



**Portland General Electric Company**  
121 SW Salmon Street • Portland, Oregon 97204

October 23, 2006

**Via US Mail and Electronics**

Oregon Public Utility Commission  
550 Capitol St., NE # 215  
Salem, OR 97301

ATTN: *Commission Filing Center*

**Re: Steam Contract between PGE and  
ConAgra Foods Packaged Foods Company, Inc  
Advice Filing 2006-S3**

Per ORS 757.005, 757.007, and 757.009, enclosed for filing are an original executed version (confidential), and a redacted public version of a steam contract between Portland General Electric ("PGE") and ConAgra Foods Packaged Food Company, Inc. Portions of this contract are confidential and have been redacted accordingly, as noted below. A complete copy of the contract has been forwarded to Bill McNamee.

PGE asks that the Oregon Public Utility Commission ("Commission") approve this contract for the following reasons: 1) the revenue generated from this steam sale is sufficient to cover relevant costs; (2) this contract is not discriminatory; and (3) PGE customers are held harmless, as this contract incorporates opportunity-cost pricing (i.e. the steam pricing is based on the market value of power that would otherwise be used for electric production.). *See Commission Order No. 01-489; docket UE 125.*

PGE considers portions of the contract as proprietary because these sections contain formulas and pricing information that would impair ConAgra's ability to compete: redactions have been made in Sections 10, and all of Exhibit C. PGE understands that the Commission will keep the confidential information from public disclosure and requests that the confidential contract not be published on the OPUC website.

We also ask that this matter be considered at the December 5, 2006 Public Meeting, as the steam customer has requested that service begin under the contract on or about December 14, 2006. Therefore, PGE requests that the contract become effective on December 14, 2006.

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Commission Filing Center  
Oregon Public Utility Commission  
October 23, 2006

Portland General Electric

If you have any questions or require further information, please call me at (503) 464-7580. Please direct all formal correspondence and requests to the following email address [pge.opuc.filings@pgn.com](mailto:pge.opuc.filings@pgn.com).

Sincerely,



Patrick Hager  
Manager, Regulatory Affairs

Attachs: (Contract – confidential and redacted version)  
via Electronics and US Mail

cc: Bill McNamee, OPUC (via electronics)

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**PORTLAND GENERAL ELECTRIC COMPANY**

**COYOTE SPRINGS**

**STEAM SALE AGREEMENT**

**DATED OCTOBER 13, 2006**

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**PORTLAND GENERAL ELECTRIC COMPANY**

**COYOTE SPRINGS**

**STEAM SALE AGREEMENT**

This AGREEMENT dated this 10th day of October 2006 (“Execution Date”), by and between PORTLAND GENERAL ELECTRIC COMPANY, an Oregon corporation (“Seller” or “PGE”), and ConAgra Foods Packaged Foods Company, Inc. (“Buyer”).

**WITNESSETH**

WHEREAS, Buyer owns a food processing facility in Morrow County, Oregon (the “Buyer’s Facility”), that will utilize Steam for industrial purposes; and

WHEREAS, Seller operates a natural gas fired plant for the production of electricity (the “CS1 Plant”) on a site near to the Buyer’s Facility; and

WHEREAS, Seller produces Steam during the normal production of electricity; and

WHEREAS, Seller desires to sell and Buyer desires to purchase thermal energy in the form of Steam generated by the CS1 Plant or the Auxiliary Boiler System for use at Buyer’s Facility.

NOW, THEREFORE, in consideration of the agreements and covenants hereinafter set forth, the Parties hereto hereby covenant and agree as follows:

**SECTION 1  
DEFINITIONS**

The capitalized terms used in this Agreement shall have the meanings set forth in “Exhibit A,” which is made hereby a part of this Agreement.

**SECTION 2  
TERM**

This Agreement shall be effective from the Execution Date or the effective date chosen by the Oregon Public Utility Commission (“OPUC”) upon its approval of this Agreement, whichever is later (hereinafter “Effective Date”) and, unless earlier terminated in accordance with the terms hereof, shall continue until the first (1<sup>st</sup>) anniversary of the Effective Date (the “Term”) with four succeeding options for the Parties to renew for an additional one (1) year term (each, a “Renewal Term”). Each such one (1) year renewal option shall be deemed automatically exercised unless, at least 180 days prior to the end of the Term or a Renewal Term,

the Buyer or Seller provides notice of termination to the other Party. In the event such notice is provided, this Agreement shall terminate at the end of the Term or such Renewal Term.

### **SECTION 3 PRICING OPTIONS**

Any Steam price option selected by the Buyer will remain in effect and continue to be the default option until the Buyer has given the required notice to change the applicable Steam price option. To change options, the Buyer must provide notice by December 15 for the following year and must complete the specified term of their current election.

The following pricing options are available to Buyer:

(Please check one and initial selection)

\_\_\_\_\_ Quarterly pricing option

Prices are reset each quarter. Buyer's Steam purchase shall be repriced for each quarter of the calendar year, beginning January 1, April 1, July 1 and October 1. The price shall be established on the 15<sup>th</sup> of the month preceding each quarter (or on the following working day if the 15<sup>th</sup> is a weekend or holiday) by Seller posting such price on its website ("PortlandGeneral.biz") and shall be based on the Forward Market Price.

  X   Monthly pricing option

Monthly prices will vary from month to month and are reset each month. The price shall be established on the 15<sup>th</sup> of the preceding month (or on the following working day if the 15<sup>th</sup> is a weekend or holiday) by Seller posting such price on its website ("PortlandGeneral.biz") and shall be based on the Forward Market Price.

### **SECTION 4 CONDITIONS PRECEDENT**

Seller's obligations under this Agreement are subject to the satisfaction, or waiver by Seller, of the following conditions precedent:

- 4.1 To the extent required, Seller shall have received all necessary approvals of this Agreement by the Oregon Public Utility Commission.
  
- 4.2 Buyer shall have provided credit information and demonstrated creditworthiness satisfactory to Seller in the exercise of its reasonable business judgment.

## **SECTION 5 STEAM SUPPLY**

### 5.1 General

- (a) Commencing upon the Effective Date and continuing throughout the Term or a Renewal Term, Seller shall deliver to the Steam Delivery Point and sell to Buyer, and Buyer shall accept and purchase from Seller, subject to the terms and conditions contained herein, Base Steam, Peak Steam, and Emergency Steam for the Buyer's Facility.
- (b) Seller reserves the right to contract to sell Steam to other purchasers.
- (c) Seller's obligations to provide Steam under this Agreement shall be subject to the availability of Buyer's Steam Delivery System to receive such Steam. In the event the Buyer's Steam Delivery System is incapable of receiving Steam from Seller to Buyer, Seller shall have no obligation to deliver Steam to the Seller's Steam Delivery Point and sell Steam to Buyer.
- (d) Seller is relieved from supplying Steam to the Buyer in the event that the CS1 Plant and the Auxiliary Boiler System are unavailable or inoperable.
- (e) Seller reserves the option at all times to provide the Buyer with Steam from either the Auxiliary Boiler System or the CS1 Plant, assuming both are available and operable pursuant to the following operating rules:
  - i. In the event that the CS1 Plant, in PGE's sole discretion, cannot be Economically Dispatched, then Steam will be provided by the Auxiliary Boiler System.
  - ii. In the event that the Auxiliary Boiler System is inoperable as reasonably determined by PGE, and the CS1 Plant, in PGE's reasonable judgment, cannot be Economically Dispatched, then, Seller is relieved from supplying Steam to the Buyer.

