Date Minimum Net Output” shall mean seventy-five (75%) X expected Net Output set forth in Exhibit A for each month.

1.259. “Prime Rate” means the publicly announced prime rate or reference rate for commercial loans to large businesses with the highest credit rating in the United States in effect from time to time quoted by Citibank, N.A. If a Citibank, N.A. prime rate is not available, the applicable Prime Rate shall be the announced prime rate or reference rate for commercial loans in effect from time to time quoted by a bank with \$10 billion or more in assets in New York City, N.Y., selected by the Party to whom interest based on the prime rate is being paid.

1.2630. “Prudent Electrical Practices” means those practices, methods, standards and acts engaged in or approved by a significant portion of the electric power industry in the Western Electricity Coordinating Council 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 applicable equipment suppliers and manufacturers, operational limits, and all applicable laws and regulations. Prudent Electrical Practices are 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 relevant region, during the relevant period, as described in the immediate preceding sentence.

1.2731. “Required Facility Documents” means all licenses, permits, authorizations, and agreements necessary for construction, operation, interconnection, and maintenance of the Facility including without limitation those set forth in Exhibit B.

1.2832. “RPS Attributes” means all attributes related to the Net Output generated by the Facility that are required ~~in order~~ to provide PGE Purchasing Utility with “qualifying electricity,” as that term is defined in Oregon’s Renewable Portfolio Standard Act, Ore. Rev. Stat. 469A.010, in effect at the time of execution of this Agreement. RPS Attributes do not include Environmental Attributes that are greenhouse gas offsets from methane capture not associated with the generation of electricity and not needed to ensure that there are zero net emissions associated with the generation of electricity.

1.33. “Schedule” shall mean PGE Purchasing Utility Schedule ~~201~~ filed with the Oregon Public Utilities Commission (“Commission”) in effect on the Effective Date of this Agreement and attached hereto as Exhibit D, the terms of which are hereby incorporated by reference.

1.34. “Senior Lien” means a prior lien which has precedence as to the property under the lien over another lien or encumbrance.

~~1.35. “Start Up Lost Energy Value” means for the period after the date specified in Section 2.2.2 but prior to achievement of the Commercial Operation Date: zero, unless the Net Output is less than the pro-rated Pre-Commercial Operation Date Minimum Net Output for the applicable delay period, and the time-weighted average of the delay period’s Mid-C Index Price for On Peak Hours and Off Peak Hours is greater than the time-weighted average of the delay period’s Contract Price for On Peak Hours and Off Peak Hours, in which case Startup Lost Energy Value equals: (pro-rated Pre-Commercial Operation Date Minimum Net Output for the applicable period—Net Output for~~

~~the applicable period) X (the lower of: the time-weighted average of the Contract Price for On-Peak hours and Off-Peak Hours during the applicable period; or (the time-weighted average of the Mid-C Index Price for On-Peak Hours and Off-Peak Hours during the applicable period—the time-weighted average of the Contract Price for On-Peak Hours and Off-Peak Hours during the applicable period)). The time-weighted average in this section will reflect the relative proportions of On-Peak Hours and Off-Peak Hours in each day.~~

1.36. “Start-Up Testing” means the start-up testing required by the manufacturer or interconnection provider that establishes that the Facility is reliably producing electric energy completion of applicable required factory and start-up tests as set forth in Exhibit C.

1.37. “Step-in Rights” means the right of one party to assume an intervening position to satisfy all terms of an agreement in the event the other party fails to perform its obligations under the agreement.

1.38. “Term” shall mean the period beginning on the Effective Date and ending on the Termination Date.

1.39. “Test Period” ~~shall~~ means a period during which Start-Up Testing is conducted a period of sixty (60) days or a commercially reasonable period determined by the Seller.

References to Recitals, Sections, and Exhibits are to be the recitals, sections and exhibits of this Agreement.

SECTION 2: ~~TERM;~~ COMMERCIAL OPERATION DATE

2.1. This Agreement shall become effective upon execution by both Parties (“Effective Date”).

2.2. Time is of the essence of this Agreement, and Seller's ability to meet certain requirements prior to the Commercial Operation Date and to complete all requirements to establish the Commercial Operation Date is critically important. Therefore,

~~2.2.1 By _____ [date to be determined by the Seller] Seller shall begin initial deliveries of Net Output; and~~

~~2.32.2~~ By _____ [date to be determined by the Seller] ~~s~~ Subject to Section 2.42.3 below, Seller shall have completed all requirements under Section 1.5 and shall have established the Commercial Operation Date by _____ (“Scheduled Commercial Operation Date”):

~~2.4. 2.3 The Schedule Commercial Operation Date may be extended on the terms set forth below: Unless the Parties agree in writing that a later Commercial Operation Date is reasonable and necessary, the Commercial Operation Date shall be no more than three (3) years from the Effective Date. PGE will not unreasonably withhold agreement to a Commercial Operation Date that is more than three (3) years from the Effective date if the Seller has demonstrated that a later Commercial Operation Date is reasonable and necessary~~

2.4.1 Excused Delay. If Seller fails to achieve Commercial Operation on or before the Scheduled Commercial Operation Date due to an Excused Delay, the Scheduled Commercial Operation Date shall be deemed extended on a day-for-day basis to match the duration of such Excused Delay. Upon the request of Seller, and provided that the existence

or duration of any Excused Delay is not the subject of a good faith dispute between the Parties and no Seller Event of Default has occurred and is continuing, Utility agrees to provide reasonable assurances to Seller's Lenders and other financial institutions that the Scheduled Commercial Operation Date has been extended under this Section.

2.4.2 Option to Extend Scheduled Commercial Operation Date or Terminate. If Seller receives an interconnection study result within the six-month period following the Effective Date that include an estimate of time to interconnect that is longer than the development period or an estimate of costs to interconnect that render the project uneconomic in the Seller's opinion, anytime within such six-month period, Seller may elect by written notice to Purchasing Utility:

2.4.2.1 To extend the Scheduled Commercial Operation Date; provided that the extended Scheduled Commercial Operation may not occur after the last day of the five-year period following the Effective Date; or

2.4.2.2 To terminate this Agreement; provided that Seller shall be liable to Purchasing Utility for any damages incurred by Purchasing Utility up until the date of termination, which damages may be taken from the Project Development Security posted by Seller.

_____ 2.53. This Agreement shall terminate on _____, [date to be chosen by Seller but not to exceed 20 years from the date contained in Section 2.2.2], or the date the Agreement is terminated in accordance with Section 9 or 11, Subject to Section 2.5.1 below, the fixed-price term shall be a term of fifteen (15) years beginning on the Commercial Operation Date, or the Scheduled Commercial Operation Date, whichever is earlier (~~"Termination Date"~~).

2.5.1 If the Scheduled Commercial Operation Date is more than three years after the Effective Date, then the fixed-price term will be reduced one day for every day of the Development Period after three-year anniversary of the Effective Date, with the reduction taken from the end of the fixed-price term.

2.5.2 Notwithstanding Section 2.5.1 above, if the Seller provides an interconnection study by Purchasing Utility showing that the time it will take Purchasing Utility to complete the interconnection to the Facility necessitates a Commercial Operation Date longer than three years from the Effective Date, then the additional time necessitated by the interconnection up to an additional two years will not be taken off the period of the fixed-price term.

2.6 Damages for Failure to Meet the Scheduled Commercial Operation Date. Unless otherwise excused under Agreement, damages for failure to meet the Scheduled Commercial Operation Date are equal to the positive difference between Purchasing Utility's replacement power costs less the Contract Price during the period of default, determined on a daily basis with positive differences aggregated and invoiced as a monthly sum, plus costs reasonably incurred by Purchasing Utility to purchase replacement power and additional transmission charges, if any, incurred by Purchasing Utility to deliver replacement energy to the Point of Delivery.

2.6.1 If Seller would have been required to transfer Renewable Energy Credits to Purchasing Utility during the period when Seller is in default under this subsection, then damages owed to Purchasing Utility will include Purchasing Utility's costs reasonably incurred to acquire replacement Renewable Energy Credits.

2.6.2 Notwithstanding the forgoing, delay damages incurred under this Section may not exceed an amount equal to what Seller would have received under this Agreement for energy delivered during the default period.

SECTION 3: REPRESENTATIONS AND WARRANTIES

Seller and PGE Purchasing Utility represent, covenant, and warrant as follows:

3.1.1 Seller warrants it is a _____ duly organized under the laws of the state of of
_____.

~~3.1.2~~ Seller warrants that the execution and delivery of this Agreement does not contravene any provision of, or constitute a default under, any indenture, mortgage, or other material agreement binding on Seller or any valid order of any court, or any regulatory agency or other body having authority to which Seller is subject.

~~3.1.3~~ Seller warrants that the Facility is and shall for the Term of this Agreement continue to be a "Qualifying Facility" ("QF") as that term is defined in the version of 18 C.F.R. Part 292 in effect on the Effective Date. Seller has provided the appropriate QF certification, which may include a Federal Energy Regulatory Commission ("FERC") self-certification to PGE Purchasing Utility prior to PGE Purchasing Utility's execution of this Agreement. At any time during the Term of this Agreement, PGE Purchasing Utility may require Seller to provide PGE Purchasing Utility with evidence satisfactory to PGE Purchasing Utility in its reasonable discretion that the Facility continues to qualify as a QF under all applicable requirements.

~~3.1.4~~ Seller warrants that it has not within the past two (2) years been the debtor in any bankruptcy proceeding, and Seller is and will continue to be for the Term of this Agreement current on all of its financial obligations.

~~3.1.5~~ Seller warrants that during the Term of this Agreement, all of Seller's right, title and interest in and to the Facility shall be free and clear of all liens and encumbrances other than liens and encumbrances arising from third-party financing of the Facility other than workers', mechanics', suppliers' or similar liens, or tax liens, in each case arising in the ordinary course of business that are either not yet due and payable or that have been released by means of a performance bond acceptable to PGE Purchasing Utility posted within eight (8) calendar days of the commencement of any proceeding to foreclose the lien.

~~3.5.1.6~~ Seller warrants that it will design and operate the Facility consistent with Prudent Electrical Practices.

~~3.5.1.7.2~~ Seller warrants that the Facility has a Nameplate Capacity Rating not greater than 10,000 kW.

~~3.5.3.1.8~~ Seller warrants that Net Dependable Capacity of the Facility is _____kW.

~~3.5.41.9.~~ Seller estimates that the average annual Net Output to be delivered by the Facility to PGE Purchasing Utility is __ kilowatt-hours (“kWh”), which amount PGE Purchasing Utility will include in its resource planning.

~~3.5.51.10.~~ Seller represents and warrants that the Facility shall achieve the following Mechanical Availability Percentages (“Guarantee of Mechanical Availability”):

~~3.5.51.10.1~~ Ninety percent (90%) beginning in the first-second Contract Year and extending through the Term ~~for the Facility~~, if the Facility was operational and sold electricity to PGE Purchasing Utility or another buyer prior to the Effective Date of this Agreement; or

~~3.5.51.10.2~~ Ninety percent (90%) beginning in the fourth Contract Year ~~three~~ and extending throughout the remainder of the Term, if the Facility was not operational and did not sell electricity to Purchasing Utility or another buyer prior to the Effective Date of this Agreement.

~~3.1.10.5.5.3~~ Annually, within 90 days of the end of each Contract Year Seller shall send to PGE Purchasing Utility a detailed written report demonstrating and providing evidence of the actual MAP for the previous Contract Year. The 90 percent Guarantee of Mechanical Availability will be reduced on a pro rata basis for any portion of the annual period the Facility was prevented from being available for reasons of Force Majeure or a default by Purchasing Utility under this Agreement or the Generation Interconnection Agreement.

~~3.5.51.10.4~~ Seller’s failure to meet the Guarantee of Mechanical Availability in a Calendar Year shall result in damages payable to PGE Purchasing Utility by Seller ~~equal to the Lost Energy Value. PGE shall bill Seller for such damages in accordance with Section 8 in an amount calculated by Purchasing Utility pursuant to OAR 860-029-0210(10), and subject to the limitations set forth therein.~~

~~3.6.1.11.~~ Seller will deliver from the Facility to PGE Purchasing Utility at the Point of Delivery Net Output not to exceed a maximum of _ kWh of Net Output during each Contract Year (“Maximum Net Output”).