### 5.2 Base Steam

- (a) Base Steam is the Steam flow required by the Buyer to support the routine Steam use at the Buyer's facility and includes Steam delivered to the Buyer's Metering System and Steam lost due to condensation and leakage between the Seller's Steam Delivery Point and the Buyer's Metering System.
- (b) Seller shall deliver and sell up to 35,000 pounds per hour Base Steam at the Seller's Steam Delivery Point.



- (c) Seller shall deliver and sell up to an additional 3,000 pounds per hour Base Steam at the Seller's Steam Delivery Point to allow for Steam lost through condensation and leakage in the Buyer's Steam Delivery System between the Seller's Steam Delivery Point and the Buyer's Metering System.
- (d) The Buyer shall regulate the flow of Base Steam to its facilities so as not to exceed 38,000 pounds per hour at the Buyer's Metering System.
- (e) The Seller reserves the right, with one hour notification, to shut off the flow of Base Steam to Buyer's Facility in the event Buyer's acceptance rate of Steam plus Steam lost through leakage in the Buyer's Steam Delivery System between the Seller's Steam Delivery Point and the Buyer's Metering System exceeds 38,000 pounds per hour.
- (f) Steam delivered to the Buyer's Steam Delivery System is metered at the Seller's Steam Delivery Point by Seller's installed instrumentation.

### 5.3 Peak Steam

- (a) Peak Steam is the demand for Steam deliveries in excess of Base Steam at the Buyer's Facility.
- (b) Peak Steam is metered by the same instrumentation as Base Steam.
- (c) Seller will attempt to deliver and sell to Buyer, Peak Steam of up to an additional 5,000 pounds per hour if so requested by the Buyer, if Seller determines in its sole discretion that such additional Steam is available.

### 5.4 Emergency Steam

Seller shall deliver Emergency Steam to the Buyer as follows:

- (a) Seller will inform the Buyer that in Seller's judgment an emergency condition exists and the Buyer shall use its best efforts and take immediate actions to minimize Steam consumption by incrementally shutting down Buyer's batch processes to reduce its steam consumption rate every 60 minutes, by 20,000 lbs. per hour until consumption is zero.
- (b) Notwithstanding 5.4(a) above and consistent with Seller's obligations under Section 5.1, Seller will use Prudent Operating Practices to supply Emergency Steam as long as possible but reserves the right to allocate Emergency Steam among all its customers in a manner which it deems in its sole discretion to be equitable to all customers when Seller cannot deliver the Steam demand of all of its customers.

- (c) Seller may provide Emergency Steam but makes no guarantees or warranties except as expressly provided herein as to the availability of Emergency Steam.

## **SECTION 6 STEAM QUALITY**

### 6.1 Steam Conditions

- (a) Seller will deliver Steam to the Buyer at the Seller's Steam Delivery Point within the following limits:

Pressure @ 250-400 pounds per square inch  
Temperature @ 400-495°F, 0-50°F superheat

- (b) If the Buyer utilizes other sources of Steam, isolation will be provided such that no Steam from other sources is or is capable of being mixed with Steam supplied by the Seller.

### 6.2 Steam Chemistry

- (a) Seller's Responsibilities:

- (i) Seller represents that the water treatment chemicals used in the water from which the Steam is produced are as set forth in "Exhibit B," which is hereby made a part of this Agreement.
- (ii) Seller shall provide advance notice to Buyer before any different chemicals are used in water treatment, disclosing the same level of descriptive information for such different chemicals as is contained in "Exhibit B" which is hereby made a part of this Agreement.

- (b) Buyer's Responsibilities:

- (i) Buyer shall be responsible for assuring upon the Effective Date that the chemicals used by the Seller to treat its Steam and water set forth in Exhibit B meet or exceed standards applicable to Buyer, and Buyer shall obtain any required approvals for its use of such chemicals.
- (ii) Any changes to the chemicals used by Seller shall be subject to Buyer's pre-approval, which approval shall not be unreasonably withheld.

### 6.3 Organic Steam

Organic Steam is provided by the Seller, at the request of the Buyer, exclusively from the Auxiliary Boiler System. The Seller limits Organic Steam delivery to a maximum of twenty-one (21) days in a calendar year. The Seller will produce Organic Steam on a

reasonable efforts basis with no warranty as to the quality or term of delivery. If production of Organic Steam causes harm to Steam production equipment, Seller reserves the right to restrict or eliminate delivery of such Organic Steam.

## **SECTION 7 SELLER'S DELIVERY OF STEAM TO BUYER**

### 7.1 Seller's Responsibilities:

- (a) Seller shall be solely responsible for the Steam Facilities up to and including the Seller's Steam Delivery Point.
- (b) Seller shall not be regarded as Buyer's agent, nor shall Buyer have any responsibility or liability, for Seller's design, construction, operation or maintenance of those facilities on Seller's side of the Seller's Steam Delivery Point.
- (c) Seller shall, at its option, have the right, without assuming any duty, to enter upon the location of the interconnection of Buyer's Facilities with the Buyer's Steam Delivery System, upon reasonable advance notice, for the purpose of making any repairs or securing any equipment in the event a Hazardous Condition comes to Seller's attention.
- (d) Seller shall use reasonable efforts to avoid any unnecessary interference with Buyer's operations at the Buyer's Facility, and shall comply with Buyer's reasonable rules and regulations regarding access, sanitation and safety.
- (e) Seller does not hereby agree to undertake any monitoring or surveillance of Buyer's Facilities.
- (f) Seller shall, at its own expense, maintain its portion of the Steam Facilities in accordance with Prudent Operating Practices.
- (g) Seller shall, at its own expense, maintain the Auxiliary Boiler System in accordance with Prudent Operating Practices.
- (h) Seller shall, if the Auxiliary Boiler System is inoperable, use commercially reasonable efforts to restore operation of the Auxiliary Boiler System as soon as practicable.

### 7.2 Buyer's Responsibilities:

- (a) Buyer shall provide Seller and its agents, employees, representatives and contractors with access at reasonable times, upon reasonable advance notice, to those portions of the Buyer's Facility as are reasonably necessary for the

construction, installation, maintenance, monitoring and metering of the Steam Facilities.

- (b) Buyer shall, at its own expense, install a Steam isolation valve at the Buyer's Facility that can be remotely operated from the CS1 Plant control room to allow the Seller to stop Steam supply when in Seller's judgment an emergency situation exists.
- (c) When notified by the Seller, Buyer is responsible for remedying a Hazardous Condition within the Buyer's Facility. If the Buyer fails to correct a Hazardous Condition upon reasonable notification from the Seller, Buyer agrees to reimburse the Seller for any reasonable expenses incurred by the Seller to remedy such Hazardous Condition.
- (d) Buyer shall, at its own expense, maintain its portion of the Steam Facilities in accordance with Prudent Operating Practices.
- (e) Buyer shall not be regarded as Seller's agent, nor shall Seller have any responsibility or liability, for Buyer's design construction, operation or maintenance of any facilities on the Buyer's side of the Seller's Steam Delivery Point.
- (f) Buyer shall be solely responsible for the Steam interconnection facilities between the Seller's Steam Delivery Point and the Buyer's Facility.
- (g) Title to and risk of loss with respect to all Steam shall pass to and rest in Buyer when such Steam is delivered to Buyer by Seller at the Seller's Steam Delivery Point in accordance with the terms of this Agreement.
- (h) Buyer shall not resell the Steam without PGE's prior written consent.