~~3.7.1.12.~~ By the Commercial Operation Date, Seller has entered into a Generation Interconnection Agreement for a term not less than the term of this Agreement.

~~3.8.1.13.~~ PGE Purchasing Utility warrants that it has not within the past two (2) years been the debtor in any bankruptcy proceeding, and PGE Purchasing Utility is and will continue to be for the Term of this Agreement current on all of its financial obligations.

~~3.9.1.14.~~ (See the selection made in the first paragraph of this Agreement to determine whether Option A or Option B applies – only one option applies):

Option A: Seller warrants that (i) the Facility satisfies the eligibility requirements for the Renewable Fixed Price Option specified in the section of PGE Purchasing Utility’s Schedule entitled “Definition of a Small Cogeneration Facility or Small Power Production Facility Eligible to Receive the Standard Fixed Price Option or the Renewable Fixed Price Option under the Standard PPA” and, if applicable, in the section entitled “Eligibility for Interim Solar-Plus Storage Standard Prices,” and (ii) Seller will not make any changes in its

ownership, control or management during the term of this Agreement that would cause it to not be in compliance with the eligibility requirements for the Renewable Fixed Price Option specified in the section of [PGE Purchasing Utility](#)'s Schedule entitled "Definition of a Small Cogeneration Facility or Small Power Production Facility Eligible to Receive the Standard Fixed Price Option or the Renewable Fixed Price Option under the Standard PPA" and, if applicable, in the section entitled "Eligibility for Interim Solar-Plus-Storage Standard Prices." Seller will provide, upon request by [PGE Purchasing Utility](#) not more frequently than every 36 months, such documentation and information as may be reasonably required to establish Seller's continued compliance with such Definition. [PGE Purchasing Utility](#) agrees to take reasonable steps to maintain the confidentiality of any portion of the above-described documentation and information that the Seller identifies as confidential except [PGE Purchasing Utility](#) will provide all such confidential information to the Public Utility Commission of Oregon upon the Commission's request.

Option B: Seller warrants that (i) the Facility satisfies the eligibility requirements for a Standard PPA specified in the section of [PGE Purchasing Utility](#)'s Schedule entitled "Definition of a Small Cogeneration Facility or Small Power Production Facility Eligible to Receive the Standard Fixed Price Option or the Renewable Fixed Price Option under the Standard PPA" and (ii) Seller will not make any changes in its ownership, control or management during the term of this Agreement that would cause it to not be in compliance with the eligibility requirements for a Standard PPA specified in the section of [PGE Purchasing Utility](#)'s Schedule entitled "Definition of a Small Cogeneration Facility or Small Power Production Facility Eligible to Receive the Standard Fixed Price Option or the Renewable Fixed Price Option under the Standard PPA." Seller will provide, upon request by [PGE Purchasing Utility](#) not more frequently than every 36 months, such documentation and information as may be reasonably required to establish Seller's continued compliance with such Definition. [PGE Purchasing Utility](#) agrees to take reasonable steps to maintain the confidentiality of any portion of the abovedescribed documentation and information that the Seller identifies as confidential except [PGE Purchasing Utility](#) will provide all such confidential information to the Public Utility Commission of Oregon upon the Commission's request.

~~3.10-15.~~ Seller warrants that it will comply with all requirements necessary for all Transferred RECs (as defined in Section 4.5) associated with Net Output to be issued, monitored, accounted for, and transferred by and through the Western Renewable Energy Generation System consistent with the provisions of OAR 330-160-0005 through OAR 330-160-0050. [PGE Purchasing Utility](#) warrants that it will reasonably cooperate in Seller's efforts to meet such requirements, including, for example serving as the qualified reporting entity for the Facility if the Facility is located in [PGE Purchasing Utility](#)'s balancing authority.

SECTION 4: DELIVERY OF POWER, PRICE AND ENVIRONMENTAL ATTRIBUTES

4.1. Commencing on the Effective Date and continuing through the Term of this Agreement, Seller shall sell to [PGE Purchasing Utility](#) the entire Net Output delivered from the Facility at the Point of Delivery.

4.2. [PGE Purchasing Utility](#) shall pay Seller the Contract Price for all delivered Net Output.

4.3. During the Development Period, the Seller may make reasonable modification to the design and components of the Facility from the design and components contained in the Agreement. The Facility shall provide Purchasing Utility an As-built Supplement describing the Facility within 90 days after the Commercial Operation Date. Except with Purchasing Utility's written consent or as allowed by law, the Facility as reflected in the As-built Supplement may not: (A) Have a Nameplate Capacity Rating that exceeds the Nameplate Capacity Rating in the Agreement as of the Effective Date; or (B) Result in an expected annual net output that is greater than 10 percent above that specified in the Agreement as of the Effective Date.

4.3.1 Seller may, during the Development Period, make modifications to the Facility that do not increase the Nameplate Capacity Rating of the Facility in the Agreement, but which are reasonably likely to cause the expected annual net output to exceed that listed in the Agreement by more than 10 percent, without Purchasing Utility's prior approval but subject to the requirements set forth in OAR 860-029-0120(14)(b). (See the selection made in the first paragraph of this Agreement to determine whether Option A or Option B applies — only one option applies):

~~**Option A:** Upon completion of construction of the Facility, Seller shall provide PGE an As-built Supplement to specify the actual Facility as built. Seller shall not increase the Nameplate Capacity Rating above that specified in Exhibit A or increase the ability of the Facility to deliver Net Output in quantities in excess of the Net Dependable Capacity, or the Maximum Net Output as described in Section 3.1.11 above, through any means including, but not limited to, replacement, modification, or addition of existing equipment, except with prior written notice to PGE. In the event Seller increases the Nameplate Capacity Rating of the Facility pursuant to this section to no more than 3,000 kW (if the Facility produces Net Output through solar or solar plus storage generation), or to no more than 10,000 kW (if the Facility does not produce Net Output through solar or solar plus storage generation), PGE shall pay the Contract Price for the additional delivered Net Output. In the event Seller increases the Nameplate Capacity Rating of the Facility to greater than 3,000 kW and the Facility produces Net Output through solar or solar plus storage generation, then Seller shall be required to enter into a new power purchase agreement for all delivered Net Output proportionally related to the increase of Nameplate Capacity above 3,000 kW. In the event Seller increases the Nameplate Capacity Rating of the Facility to greater than 3,000 kW but no greater than 10,000 kW and the Facility produces Net Output through solar or solar plus storage generation, the new power purchase agreement will be (at Seller's choice) either a standard (Schedule 201) power purchase agreement or a negotiated (Schedule 202) power purchase agreement and neither option is eligible for Schedule 201 prices. In the event the Seller increases the Nameplate Capacity Rating to greater than 10,000 kW and the Facility produces Net Output through solar or solar plus storage generation, then Seller shall be required to enter into a new negotiated (Schedule 202) power purchase agreement for all delivered Net Output proportionally related to the increase of Nameplate Capacity above 3,000 kW. In the event Seller increases the Nameplate Capacity Rating to greater than 10,000 kW and the Facility produces Net Output through means other than solar or solar plus storage generation, then Seller shall be required to enter into a new negotiated (Schedule 202) power purchase agreement for all delivered Net Output proportionally related to the increase of Nameplate Capacity above 10,000 kW.~~

~~**Option B:** Upon completion of construction of the Facility, Seller shall provide PGE an As built Supplement to specify the actual Facility as built. Seller shall not increase the Nameplate Capacity Rating above that specified in Exhibit A or increase the ability of the Facility to deliver Net Output in quantities in excess of the Net Dependable Capacity, or the Maximum Net Output as described in Section 3.1.11 above, through any means including, but not limited to, replacement, modification, or addition of existing equipment, except with prior written notice to PGE. In the event Seller increases the Nameplate Capacity Rating of the Facility to no more than 10,000 kW pursuant to this section, PGE shall pay the Contract Price for the additional delivered Net Output. In the event Seller increases the Nameplate Capacity Rating to greater than 10,000 kW, then Seller shall be required to enter into a new negotiated (Schedule 202) power purchase agreement for all delivered Net Output proportionally related to the increase of Nameplate Capacity above 10,000 kW.~~

4.4. To the extent not otherwise provided in the Generation Interconnection Agreement, all costs associated with the modifications to [PGE Purchasing Utility](#)'s interconnection facilities or electric system occasioned by or related to the interconnection of the Facility with [PGE Purchasing Utility](#)'s system, or any increase in generating capability of the Facility, or any increase of delivery of Net Dependable Capacity from the Facility, shall be borne by Seller.

4.5. From the start of the Renewable Resource Deficiency Period through the remainder of the Term of this Agreement, Seller shall provide and [PGE Purchasing Utility](#) shall acquire the RPS Attributes for the Contract Years as specified in the Schedule and Seller shall retain ownership of all other Environmental Attributes (if any). During the Renewable Resource Sufficiency Period, Seller shall retain all Environmental Attributes in accordance with the Schedule. The Contract Price includes full payment for the Net Output and any RPS Attributes transferred to [PGE Purchasing Utility](#) under this Agreement. With respect to Environmental Attributes not transferred to [PGE Purchasing Utility](#) under this Agreement ("Seller- Retained Environmental Attributes") Seller may report under §1605(b) of the Energy Policy Act of 1992 or under any applicable program as belonging to Seller any of the Seller-Retained Environmental Attributes, and [PGE Purchasing Utility](#) shall not report under such program that such Seller-Retained Environmental Attributes belong to it. With respect to RPS Attributes transferred to [PGE Purchasing Utility](#) under this Agreement ("Transferred RECs"), [PGE Purchasing Utility](#) may report under §1605(b) of the Energy Policy Act of 1992 or under any applicable program as belonging to it any of the Transferred RECs, and Seller shall not report under such program that such Transferred RECs belong to it.

SECTION 5: OPERATION AND ~~CONTROL~~ OUTAGES

5.1. Seller shall operate and maintain the Facility in a safe manner in accordance with the Generation Interconnection Agreement, and Prudent Electrical Practices. [PGE Purchasing Utility](#) shall have no obligation to purchase Net Output from the Facility to the extent the interconnection of the Facility to [PGE Purchasing Utility](#)'s electric system is disconnected, suspended, or interrupted, in whole or in part, pursuant to the Generation Interconnection Agreement, or to the extent generation curtailment is required as a result of Seller's noncompliance with the Generation Interconnection Agreement. Seller is solely responsible for the operation and maintenance of the Facility. [PGE Purchasing Utility](#) shall not, by reason of its decision to inspect or not to inspect the Facility, or by any action or inaction taken with respect to any such inspection, assume or be held

responsible for any liability or occurrence arising from the operation and maintenance by Seller of the Facility.

5.2. Planned Outages. Seller must provide Purchasing Utility with an annual forecast of Planned Outages for each Contract Year of the purchase period at least one month, but no more than three months, before the first day of that Contract Year, and may update such Planned Outage forecast as necessary to comply with Prudent Electrical Practices. Any such update to the Planned Outage forecast must be promptly submitted to Purchasing Utility. Although the Planned Outage schedule should include predetermined outage duration, the outage may be extended when the original scope of work requires more time than originally scheduled, subject to notice of at least five days to Purchasing Utility when feasible.

5.3 Maintenance Outages. If Seller reasonably determines that it is necessary to schedule a Maintenance Outage, the Seller must notify Purchasing Utility of the proposed Maintenance Outage as soon as practicable, but in any event at least five days before the Maintenance Outage begins. Seller must take all reasonable measures, consistent with Prudent Electrical Practices, to minimize the frequency and duration of Maintenance Outages.

5.3.1 Seller's notice of a proposed Maintenance Outage must include the expected start date and time of the outage, the amount of generation capacity of the Facility that will not be available, and the expected completion date and time of the outage. Purchasing Utility will promptly respond to such notice and may request reasonable modifications in the schedule for the outage. Seller must use all reasonable efforts to comply with any request to modify the schedule for a Maintenance Outage, provided that such change has no substantial impact on the Facility.

5.3.2 Once the Maintenance Outage has commenced, Seller must keep the Purchasing Utility apprised of any changes in the generation capacity available from the Facility during the Maintenance Outage, and any changes in the expected Maintenance Outage completion date and time. As soon as practicable, any notifications given orally must be confirmed in writing. Although the notice of proposed Maintenance Outage must include an expected completion date and time of the outage, the outage may be extended when the original scope of work requires more time than originally scheduled subject to notice of at least five days where feasible.