## **SECTION 8 COORDINATION/SCHEDULING**

### 8.1 General

Buyer and Seller shall use their best efforts to coordinate operations and maintenance between the CS1 Plant and the Buyer's Facility and to cooperate in facilitating the reliable and efficient operation of the CS1 Plant and Buyer's Facility.

### 8.2 Scheduling Steam Deliveries

- (a) Buyer's responsibilities:

- (i) Buyer will, prior to the last working day of each month, provide Seller with its planned Steam use during the following month.
  - (ii) Buyer will provide Seller reasonable notice of changes exceeding 10,000 pounds per hour to its planned Steam use.
  - (iii) Buyer will provide Seller reasonable notice of scheduled or planned shutdowns or startups of Buyer's Facility. For purposes of this subsection 8.2(a)(iii), reasonable notice shall be four (4) hours prior notice for planned startups and shutdowns. Buyer will use best efforts to give Seller reasonable notice of any unplanned shutdowns.
- (b) Seller's Responsibilities:
- (i) Seller will provide Buyer reasonable notice of scheduled or planned Steam pressure changes of greater than 75 pounds per square inch.
  - (ii) Seller will provide reasonable notice of impending plant problems that may restrict Steam flow to the Buyer.
  - (iii) Seller makes no guarantees or warranties as to the availability of the Buyer's Steam Delivery System.
  - (iv) Seller makes no guarantees or warranties as to the effects of other Steam users on the Buyer's Facility.

### 8.3 Scheduling Maintenance

- (a) Seller's Responsibilities:
- (i) Seller shall use its reasonable best efforts to ensure that both the CS1 Plant and the Auxiliary Boiler System are not inoperative at the same time.
  - (ii) Except for necessary repairs to equipment shared by both the CS1 Plant and the Auxiliary Boiler System, Seller shall make all reasonable efforts not to schedule outages of both the CS1 Plant and the Auxiliary Boiler System at the same time.
  - (iii) There may be times where the entire Steam Facility must be shut down for maintenance purposes, and accordingly, notwithstanding anything to the contrary contained in this Agreement, Seller reserves the right to shut down the Steam Facilities and is relieved of its obligation to provide Steam to Buyer under such circumstances. Seller will provide all Steam customers with notice reasonably in advance and will coordinate with all Steam customers to schedule and minimize such outages.

- (iv) Seller is not responsible for maintenance and operation of the Buyer's Steam Delivery System, which connects Seller's Steam Facilities to Buyer's Facilities.
- (b) Buyer's Responsibilities:
  - (i) Buyer shall use reasonable efforts to schedule outages on weekdays.
  - (ii) Buyer will cooperate with Seller and other Steam customers to schedule Steam Facilities outages when necessary.

## **SECTION 9 STEAM METERING**

### 9.1 Seller's Metering System

- (a) Seller shall provide metering ("Seller's Metering System") that measures the Steam delivered at the Seller's Steam Delivery Point.
- (b) The total quantity of Steam delivered from the Seller to the Buyer at the Seller's Steam Delivery Point shall be measured by the Seller's Metering System.
- (c) Seller's Metering System consists of meters near the Seller's Steam Delivery Point, the Auxiliary Boiler System and the Steam Turbine Extraction and the associated components to establish steam flows.

### 9.2 Buyer's Metering System

- (a) Buyer shall provide a meter ("Buyer's Metering System") that measures the total Steam consumed at the Buyer's Facility. Buyer's Meter shall be used to determine the total Steam lost through condensation and leakage between the Seller's Steam Delivery Point and the Buyer's Metering System which shall be the difference between the total Steam delivered to the Buyer's Steam Delivery System as measured by Seller's Metering System and the total Steam delivered to the Buyer as measured by the Buyer's Metering System.
- (b) Buyer's Metering System shall be designed, constructed and maintained in accordance with criteria reasonably approved by Seller.
- (c) Buyer will communicate all necessary information measured by the Buyer's Metering System to Seller's CS1 Plant via telemetry or hard wire in a form satisfactory to Seller including:

Instantaneous Steam flow, raw and compensated  
Integrated Steam flow, including monthly totals  
Steam temperature

## Steam pressure

### 9.3 Metering System Calibration

- (a) Buyer and Seller shall each provide and maintain their respective meters, sensing elements, transmitters, special and general purpose computer systems to be used for the primary measurement, signal conditioning, calculation, and invoice accounting for determination of payments by Buyer to Seller.
- (b) At least once each work shift, Buyer and Seller, each at its own expense, shall monitor their respective metering instrumentation for proper function, including controller, transmitters and sensing devices.
- (c) Buyer and Seller, each at its own expense, shall perform maintenance and calibration checks on their respective flow meters at least annually.
- (d) Buyer and Seller shall have the right to be present whenever the other party reads, cleans, changes, repairs, inspects, tests, calibrates, or adjusts the sensing elements, pneumatic or electronic transmitters used in measuring or checking the measurement of Steam delivered to Buyer. Buyer and Seller will work cooperatively to meet the intent of this paragraph. Without limiting the generality of the foregoing sentence, each Party shall provide at least two (2) hours advance notice to the other Party of a request to inspect or observe the operation of the other Party's metering system.
- (e) The calibration records for the measuring equipment shall remain the property of the respective Buyer or Seller, however, upon request, Buyer or Seller will provide to the other Party copies of its records and charts, plus calculations, for inspection and verification.
- (f) Buyer or Seller may, at any time that they reasonably suspect an error of the Seller's Metering System or Buyer's Metering System respectively, request additional testing of the Seller's Metering System or Buyer's Metering System respectively whereupon Buyer or Seller as appropriate shall promptly schedule testing or verification of the portion of the suspected of being in error.
- (g) Buyer or Seller may request this additional testing to be completed by a competent third party. In such case, the Parties shall mutually agree on the third party. The party requesting the additional testing shall pay the cost of such additional testing unless the percentage error for any component, system or subsystem is greater than those specified in column C, "Measured Accuracy," of the attached "Exhibit D," which is hereby made a part of this Agreement, in which event the other Party shall pay the cost of such additional testing.

#### 9.4 Metering Adjustments

- (a) If the Buyer's or Seller's Metering System is found upon testing to be in error by more than  $\pm 1.123\%$  of Steam flow as established in Exhibit D, measured Steam flow during the month will be adjusted.
- (b) The adjustment in measured Steam flow will be made for the actual period during which inaccurate measurements were made if that period can be determined to the mutual satisfaction of the Parties, otherwise the adjustment in measured Steam flow will be made by Seller for one-half of the period from the date of the last previous test of the Seller's Metering System.
- (c) The amount of the adjustment will be determined by correcting the error if the percentage of error is ascertainable by calibration, tests, or mathematical calculation or if such correction is impracticable, then by estimating on the basis of deliveries during a period under similar conditions when the Buyer's and Seller's Metering System was registering accurately.
- (d) Buyer will pay Seller the amount of any underpayment, or Seller will refund to Buyer the amount of any overpayment, determined as a result of an adjustment in measured Steam flow made in accordance with this Section 9.4.

#### 9.5 Metering Failure

- (a) If the Buyer's or Seller's Metering System fails to register, or is otherwise inoperable for all or part of the billing period, measured Steam flow will be adjusted pursuant to Section 9.4 (c).
- (b) If one or more of the Buyer's Metering System(s) fails to register, or is otherwise inoperable for all or part of a billing period, the Steam line losses will be determined and apportioned based upon historical loss patterns for a comparable seasonal period.
- (c) If the Seller's Metering System fails to register or is otherwise inoperable for all or part of a billing cycle, the Steam line losses will be determined and based upon historical loss patterns for a comparable seasonal period. As the Seller has multiple meters in the Seller's Metering System, all Seller's meters would have to fail for this paragraph to be applicable.