5.4 Forced Outages. Seller must promptly notify Purchasing Utility orally, via telephone to a number specified by the Purchasing Utility (or other method approved by the Purchasing Utility), of any Forced Outage resulting in more than ten percent of the Nameplate Capacity Rating of the Facility being unavailable. This report from Seller must include the amount of the generation capacity of the Facility that will not be available because of the Forced Outage and the expected return date of such generation capacity. Seller must promptly update the report as necessary to advise the Purchasing Utility of changed circumstances. As soon as practicable, any oral report of a Forced Outage must be confirmed in writing to the Purchasing Utility.

5.5 Notwithstanding the requirements of Sections 5.2 through 5.4 above, Seller will inform the Purchasing Utility, via telephone to a number specified by the Purchasing Utility (or other method approved by Purchasing Utility), of any limitations, restrictions, deratings or outages reasonably predicted by Seller to affect more than five percent of the Nameplate Capacity Rating of

the Facility for the following day and will promptly update such notice to the extent of any material changes in this information.

~~Seller agrees to provide sixty (60) days advance written notice of any scheduled maintenance that would require shut down of the Facility for any period of time.~~

~~5.3. If the Facility ceases operation for unscheduled maintenance, Seller immediately shall notify PGE of the necessity of such unscheduled maintenance, the time when such maintenance has occurred or will occur, and the anticipated duration of such maintenance. Seller shall take all reasonable measures and exercise its best efforts to avoid unscheduled maintenance, to limit the duration of such unscheduled maintenance, and to perform unscheduled maintenance during Off-Peak hours.~~

SECTION 6: CREDITWORTHINESS

6.1 Project Development Security. If Seller does not meet the creditworthiness requirements set forth in OAR 860-029-0120(18), then Seller must post Project Development Security for the Purchasing Utility's benefit within 120 days after the Effective Date. The amount of required Project Development Security will be \$150/kWh. The obligation to maintain the Project Development Security will expire upon the Commercial Operation Date. Seller may use either of the following options to post Project Development Security:

6.1.1 Cash Escrow Security. Seller shall deposit in an escrow account established by Purchasing Utility in a banking institution acceptable to both Seller and Purchasing Utility, Project Development Security. Such sum shall earn interest at the rate applicable to money market deposits at such banking institutions from time to time.

6.1.2 Letter of Credit Security. Seller shall post and maintain in an amount equal to the Project Development Security either a guaranty from a person that satisfies the creditworthiness requirements OAR 860-029-0120(18), or a Letter of Credit in favor of Purchasing Utility.

6.1.3 To the extent Purchasing Utility receives payment from the Project Development Security for damages in the event of default, the qualifying facility will, within 15 days, restore the Project Development Security as if no such deduction had occurred.

6.2 Default Security. If Seller does not meet the creditworthiness requirements set forth in OAR 860-029-0120(18), then Seller must post Default Security the Commercial Operation Date. The amount of required Default Security will be \$50/kWh. Seller may use one of the following options to post Default Security:

6.2.1 Cash Escrow Security. Seller shall deposit the Default Security in an escrow account established by Purchasing Utility in a banking institution acceptable to both Seller and Purchasing Utility. Such sum shall earn interest at the rate applicable to money market deposits at such banking institutions from time to time. To the extent Purchasing Utility receives payment from the Default Security for damages in the event of default, Seller will, within 15 days, restore the Default Security as if no such deduction had occurred;

6.2.2 Letter of Credit Security. Seller shall post and maintain in an amount equal to the Default Security either a guaranty from a person that satisfies the creditworthiness

requirements under OAR 860-029-0120(18), or a Letter of Credit in favor of Purchasing Utility. To the extent Purchasing Utility receives payment from the Default Security for damages in the event of default, Seller will, within 15 days, restore the Default Security as if no such deduction had occurred.

6.2.3 Step-in Rights and Senior Liens. Default security can be satisfied through grant of step-in rights or a senior lien to Purchasing Utility in a form acceptable to Purchasing Utility in its reasonable-exercised discretion.

~~In the event Seller: a) is unable to represent or warrant as required by Section 3 that it has not been a debtor in any bankruptcy proceeding within the past two (2) years; b) becomes such a debtor during the Term; or c) is not or will not be current on all its financial obligations, Seller shall immediately notify PGE and shall promptly (and in no less than 10 days after notifying PGE) provide default security in an amount reasonably acceptable to PGE in one of the following forms: Senior Lien, Step in Rights, a Cash Escrow or Letter of Credit. The amount of such default security that shall be acceptable to PGE shall be equal to: (annual On Peak Hours) X (On Peak Price — Off Peak Price) X (Net Dependable Capacity). Notwithstanding the foregoing, in the event Seller is not current on construction related financial obligations, Seller shall notify PGE of such delinquency and PGE may, in its discretion, grant an exception to the requirements to provide default security if the QF has negotiated financial arrangements with the construction loan lender that mitigate Seller's financial risk to PGE.~~

SECTION 7: METERING

7.1. PGE Purchasing Utility shall design, furnish, install, own, inspect, test, maintain and replace all metering equipment at Seller's cost and as required pursuant to the Generation Interconnection Agreement.

7.2. Metering shall be performed at the location and in a manner consistent with this Agreement and as specified in the Generation Interconnection Agreement. All Net Output purchased hereunder shall be adjusted to account for electrical losses, if any, between the point of metering and the Point of Delivery, so that the purchased amount reflects the net amount of power flowing into PGE Purchasing Utility's system at the Point of Delivery.

7.3. PGE Purchasing Utility shall periodically inspect, test, repair and replace the metering equipment as provided in the Generation Interconnection Agreement. If any of the inspections or tests discloses an error exceeding two (2%) percent of the actual energy delivery, either fast or slow, proper correction, based upon the inaccuracy found, shall be made of previous readings for the actual period during which the metering equipment rendered inaccurate measurements if that period can be ascertained. If the actual period cannot be ascertained, the proper correction shall be made to the measurements taken during the time the metering equipment was in service since last tested, but not exceeding three (3) months, in the amount the metering equipment shall have been shown to be in error by such test. Any correction in billings or payments resulting from a correction in the meter records shall be made in the next monthly billing or payment rendered. Such correction, when made, shall constitute full adjustment of any claim between Seller and PGE Purchasing Utility arising out of such inaccuracy of metering equipment.