#### 9.6 Resolution of Disputes and Discrepancies

The Parties agree to communicate with each other and attempt to resolve in good faith any disputes or discrepancies regarding to the accuracy, precision or reliability of the Metering System. If the Parties are unable to informally resolve any disputes or discrepancies, then either Party may invoke the dispute resolution procedure described in Exhibit E, Section F.



**SECTION 10**  
**MONTHLY CHARGE FOR STEAM**

10.1 Monthly Charge for Steam

**[REDACTED]**

10.2 Steam Cost

**[REDACTED]**

**[REDACTED]**

10.3 Steam Delivered

The total amount of Steam delivered to the Seller's Steam Delivery Point by the Seller during the month in 1,000 pound units shall be the sum of the average hourly Steam flows as measured by the Seller's Metering System, or if such sum is unavailable, the difference between the readings of the total pounds of Steam at the end of the month and at the beginning of the month as measured by the Seller's Metering System.

Steam lost in the Buyer's Steam Delivery System shall equal the difference between the amount of Steam delivered into the Buyer's Steam Delivery System by Seller as measured by Seller's Metering System during the month and the amount of Steam delivered to the Buyer's Metering System during the month. All Steam measurements shall be in 1,000 pound units.

10.4 Port Agency Fee

Buyer shall pay the Port Agency Fee which will be determined as follows:

**Steam Delivered x Steam Cost x 0.1**

10.5 Buyer shall pay all taxes on the sale or use of Steam now or hereafter levied by the State of Oregon or any other taxing authority.

10.6 The above described formulas shall be subject to renegotiations if the Oregon Public Utility Commission, or any successor agency, disapproves of any terms and conditions of

this agreement, including but not limited to, the price charged for Steam hereunder, at any time following the Effective Date.

## **SECTION 11 BILLING, PAYMENT AND RECORDS**

### 11.1 Determining Monthly Steam Use

- (a) Seller shall record from its distributed control system the readings for Steam quantities from Buyer's Metering System at midnight of the last day of each month. (b) If Seller cannot obtain readings from Buyer's Metering System at its distributed control system, Buyer shall provide to Seller daily readings within one (1) hour of midnight and Seller shall take readings at Buyer's metering station within twelve (12) hours of midnight of the last day of each month.

### 11.2 Monthly Statement

- (a) Seller shall deliver to Buyer by the fifteenth (15th) day of each month following the month for which the reading was taken a statement showing the pounds of Steam delivered to Buyer and the Monthly Charge for Steam for the applicable month, as adjusted to reflect the amount of any adjustment pursuant to Sections 9 and 10 hereof.
- (b) Any statement delivered to Buyer pursuant to this Section 11.2 hereof shall set forth in detail Seller's calculation of the Monthly Charge for Steam and the payment due from Buyer, and shall be accompanied by information reasonably sufficient for Buyer to determine the accuracy of such statement.

### 11.3 Payment

- (a) Buyer shall pay to Seller the payment due as set forth in the statements provided to Buyer by Seller pursuant to Section 11.2 hereof, and such payment shall be made within 30 days from the date of invoice.
- (b) Any payment not so made will bear interest from the date on which payment was required to be made to the date such payment is actually received by Seller, and such interest shall accrue at an annual rate of 1.5% a month, but in no event more than the maximum rate permitted by applicable law.
- (c) Except in the event of a statement dispute under Section 11.5, and, if this Agreement is not terminated for failure to pay in accordance with the terms contained herein, if Buyer fails to make a payment due as required by Section 11.3(a), in addition to any other remedies that may be allowed by law or pursuant to this Agreement, Buyer shall be required to make monthly prepayments for Steam. Such prepayments shall equal an estimated payment amount for Buyer's typical Steam consumption in any particular month, as reasonably determined by

Seller. In addition, Seller shall continue to bill Buyer in accordance with this Section 11, and Buyer shall be responsible for payment, pursuant to Section 11.3, of any amounts owed in addition the amount already prepaid for a particular month. In the event Buyer's prepayment is greater than the actual Monthly Charge for Steam for the corresponding month, Seller shall adjust by such amount future prepayments for Steam.

#### 11.4 Statement Disputes

- (a) If Buyer in good faith disputes a statement prepared by Seller, Buyer shall pay the full amount of such statement, and the disputed portion shall be subject to the dispute resolution procedures as set forth in Section F of the attached "Exhibit E", which is hereby made a part of this Agreement, which shall be commenced within thirty (30) days of payment.
- (b) Any billing adjustment determined to be necessary pursuant to said dispute resolution procedures shall be made in the next regularly prepared billing statement issued following the final resolution or decision, either in the form of a credit to Buyer against amounts otherwise due or as an additional charge to Buyer, as the case may be.

#### 11.5 Records

Seller and Buyer will maintain and preserve for a period of at least one year from the date of the preparation thereof, complete and accurate records of all data and information (a) reflecting the pounds of Steam delivered to Buyer in each year during the Term or a Renewal Term hereof, and (b) necessary to calculate the payments as provided in this Agreement, including invoices, receipts, charts, printouts and other materials and documents. Seller and Buyer shall make all such records available for inspection by the other party or its representatives upon reasonable advance notice.

## **SECTION 12 CREDITWORTHINESS**

#### 12.1 Adequate Assurance

Should the creditworthiness, financial responsibility, or performance of Buyer or Buyer's Guarantor (if applicable) become reasonably unsatisfactory to Seller after the Effective Date, Seller, upon fifteen days (15) prior written notice to Buyer, may require at its sole option adequate assurance of due performance. Such assurance may be provided in the form of a guaranty, letter of credit, cash prepayment, or any other security in a form and amount acceptable to Seller.

#### 12.2 Financial Information

Buyer or Buyer's Guarantor (if applicable) shall deliver within 120 days following the

end of each fiscal year, a copy of Buyer's or Buyer's Guarantor's annual report containing audited consolidated financial statements for the most recently ended fiscal year. Buyer or Buyer's Guarantor shall also deliver upon Seller's request a copy of Buyer's or Buyer's Guarantor's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and prepared in accordance with generally accepted accounting principles, consistently applied; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as Buyer or Buyer's Guarantor diligently pursues the preparation, certification and delivery of the statements.

**SECTION 13  
GENERAL PROVISIONS**

This Agreement shall be further subject to those general terms and conditions contained in the attached Exhibit E, which is hereby incorporated by reference.

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound hereby, have caused this Agreement to be signed by their respective officers thereunto duly authorized as of the day and year first set forth above.

**Seller:**

**Buyer:**

PORTLAND GENERAL ELECTRIC  
COMPANY

ConAgra Foods Packaged Foods Co.

By: \_\_\_\_\_  
Stephen Quennoz  
Its: Vice President  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Rick Martin  
Its: V.P. Manufacturing  
Date: \_\_\_\_\_

## EXHIBIT A

### To Energy Sale Agreement between Portland General Electric Company and ConAgra Foods Inc.

#### DEFINITIONS

Except as otherwise defined in the Agreement to which this Exhibit is a part, capitalized terms shall have the meanings set forth below:

1. “*AECO*” means the AECO gas trading hub located in Alberta, Canada.
2. “*Auxiliary Boiler System*” means a gas fired steam boiler appurtenant to the CS1 Plant, one of two Steam sources used by Seller to supply Steam for sale.
3. “*Base Steam*” has meaning set forth in Section 5.2.
4. “*Buyer*” means ConAgra Foods Packaged Foods Company, and its successors and permitted assigns as buyer under this Agreement.
5. “*Buyer’s Facility*” means that food processing facility in Morrow County, Oregon, including but not limited to Buyer’s processing plant located at The Port of Morrow, Morrow County, Oregon and all appurtenant structures, fixtures, improvements, equipment and other personal and real property interests now or hereafter owned or leased by Buyer at or near that location, beginning at the Steam Delivery Point.
6. “*Buyer’s Metering System*” means Buyer’s system of instruments, gauges, sensing elements, pneumatic and/or electronic signal transmitters, processors and controllers which is used to sense, transmit and calculate the quantity of Steam delivered by Seller.
7. “*Buyer’s Steam Delivery System*” means Buyer’s pipeline consisting of the steam piping, supports, vaults, steam traps, transmitters, receivers, insulation and other personal and real property interests located between the CS1 plant and Buyer’s facility, including any such interests hereafter owned or leased by the Buyer and used in connection with receiving steam from the Seller.
8. “*CS1 Plant*” means the combustion turbines and generators, heat recovery boiler, Steam turbine generator, and all other appurtenant structures, fixtures, improvements, equipment other than the Auxiliary Boiler System and other personal and real property interests located on or near the Coyote Springs Project now or hereafter owned or leased by Seller and used primarily in connection with generating and delivering electricity.
9. “*Dispatch Costs*” means the cost of delivered fuel, and other variable operation and maintenance to generate one MWh from the CS1 plant.
10. “*Economically Dispatched*” means that the CS1 Plant is dispatched when there is a positive difference between the Forward Market Price of electricity and the Dispatch Costs of CS1 Plant.

11. “*Emergency Steam*” shall mean steam delivered during periods when Seller’s ability to deliver steam is reduced.
12. “*Event of Default*” has the meaning set forth in the attached Exhibit E, Section A hereof.
13. “*Force Majeure*” has the meaning set forth in the attached Exhibit E, Section C to the Agreement.
14. “*Forward Market Price*” has the meaning set forth in Section 10.2.
15. “*Guarantor*” means with respect to Buyer, none, and respect to Seller, none.
16. “*Gas or Natural Gas*” means natural gas or the residue gas remaining after natural gas has been treated for the removal of any of its constituent parts other than methane.
17. “*Hazardous Condition*” means a condition presenting a serious risk of significant damage to property or persons.
18. “*Monthly Charge for Steam*” means the amount payable by Buyer to Seller for Steam delivered pursuant to this Agreement as determined under Section 10 and set forth on each monthly invoice for Steam delivered by Seller to Buyer.
19. “*Operations and Maintenance Cost*” mean Annual variable budgeted operations and maintenance (“O&M”) costs to operate the CS1 Plant and the Auxiliary Boiler System on January 1 of each applicable calendar year. The cost of natural gas, as required to operate the Auxiliary Boiler System is included in the annual Operation and Maintenance Cost.
20. “*Organic Steam*” means steam that is produced, on a reasonable efforts basis, exclusively from the Auxiliary Boiler System using modified chemical additives to meet the Buyer’s requirements. The Buyer shall be responsible for pre-approving all chemicals used by the Seller to treat its Steam and water while assuring that such chemicals will meet or exceed standards applicable to the Buyer for the production of Organic Steam. The Buyer shall obtain all required regulatory approvals for the Seller’s use of chemicals to the extent they are required to produce Organic Steam and are different than the chemicals as outlined in Exhibit B.
21. “*Party or Parties*” means a signatory or the signatories to this Agreement and its or their successors and permitted assigns, as the case may be.
22. “*Peak Steam*” has the meaning set forth in Section 5.3.
23. “*Port of Morrow or Port*” means the municipal corporation of the State of Oregon responsible for commercial development of the area around and including Buyer’s Facility and the CS1 Plant.
24. “*Prime Rate*” means the interest rate (sometimes referred to as “Base Rate”) for large commercial loans to creditworthy entities announced from time to time by US National

Bank, in either case determined as of the date the obligation to pay interest arises, but in no event more than the maximum rate permitted by applicable law.

25. *“Prudent Operating Practices”* means the practices, methods and acts engaged in or approved by a significant portion of the electric utility industry (with respect to Seller) or the potato products producers (with respect to Buyer) that at a particular time, in the exercise of reasonable judgment in light of the facts known or that reasonably should have been known at the time a decision was made, would have been expected to accomplish the desired result in a manner consistent with law, regulation, reliability, safety, environmental protection, economy and expedition.
26. *“Renewal Term”* has the meaning set forth in Section 2.
27. *“Seller”* means Portland General Electric Company, an Oregon Corporation, and its successors and permitted assigns as seller under this Agreement.
28. *“Seller’s Metering System”* has the meaning set forth in Section 9.1(c).
29. *“Service Factor”* shall mean the expected operating hours of the gas turbine divided by the total hours of Steam delivered. For purposes of this agreement, service factor is defined at 0.75, unless the Parties agree to modify it.
30. *“Steam”* means steam produced by the Seller’s Steam Facilities as measured in 1,000 pound increments and delivered by Seller to Buyer at the Steam Delivery Point pursuant to this Agreement.
31. *“Steam Conversion”* equals 0.102 MW per 1000 Lbs of Steam.
32. *“Steam Cost”* shall have the meaning set forth in Section 10.2.
33. *“Seller’s Steam Delivery Point”* means the physical point, a 12” flanged connection, to the Buyer’s Steam Delivery System, at which Steam is delivered from the CS1 Plant to the Buyer pursuant to Section 5, located in the Seller’s vault near the southern most boundary of the CS1 Plant.
34. *“Steam Facilities”* means those facilities reasonably required for the production, receipt, delivery, isolation, protection and monitoring of Steam, including valving, safety relief valves, appropriate pressure reducing valves, appropriately designed desuperheating station, supports, metering systems, pipe systems, pipelines and other facilities reasonably required to connect the Steam systems of the Buyer’s Facility and the CS1 Plant in order to effectuate the purposes of this Agreement.
35. *“Steam Turbine Extraction”* means the extraction line off the steam turbine which may be used to supply steam to the Buyer.
36. *“Term”* has the meaning set forth in Section 2.



**EXHIBIT B**  
**To Energy Sale Agreement between Portland General**  
**Electric Company and ConAgra Foods**

**STEAM AND WATER CHEMICAL CONTROL ADDITIVES**

The following chemical additives are used in the Coyote Springs Steam systems:

- (1) Supplier/Function: Nalco Corporation / Aux Boiler oxygen control  
 Description: Aqueous solution of volatile oxygen control additives  
 Active Chemicals: Erythorbic Acid & Diethylaminoethanol
- (2) Supplier/Function: Nalco Corporation / Steam cycle pH control  
 Description: Aqueous solution of volatile pH control additives  
 Active Chemicals: Any of Cyclohexylamine, Morpholine & Diethylaminoethanol
- (3) Supplier/Function: Nalco Corporation / Boiler drum pH control  
 Description: Aqueous solution of non-volatile pH control additives  
 Active Chemicals: Sodium tri-polyphosphate and Sodium hydroxide
- (4) Supplier/Function: Various suppliers / Boiler drum pH control  
 Description: Aqueous solution of non-volatile pH control additive  
 Active Chemicals: Sodium Hydroxide
- (5) Supplier/Function: Nalco Corporation / Aux Boiler suspended solids control  
 Description: Aqueous solution of corrosion product dispersant  
 Active Chemicals: Poly-carboxylic acid
- (6) Supplier/Function: Nalco Corporation / Auxiliary boiler oxygen control  
 Description: Aqueous solution of non-volatile oxygen control additives  
 Active Chemicals: Cobalt sulfate, Sodium Metabisulfite, Sodium Sulfite

Chemicals used in the HRSG can be entrained in Steam water droplets. These water droplets are vaporized in the superheater sections of the boiler and the non-volatile chemicals are expected to plate out in the superheaters, HP Steam piping and Steam turbine before reaching the extraction system. Chemicals used in the Auxiliary Boiler are added directly to the boiler and can be entrained in the Steam.