7.4. To the extent not otherwise provided in the Generation Interconnection Agreement, all of PGE Purchasing Utility's costs relating to all metering equipment installed to accommodate Seller's Facility shall be borne by Seller.

SECTION 8: BILLINGS, COMPUTATIONS AND PAYMENTS

8.1. On or before the thirtieth (30th) day following the end of each Billing Period, PGE Purchasing Utility shall send to Seller payment for Seller's deliveries of Net Output to PGE Purchasing Utility, together with computations supporting such payment. PGE Purchasing Utility may offset any such payment to reflect amounts owing from Seller to PGE Purchasing Utility pursuant to this Agreement, the Generation Interconnection Agreement, and any other agreement related to the Facility between the Parties or otherwise. On or before the thirtieth (30th) day following the end of each Contract Year, PGE Purchasing Utility shall bill for any Lost Energy Value accrued pursuant to this Agreement.

8.2. Any amounts owing after the due date thereof shall bear interest at the Prime Rate plus two percent (2%) from the date due until paid; provided, however, that the interest rate shall at no time exceed the maximum rate allowed by applicable law.

SECTION 9: DEFAULT, REMEDIES AND TERMINATION

9.1. ~~In addition to any other event that may constitute a default under this Agreement, the following events, if uncured within the applicable cure period, may constitute a default by Seller for which the Purchasing Utility may terminate under this Agreement:~~

9.1.1. Breach by Seller ~~or PGE~~ of a representation or warranty, except for Section 3.1.4, set forth in this Agreement.

9.1.2. ~~Seller's failure to provide Project Development Security or Default Security, if required, in the applicable timeframe, if required by Section 6, prior to delivery of any Net Output to PGE or within 10 days of notice.~~

9.1.3. ~~Seller's failure to meet the Guarantee of Mechanical Availability established in Section 3.1.10 for two consecutive Contract Years or Seller's failure to provide any written report required by that section.~~

9.1.4. ~~If Seller is no longer a~~ Failure to maintain Qualifying Facility status.

9.1.5. Failure of ~~PGE~~ to make any required payment pursuant ~~when due hereunder, unless the amount of the payment is subject to a good faith dispute to Section 8.1.~~

9.1.6. ~~Seller's failure to meet the Scheduled~~ Commercial Operation Date.

9.1.6.1. In the event of a default under Section 9.1.6, Purchasing Utility may provide Seller with written notice of default. Seller shall have one year in which to cure the default, during which time the Seller shall pay Purchasing Utility damages as set forth herein. If Seller has not cured the default within one year following the

Scheduled Commercial Operation Date, then Purchasing Utility may immediately thereafter terminate this Agreement as provided in Section 9.3. Purchasing Utility's resource sufficiency/deficiency position shall have no bearing on Purchasing Utility's right to terminate the Agreement under this Section.

9.1.7 Failure to sell the entire Net Output to Purchasing Utility according to the terms of this Agreement.

9.1.8 Abandonment of the Facility.

9.1.8 Failure to comply with any other material obligation under this Agreement.

9.2. The following events, if uncured within the applicable cure period, may constitute a default by Purchasing Utility for which Seller may terminate this Agreement:

9.2.1. Breach by Purchasing Utility of a representation or warranty set forth in this Agreement.

9.2.2 Failure of make any required payment pursuant when due hereunder, unless the amount of the payment is subject to a good faith dispute.

9.2.3 Failure to receive or purchase the entire Net Output according to the terms of this Agreement.

9.2.4 Failure to comply with any other material obligation under this Agreement. In the event of a default under Section 9.1.6, PGE may provide Seller with written notice of default. Seller shall have one year in which to cure the default during which time the Seller shall pay PGE damages equal to the Lost Energy Value. If Seller is unable to cure the default, PGE may immediately terminate this Agreement as provided in Section 9.3. PGE's resource sufficiency/deficiency position shall have no bearing on PGE's right to terminate the Agreement under this Section 9.2.

9.3. Cure Periods. Except with a respect to a failure to meet the Guaranty of Mechanical Availability for two consecutive years, which is not curable, and notwithstanding the one year time period to cure a failure to meet the Scheduled Commercial Operation Date, the non-defaulting Party has 30 days following written notice from the non-defaulting party in which to cure any other event of default.

9.3.1 The 30 day cure period shall be extended by an additional 90 days if: (A) The failure cannot reasonably be cured within the 30 day period; (B) The default is reasonably capable of being cured within the additional 90 day period; and (C) The defaulting Party commences the cure within the original 30 day period.

9.4 In the event of a default under this Agreement, except as otherwise provided in this Agreement excluded under this Agreement, Force Majeure, or otherwise, the non-defaulting Party may terminate this Agreement at its sole discretion by deliver aing written notice of termination to the other Party. In addition, the non-defaulting party may pursue any and all legal or equitable remedies provided by law or pursuant to this Agreement including damages related to the need to procure replacement power. A termination hereunder shall be effective upon the date of delivery of notice, as provided in Section 20. The rights provided in this Section 9 are cumulative such that the exercise of one or more rights shall not constitute a waiver of any other rights. The non-defaulting

Party must provide the defaulting Party a notice of termination at least 30 days prior to the date of termination. The notice for termination may run concurrently with the applicable cure period.

~~9.54. Invoice for Damages. If this Agreement is terminated as provided in this Section 9 PGE~~If damages are incurred by the non-breaching Party as a result of a breach of this Agreement, the breaching Party must remit payment in the full amount of the damages to the non-breaching Party no later than 30 days after the breaching Party receives an invoice for damages from the non-breaching Party if the amount of payment is not the subject of good-faith dispute. The invoice for damages must include a written statement explaining in reasonable detail the calculation of the damages amount shall make all payments, within thirty (30) days, that, pursuant to the terms of this Agreement, are owed to Seller as of the time of receipt of notice of default. PGE shall not be required to pay Seller for any Net Output delivered by Seller after such notice of default.