Volatile chemicals are used to control pH in the feedwater and steam. Chemical concentrations expected in the Steam, which may carry over into the extraction Steam are:

<i>Chemical</i>	<i>Normal Concentration</i>	<i>Potential Concentration</i>
Morpholine	0.5 ppm	5 ppm
Cyclohexylamine	1 ppm	5 ppm

**EXHIBIT C**  
**To Energy Sale Agreement Between Portland General**  
**Electric Company and ConAgra Foods**

**[REDACTED]**

**[REDACTED]**

**EXHIBIT D**  
**To Energy Sale Agreement between Portland General**  
**Electric Company and ConAgra Foods**

**BUYER'S STEAM UNCERTAINTY LIMITS**

Measurement Parameter	$\frac{A}{\#}$ Inst.	$\frac{B}{\text{Eff Factor}}$ % per 1%	$\frac{C}{\text{Meas Accuracy}}$	$\frac{(B*C)}{\sqrt{A}}$ Flow Uncert.	Comments
1) Steam Flow					
Meter	1	1.000	1.000%	1.000%	Typical for uncalibrated venturi ASME MFC-3M, p. 41
DP Transmitter	1	0.470	0.55%	0.240%	Effect based on EPS Model based on ASME MFC-3M Acc. based on ¼% trans @ ½ range and .1% shunt
Pressure Compensation	1	0.538	0.55%	0.274%	Effect based on EPS Model based on ASME MFC-3M Acc. based on ¼% trans @ ½ range and .1% shunt
Temp. Compensation	1	0.323	0.789%	0.255%	Effect based on EPS Model based on ASME MFC-3M Accuracy of 3°F assumed
Measurement sys inacc	1	1.000	0.250%	0.250%	Ambient Effects on Measurement System
<b>Steam Flow Uncertainty</b>				<b>1.123%</b>	

NOTE: This uncertainty analysis is based on detailed flow calculations. The analysis assumes that flow calculations are done in accordance with applicable ASME standards, and that Steam properties are calculated in accordance with the appropriate ASME/IFC formulations. Significant additional uncertainty may result if less rigorous calculations are followed. For example, not properly accounting for the gas expansion factor, Y1, may increase the Steam flow error by 2% at some portions of the flow range and improper density compensation may increase the Steam and water flow uncertainty by an additional 2%.

## **EXHIBIT E**

### **To Energy Sale Agreement Between Portland General Electric Company and ConAgra Foods**

#### **GENERAL TERMS AND CONDITIONS**

##### **SECTION A DEFAULT**

- A.1 An event of default (“Event of Default”) under this Agreement shall be deemed to exist upon the occurrence of any one or more of the following events:
- a. If Buyer permanently closes the Buyer’s Facility, such closure being evidenced by, without limitation, the triggering of the notice provisions of the Worker Adjustment and Retraining Notification Act.
  - b. Failure by Buyer to make payment of any amounts due Seller under this Agreement, or failure by Seller to provide Steam in accordance with this Agreement, which failure continues for a period of three (3) business days after written notice pursuant to Section G.2 hereof of such failure, provided that it shall not be an Event of Default if disputed amounts are deposited in escrow while the parties proceed under Section F hereof to resolve any dispute over the amounts due. All costs of such escrow shall be borne by Buyer.
  - c. Failure by either Party to perform fully any other material provision of this Agreement, and (a) such failure continues for a period of three (3) business days after written notice pursuant to Section G.2 hereof of such nonperformance or (b) if the non-performing Party shall commence within such three (3) business days and shall thereafter proceed with all due diligence to cure such failure, such failure is not cured within such longer period not to exceed ninety (90) days as shall be necessary for such Party to cure the same with all due diligence;
  - d. If either Party shall fail to comply with the terms of any decision reached pursuant to Section F hereof, and (a) such failure shall continue for three (3) business days after notice thereof pursuant to Section G.2 hereof or (b) if the nonperforming Party shall commence within such three (3) business days and shall thereafter proceed with all due diligence to cure such failure, such failure is not cured within such longer period not to exceed ninety (90) days as shall be necessary for such Party to cure the same with all due diligence;
  - e. If by order of a court of competent jurisdiction, a receiver or liquidator or trustee of either Party or of any of the property of either Party shall be appointed, and such receiver or liquidator or trustee shall not have been discharged within a period of ninety (90) days; or if by decree of such a court, either Party shall be adjudicated bankrupt or insolvent or any substantial part of the property of such

Party shall have been sequestered, and such decree shall have continued undischarged and un-stayed for a period of ninety (90) days after the entry thereof; or if a petition to declare bankruptcy or to reorganize either Party pursuant to any of the provisions of the federal Bankruptcy Code, as it now exists or as it may hereafter be amended, or pursuant to any other similar state statute applicable to such Party, as now or hereafter in effect, shall be filed against such Party and shall not be dismissed within ninety (90) days after such filing; or

- f. If either Party or Guarantor shall file a voluntary petition in bankruptcy under any provision of any federal or state bankruptcy law or shall consent to the filing of any bankruptcy or reorganization petition against it under any similar law; or, without limitation of the generality of the foregoing, if either Party or Guarantor shall file a petition or answer or consent seeking relief or assisting in seeking relief in a proceeding under any of the provisions of the federal Bankruptcy Code, as it now exists or as it may hereafter be amended, or pursuant to any other similar state statute applicable to such Party, as now or hereafter in effect, or an answer admitting the material allegations of a petition filed against it in such a proceeding; or if either Party or Guarantor shall make an assignment for the benefit of its creditors; or if either Party or Guarantor shall admit in writing its inability to pay its debts generally as they become due; or if either Party or Guarantor shall consent to the appointment of a receiver or receivers, or trustee or trustees, or liquidator or liquidators of it or of all or any part of its property.
- g. Failure by Buyer to establish, maintain, extend or increase adequate assurance of due performance in a form and amount acceptable to Seller when required pursuant to Section 12.1.
- h. Failure to provide financial information in accordance with Section 12.2.
- i. Buyer's Guarantor (if applicable) fails to perform any covenant set forth in the guaranty agreement it delivered in respect of this Agreement, any representation or warranty made by such Guarantor in said guaranty agreement shall prove to have been false or misleading in any material respect when made or when deemed to be repeated, the guaranty agreement shall expire or be terminated or shall in any way cease to guaranty the obligations of Buyer under this Agreement.

If both Parties agree that an Event of Default has occurred, then the non-defaulting Party may proceed to exercise any remedy given under this Agreement without proceeding to dispute resolution under Section F hereof. However, if one Party believes in good faith that no Event of Default has occurred, and promptly informs the Party asserting the existence of the Event of Default of such belief, then the Parties shall proceed under Section F hereof prior to the exercise of any remedy given under this Agreement, provided that if the Event of Default concerns a failure to make any payment due Seller as required by this Agreement, then Seller may proceed with termination of this Agreement unless Buyer pays, or places in escrow (as provided in Section A.1(b) above) while the Parties proceed under Section F hereof to resolve any dispute,

the amount claimed by Seller within a period of three (3) business days after written notice pursuant to Section G.2 hereof of such nonpayment.

- A.2 Upon the occurrence and during the continuation of any Event of Default hereunder, the Party not in default shall have the right:
- a. To terminate this Agreement upon ten (10) days written notice pursuant to Section G.2 hereof to the defaulting Party; and
  - b. To pursue any other remedy given under this Agreement or now or hereafter existing at law or in equity or otherwise.
- A.3 Upon the occurrence and during the continuation of any Event of Default related to payment by Buyer to Seller hereunder (whether or not disputed in accordance with Section F), Seller shall have the right to suspend any performance obligations it may have hereunder in addition to any other remedy provided under Section A.2 unless the disputed amounts are placed in escrow (as provided in Section A.1(b) above) while the Parties proceed under Section F hereof to resolve any dispute.

## **SECTION B TERMINATION**

- B.1 In the event of termination of this Agreement pursuant to Section A.2 hereof, the Parties shall be released and discharged from any obligations arising or accruing hereunder from and after the date of such termination; provided that termination of this Agreement shall not discharge or relieve either Party from any obligations or liabilities which may have accrued under the terms of this Agreement prior to such termination.

## **SECTION C FORCE MAJEURE**

- C.1 Force Majeure shall mean any cause or causes which wholly or partly prevents or delays the performance of obligations arising under this Agreement, or renders such performance commercially impracticable, and which is not reasonably within the control of the non-performing Party, and shall include, without limitation by enumeration, an act of God, nuclear emergency, explosion, accident, fire, epidemic, landslide, lightning, earthquake, storms, flood or similar cataclysmic occurrence; an act of the public enemy, war, blockade, insurrection, riot, civil disturbance, sabotage, strikes, lockouts, or other labor difficulties; unavailability of labor, fuel, power or raw materials; plant breakdowns or equipment failure; inability to obtain supplies; restrictions or restraints imposed by law or by rule, regulation or order of governmental authorities, whether federal, state or local; interruption or other loss of utilities; and any other cause beyond the reasonable control of the Party relying on such cause to excuse its performance hereunder; provided,

however, that neither the lack of money nor changes in market conditions shall constitute Force Majeure.

- C.2 In the event that the Parties are unable in good faith to agree that a Force Majeure has occurred, the Parties shall submit the dispute to mediation pursuant to Section F hereof, provided that the burden of proof as to whether an event of Force Majeure has occurred shall be upon the Party claiming an event of Force Majeure.
- C.3 If either Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure event, that Party shall be excused from whatever performance is affected by the Force Majeure event (other than an obligation to make a payment) to the extent so affected, provided that:
- a. The non-performing Party as soon as is practicable, but in any event within five (5) business days after the occurrence of the inability to perform due to a Force Majeure event, provides written notice to the other Party of the particulars of the occurrence including an estimation of its expected duration and probable impact on the performance of its obligations hereunder, and continues to furnish timely regular reports with respect hereto during the period of Force Majeure;
  - b. The non-performing Party shall exercise all reasonable efforts to continue to perform its obligations under this Agreement and to remedy its inability to so perform;
  - c. The non-performing Party shall provide the other Party with prompt notice of the cessation of the event of Force Majeure giving rise to the excuse from performance; and
  - d. No performance of an obligation of either Party that arose prior to the occurrence of the event of Force Majeure shall be excused as a result of such occurrence.
- C.4 Nothing in this Section C shall require the settlement of any strike, walkout, lockout or other labor dispute on terms that, in the sole judgment of the Party involved in the dispute, are contrary to such Party's interest. It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the Party having the difficulty.

## **SECTION D INSURANCE**

- D.1 Commencing on the Effective Date, except as otherwise provided herein, each Party shall, at its own expense, acquire and maintain, or cause to be acquired and maintained, the following minimum insurance coverage (in any combination of primary and excess layers of coverage) as long as such coverage or reasonably similar coverage are available on reasonable commercial terms:



- a. Statutory coverage for Workers' Compensation, and Basic Employers' Liability Coverage with a limit of \$2 million each line;
- b. Commercial General Liability Coverage (in any combination of primary and excess layers thereof), including Premises and Operations, Contractual Liability, Explosion, Collapse and Underground Hazards, and Broad Form Property Damage Liability, written with limits of \$5 million per occurrence and in the annual aggregate;
- c. Business Automobile Liability Coverage, including all owned, non-owned and hired vehicles; written with a combined single limit for bodily injury and property damage of \$2 million per Accident; and
- d. Commencing as of the Effective Date and continuing during the Term or Renewal Term, each Party shall acquire and maintain, or cause to be acquired and maintained, as long as such coverage or reasonably similar coverage are available on reasonable commercial terms, All Risk Property Coverage and Boiler and Machinery Coverage against damage to the Facility for full replacement cost.

Such coverage required under d. above shall be endorsed to provide that:

- (i) The coverage afforded shall not be canceled or reduced by a Party without at least thirty (30) days prior written notice;
- (ii) In the event of a loss, the insurance proceeds shall be applied to repair of the Party's facility, unless such proceeds are not sufficient to restore the Party's facility to full or substantial operating level; and
- (iii) The insurer shall waive any right of subrogation of the insurer to the rights of any insured party thereunder against the other Party, and any right of the insurer to any set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of that Party.

D.2 The insurance policies acquired and maintained, or caused to be acquired and maintained, by a Party pursuant to Section D.1 hereof shall: (1) be endorsed naming the other Party, its directors, officers, employees, agents and affiliates, as their interests may appear, as additional insured with respect to any and all third-party bodily injury or property damage claims arising from the Party's performance of this Agreement; (2) contain provisions indicating that each Party's interests in such insurance are severable; (3) require thirty (30) days prior written notice to be given to the other Party of cancellation or material change in any of the policies (except ten (10) days for cancellation due to non-payment of premium); and (4) be primary and not excess or contributing with respect to any other coverage available to the other Party or to its affiliates and shall not be deemed to limit a Party's liability under this Agreement.

- D.3 Evidence of insurance for the coverage specified herein shall be provided by each Party to the other Party on or before the effective date for those coverages set forth in Section D.1 hereof.
- D.4 Notwithstanding anything in this Section D to the contrary, either Party may insure for the amount of any insurance required to be carried by it under this Section D: (a) under any plan of self-insurance which it may from time to time have in force and effect so long as that Party's net worth exceeds \$10,000,000.00; (b) under a blanket policy or policies covering other liabilities of that Party and its subsidiaries, controlling or affiliated corporations; or (c) partly under such a plan of self-insurance and partly under such blanket policies.

## **SECTION E INDEMNIFICATION**

- E.1 Each Party shall indemnify, defend, and hold the other Party and its affiliates, its respective successors and assigns, and the officers, directors, employees and stockholders of each of them harmless from and against all damages, losses or expenses suffered or paid as a result of any and all claims, demands, suits, causes of action, proceedings, judgments and liabilities, including reasonable counsel fees incurred in litigation, on appeal or otherwise, assessed, incurred or sustained by or against any such Party with respect to or arising out of:
- a. With respect to Seller, an act or omission of Buyer, its successors and assigns, or any of their employees, contractors, agents or representatives in:
    - (i) the use or disposal of Steam made available by Seller at the Seller's Steam Delivery Point;
    - (ii) the design, use or maintenance of Buyer's equipment at the Seller's Steam Delivery Point or connecting the Steam Facilities or Buyer's Steam Delivery System to the Buyer's Facility; or
    - (iii) the construction, design, operation, or maintenance of the Buyer's Facility, including without limitation the Buyer's portion of the Steam Facilities;
  - b. With respect to Seller, any act or omission of any person in the construction, design, operation or maintenance of any other Steam producing equipment utilized by Buyer in Buyer's Facility.
  - c. With respect to Buyer, any act or omission of any person in the construction, design, operation, or maintenance of the CS1 Plant or the Auxiliary Boiler System.