~~9.65. In the event PGE Purchasing Utility terminates this Agreement pursuant to this Section 9, and Seller wishes to again sell Net Output to PGE Purchasing Utility following such termination, PGE Purchasing Utility in its sole discretion may require that Seller shall do so subject to the terms of this Agreement, including but not limited to the Contract Price until the Term of this Agreement (as set forth in Section 2.3) would have run in due course had the Agreement remained in effect. Purchasing Utility may also require Seller to post Default Security. Seller may not take any action or permit any action to occur the result of which avoids or seeks to avoid the restrictions in this Section through use or establishment of a special purpose entity or other Affiliate At such time Seller and PGE agree to execute a written document ratifying the terms of this Agreement.~~

~~9.76. Termination Damages. If this Agreement is terminated by Public Utility as a result of an event of default by Seller, then the termination damages owed by Seller to Public Utility will be the positive difference, if any, between: (a) The Public Utility's estimated costs to secure replacement power and Renewable Energy Credits, if applicable, for a period of 24 months following the date of termination, including any associated transmission necessary to deliver such replacement power; and (b) The Contract Price for such 24-month period ("Termination Damages").~~

9.7.1. Termination Damages may not exceed the cost the Purchasing Utility would have incurred to purchase the Facility's power and Renewable Energy Credits under the terminated Agreement.

9.7.2 Public Utility must calculate the Termination Damages on a monthly basis and in a commercially reasonable manner and provide to Seller a written statement explaining in reasonable detail the calculation of Termination Damages in the Notice of Termination.

9.7.3 Termination Damages are due by Seller within 30 days of receipt of the written Notice of Termination from the Public Utility.

9.8 Mitigation of Damages. Both Purchasing Utility and Seller have a duty to mitigate any damages, including, without limitation any Termination Damages, and must use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance under this Agreement.

9.9 Security. If this Agreement is terminated because of Seller's default, Public Utility may, in addition to pursuing any and all other remedies available at law or in equity, proceed against

any security held by Purchasing Utility in whatever form to reduce the amounts that Seller owes the Purchasing Utility arising from such default.

9.10 Cumulative Remedies. Except in circumstances in which a remedy provided for in this Agreement is described as the sole or exclusive remedy, the rights and remedies provided to the Parties herein are cumulative and not exclusive of any other rights or remedies of the Parties.

9.11 The provisions of this SSections 9.1, 9.4, 9.5, 10, and 19.2 shall survive termination of this Agreement as context requires to fully enforce each Party's rights and remedies under the Agreement.

SECTION 10: INDEMNIFICATION AND LIABILITY

10.1. Seller agrees to defend, indemnify and hold harmless PGE Purchasing Utility, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with Seller's delivery of electric power to PGE Purchasing Utility or with the facilities at or prior to the Point of Delivery, or otherwise arising out of this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PGE Purchasing Utility, Seller or others, excepting to the extent such loss, claim, action or suit may be caused by the negligence of PGE Purchasing Utility, its directors, officers, employees, agents or representatives.

10.2. PGE Purchasing Utility agrees to defend, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, claims, actions or suits, including costs and attorney's fees, both at trial and on appeal, resulting from, or arising out of or in any way connected with PGE Purchasing Utility's receipt of electric power from Seller or with the facilities at or after the Point of Delivery, or otherwise arising out of this Agreement, including without limitation any loss, claim, action or suit, for or on account of injury, bodily or otherwise, to, or death of, persons, or for damage to, or destruction or economic loss of property belonging to PGE Purchasing Utility, Seller or others, excepting to the extent such loss, claim, action or suit may be caused by the negligence of Seller, its directors, officers, employees, agents or representatives.

10.3. Nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public, nor affect the status of PGE Purchasing Utility as an independent public utility corporation or Seller as an independent individual or entity.

10.4. NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR SPECIAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES, WHETHER ARISING FROM CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

SECTION 11: INSURANCE

11.1. Prior to the connection of the Facility to PGE Purchasing Utility's electric system, provided such Facility has a design capacity of 200 kW or more, Seller shall secure and continuously carry for the Term hereof, with an insurance company or companies rated not lower than "A-B+" by

~~the A. M. Best Company, general commercial liability insurance covering bodily injury and property damage in the amount of at least \$1,000,000 each occurrence combined single limit and umbrella insurance in the amount of \$5,000,000. insurance policies for bodily injury and property damage liability. Such insurance shall include provisions or endorsements naming PGE, its directors, officers and employees as additional insureds; provisions that such insurance is primary insurance with respect to the interest of PGE and that any insurance or self-insurance maintained by PGE is excess and not contributory insurance with the insurance required hereunder; a cross liability or severability of insurance interest clause; and provisions that such policies shall not be canceled or their limits of liability reduced without thirty (30) days' prior written notice to PGE. Initial limits of liability for all requirements under this section shall be \$1,000,000 million single limit, which limits may be required to be increased or decreased by PGE as PGE determines in its reasonable judgment economic conditions or claims experience may warrant.~~

~~11.2. Prior to the connection of the Facility to PGE's electric system, provided such facility has a design capacity of 200 kW or more, Seller shall secure and continuously carry for the Term hereof, in an insurance company or companies rated not lower than "B+" by the A. M. Best Company, insurance acceptable to PGE against property damage or destruction in an amount not less than the cost of replacement of the Facility. Seller promptly shall notify PGE of any loss or damage to the Facility. Unless the Parties agree otherwise, Seller shall repair or replace the damaged or destroyed Facility, or if the facility is destroyed or substantially destroyed, it may terminate this Agreement. Such termination shall be effective upon receipt by PGE of written notice from Seller. Seller shall waive its insurers' rights of subrogation against PGE regarding Facility property losses.~~

11.23. Prior to the connection of the Facility to PGE Purchasing Utility's electric system and at all other times such insurance policies are renewed or changed, Seller shall provide PGE Purchasing Utility with a copy of each insurance policy required under this Section, certified as a true copy by an authorized representative of the issuing insurance company or, at the discretion of PGE Purchasing Utility, in lieu thereof, a certificate in a form satisfactory to PGE Purchasing Utility certifying the issuance of such insurance. If Seller fails to provide PGE Purchasing Utility with copies of such currently effective insurance policies or certificates of insurance, PGE Purchasing Utility at its sole discretion and without limitation of other remedies, may upon ten (10) days advance written notice by certified or registered mail to Seller either withhold payments due Seller until PGE Purchasing Utility has received such documents, or purchase the satisfactory insurance and offset the cost of obtaining such insurance from subsequent power purchase payments under this Agreement.