- E.2 Promptly after receipt by either Party of any claim or notice of the commencement of any action, administrative or legal proceeding, or investigation as to which the indemnity provided for in Section E.1 hereof may apply, the Party receiving such claim or notice shall notify the other Party in writing of such fact. The indemnifying Party shall assume the defense thereof with counsel designated by the indemnifying Party which is satisfactory to the indemnified Party; provided, however, that if the defendants in any such action include both Buyer and Seller and the indemnified Party reasonably concludes that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the indemnifying Party, the indemnified Party shall have the right to select separate counsel to participate in the defense of such action on behalf of the indemnified Party, at the indemnified Party's expense.
- E.3 Should the indemnified Party be entitled to indemnification under Section E.1 as a result of a claim by a third party, and the indemnifying Party fails to assume the defense of such claim, the indemnified Party may, at the expense of the indemnifying Party, contest or, with the prior written consent of the indemnifying Party, settle such claim. Provided however, that if in the written opinion of the indemnified Party's counsel such claim is meritorious, no such contest need be made, and settlement or full payment of any such claim may be made without consent of the indemnifying Party (with the indemnifying Party remaining obligated to indemnify the indemnified Party under Section E.1).

## **SECTION F DISPUTES**

- F.1 All Claims and disputes between Buyer and Seller arising out of or related to this Agreement will first be attempted to be resolved by the responsible project management personnel for both Parties. In the event such resolution fails to materialize, senior management for both Buyer and Seller will negotiate in good faith to reach an acceptable and timely resolution of the claim or dispute. Should the Parties be unable to resolve the dispute to their mutual satisfaction within five (5) working days after such negotiation by senior management, or any other mutually agreeable time period, the Parties will attempt to resolve the dispute through non-binding mediation (using a mediator upon which the parties shall mutually agree within thirty (30) days), as a condition precedent to pursuing litigation. Neither Party shall be obligated to engage in mediation for longer than two (2) days. Each Party shall be responsible for its own expenses and one-half of any mediation expenses incurred to resolve the dispute. If the Parties are still unable to resolve their differences after good faith consideration of a resolution through mediation for a period not to exceed two (2) days, each Party shall have the right to pursue litigation in accordance with the provisions set forth below.
- F.2 Neither Party shall commence any action at law or in equity as a result of any dispute, controversy or claim arising out of or in connection with or relating to this Agreement or any breach or alleged breach hereof ("Litigation") until the above procedures with respect to settlement and mediation have been complied with. Buyer and Seller agree that in the

event of legal action with regard to the terms of this Agreement, in any such action any court of general jurisdiction in the State of Oregon shall have personal and subject matter jurisdiction over such controversy and the venue in such action shall be in Multnomah County, Oregon, in the Circuit Court for the State of Oregon in Multnomah County or the United States District Court for the State of Oregon. Buyer and Seller irrevocably waive any objection to venue or claim to inconvenient forum in any such court.

## **SECTION G NOTICE AND SERVICE**

- G.1 All notices, including communications and statements which are required or permitted under the terms of this Agreement, shall be in writing, except as otherwise provided.
- G.2 Service of a notice may be accomplished by personal service, telegram, registered or certified mail (postage prepaid) or reputable overnight courier service. Notices shall be sent to the Parties at the following addresses:

*Seller:* Portland General Electric Company  
Attn: Vice President of Power Operations  
121 SW Salmon Street  
Portland, OR 97204

*With a Copy To:* Portland General Electric Company  
Attn: Coyote Springs Plant Manager  
PO Box 10  
Boardman, OR 97818

*Buyer:* ConAgra Foods Packaged Foods Company, Inc  
Attn. Operations Manager  
PO Box 379  
Boardman, OR 97818

*With a Copy To:* ConAgra Foods Packaged Foods Company, Inc  
Legal Dept  
599 S. Rivershore Lane  
Eagle, ID 83616-4979

From time to time Buyer and Seller each may designate a new address for itself for purpose of notice hereunder by written notice to each of the others duly given as provided herein which new address shall be deemed effective 20 days after such notice of new address is given unless the notice of new address specifies an effective date more than 20 days after the notice is given.

- G.2.1 If a notice is sent by registered or certified mail, it shall be deemed served three days, excluding Saturdays, Sundays or federal legal holidays, after it is mailed.

G.2.2 If a notice is served by telegram, it shall be deemed served 18 hours after delivery to the telegram company.

G.2.3 If a notice is served by reputable overnight courier service, it shall be deemed served on the business day following the day the notice was delivered to the courier service.

## **SECTION H CONSEQUENTIAL DAMAGES**

H.1. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY HERETO FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER SPECIAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, INCIDENTAL OR INDIRECT LOSSES OR DAMAGES (IN TORT, CONTRACT OR OTHERWISE) UNDER OR IN RESPECT OF THIS AGREEMENT OR FOR ANY FAILURE OF PERFORMANCE RELATED HERETO HOWSOEVER CAUSED, WHETHER OR NOT ARISING FROM SELLER'S SOLE, JOINT OR CONCURRENT NEGLIGENCE.

## **SECTION I AMENDMENTS**

I.1 No amendment or modification of the terms of this Agreement shall be binding on either the Buyer or Seller unless reduced to writing and signed by the Party against which enforcement is sought.

## **SECTION J SUCCESSORS AND ASSIGNS**

J.1 Except as specified below, the rights and obligations of the Parties to this Agreement may not be assigned by either Party except upon the express written consent of the other Party, which consent shall not be unreasonably withheld. Seller shall be entitled to assign this Agreement, without Buyer's consent, to any bona fide transferees of ownership or operation of the CS1 Plant. Buyer shall be entitled to assign this Agreement, without Seller's consent, to bona fide transferees of ownership or operation of the Buyer's Facility, for Steam to be used at the Buyer's Facility. Buyer and Seller each shall remain liable for its transferee's performance.

**SECTION K  
MISCELLANEOUS**

- K.1 This Agreement shall be governed by and construed in accordance with the laws of the state of Oregon.
- K.2 Should any provisions of this Agreement for any reason be declared invalid or unenforceable by final and un-appealable order of any court or regulatory body having jurisdiction thereof, such decision shall not affect the validity of the remaining portions, which remaining portions shall remain in force and effect as if this Agreement had been executed with the invalid portion thereof eliminated.
- K.3 This Agreement supersedes any and all oral or written agreements and understandings heretofore made relating to the subject matters herein and constitutes the entire Agreement and understanding of the Parties relating to the subject matters herein.
- K.4 All indices, titles, subject headings, section title and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive, or to affect the meaning, content or scope of this Agreement.
- K.5 Any provisions of this Agreement that are expressly or by implication to come into or remain in force following the termination or expiration of this Agreement shall survive such termination or expiration.
- K.6 The Parties shall execute such additional documents including, without limitation, a consent to assignment or similar document, and shall cause such additional actions to be taken as may be required or, in the judgment of any Party, be necessary or desirable, to effect or evidence the provisions of this Agreement and the transactions contemplated hereby.
- K.7 This Agreement may be executed in any number of counterparts, and each counterpart shall have the same force and effect as the original instrument.

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