SECTION 12: FORCE MAJEURE

12.1. As used in this Agreement, "Force Majeure" or "an event of Force Majeure" means any cause beyond the reasonable control of the Seller or of PGE Purchasing Utility which, despite the exercise of due diligence, such Party is unable to prevent or overcome. By way of example, Force Majeure may include but is not limited to acts of God, fire, flood, storms, wars, hostilities, civil strife, strikes, and other labor disturbances, earthquakes, fires, lightning, epidemics, sabotage, restraint by court order or other delay or failure in the performance as a result of any action or inaction on behalf of a public authority which by the exercise of reasonable foresight such Party could not reasonably have been expected to avoid and by the exercise of due diligence, it shall be

unable to overcome, subject, in each case, to the requirements of the first sentence of this paragraph. Force Majeure, however, specifically excludes the cost or availability of resources to operate the Facility, changes in market conditions that affect the price of energy or transmission, wind or water droughts, and obligations for the payment of money when due.

12.2. If either Party is rendered wholly or in part unable to perform its obligation under this Agreement because of an event of Force Majeure, that Party shall be excused from whatever performance is affected by the event of Force Majeure to the extent and for the duration of the Force Majeure, after which such Party shall re-commence performance of such obligation, provided that:

12.2.1. the non-performing Party shall, promptly, but in any case within one (1) week after the occurrence of the Force Majeure, give the other Party written notice describing the particulars of the occurrence; and

12.2.2. the suspension of performance shall be of no greater scope and of no longer duration than is required by the Force Majeure; and

12.2.3. the non-performing Party uses its best efforts to remedy its inability to perform its obligations under this Agreement.

12.3. No obligations of either Party which arose before the Force Majeure causing the suspension of performance shall be excused as a result of the Force Majeure.

12.4. Neither Party shall be required to settle any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to the Party's best interests.

SECTION 13: SEVERAL OBLIGATIONS

Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership or joint venture or to impose a trust or partnership duty, obligation or liability between the Parties. If Seller includes two or more parties, each such party shall be jointly and severally liable for Seller's obligations under this Agreement.

SECTION 14: CHOICE OF LAW

This Agreement shall be interpreted and enforced in accordance with the laws of the state of Oregon, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

SECTION 15: PARTIAL INVALIDITY AND PURPA REPEAL

It is not the intention of the Parties to violate any laws governing the subject matter of this Agreement. If any of the terms of the Agreement are finally held or determined to be invalid, illegal or void as being contrary to any applicable law or public policy, all other terms of the Agreement shall remain in effect. If any terms are finally held or determined to be invalid, illegal or void, the Parties shall enter into negotiations concerning the terms affected by such decision for the purpose of achieving conformity with requirements of any applicable law and the intent of the Parties to this Agreement.

In the event the Public Utility Regulatory Policies Act (PURPA) is repealed, this Agreement shall not terminate prior to the Termination Date, unless such termination is mandated by state or federal law.

SECTION 16: WAIVER

Any waiver at any time by either Party of its rights with respect to a default under this Agreement or with respect to any other matters arising in connection with this Agreement must be in writing, and such waiver shall not be deemed a waiver with respect to any subsequent default or other matter.

SECTION 17: GOVERNMENTAL JURISDICTION AND AUTHORIZATIONS

This Agreement is subject to the jurisdiction of those governmental agencies having control over either Party or this Agreement. Seller shall at all times maintain in effect all local, state and federal licenses, permits and other approvals as then may be required by law for the construction, operation and maintenance of the Facility, and shall provide upon request copies of the same to [PGE Purchasing Utility](#).

SECTION 18: SUCCESSORS AND ASSIGNS

18.1 This Agreement and all of the terms hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the Parties. No assignment hereof by either Party shall become effective without the written consent of the other Party being first obtained and such consent shall not be unreasonably withheld. Notwithstanding the foregoing, either Party may assign this Agreement without the other Party's consent as part of (a) a sale of all or substantially all of the assigning Party's assets, or (b) a merger, consolidation or other reorganization of the assigning Party.

18.2 Notwithstanding the forgoing, Seller will not make any changes in its ownership, control or management that would cause the Facility to fail to satisfy the eligibility requirements for entering into this Agreement. No more than once every 24 months, at the request of Purchasing Utility, Seller will provide documentation and information reasonably requested by Purchasing Utility to establish Seller's and the Facility's continued compliance with eligibility requirements for this Agreement. Purchasing Utility shall take reasonable steps to maintain the confidentiality of any such documentation and information the Seller identifies as confidential, provided that Purchasing Utility may provide all such information to the Commission in a proceeding before the Commission.

SECTION 19: ENTIRE AGREEMENT

19.1. This Agreement supersedes all prior agreements, proposals, representations, negotiations, discussions or letters, whether oral or in writing, regarding [PGE Purchasing Utility's](#) purchase of Net Output from the Facility. No modification of this Agreement shall be effective unless it is in writing and signed by both Parties.

19.2. By executing this Agreement, Seller releases [PGE Purchasing Utility](#) from any third party claims related to the Facility, known or unknown, which may have arisen prior to the Effective Date.

SECTION 20: NOTICES

20.1. All notices except as otherwise provided in this Agreement shall be in writing, shall be directed as follows and shall be considered delivered if delivered in person or when deposited in the U.S. Mail, postage prepaid by certified or registered mail and return receipt requested:

To Seller:

with a copy to:

To ~~PGE~~Purchasing Utility:

Contracts Manager
QF Contracts, ~~3WTC0306 PGE~~
~~121 SW Salmon St.~~

~~Portland, Oregon 97204~~

20.2 The Parties may change the person to whom such notices are addressed, or their addresses, by providing written notices thereof in accordance with this Section 20.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in their respective names as of the Effective Date.

~~PGE~~Purchasing Utility

By:
Title:
Date:

(Seller)

By:
Name:
Title: _____

Date: _____

